

Ruggerino v Prince Holdings 2012, LLC

2022 NY Slip Op 32892(U)

August 24, 2022

Supreme Court, New York County

Docket Number: Index No. 156640/2016

Judge: Alexander Tisch

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ALEXANDER TISCH PART 18

Justice

-----X

FRANCISCO RUGGERINO and LAURA ANSOURIAN,

INDEX NO. 156640/2016

Plaintiffs,

- v -

DECISION AFTER TRIAL

PRINCE HOLDINGS 2012, LLC; 9300 REALTY, INC.,
STEVEN CROMAN; HARRIET CROMAN a/k/a HARRIET
KAHAN CROMAN a/k/a HARRIET KAHAN; OREN
GOLDSTEIN; JANETH DONOVAN; RITCHELL LARAQUE;
JACQUELINE LESTER; BEST APARTMENTS; and JUDE
SCOTT,

Defendants.

-----X

Plaintiffs, tenants of apartment C3 at 309 East 8th Street in the County, City and State of New York, a building owned and managed by defendants, commenced this action on or about August 8, 2016 seeking a declaratory judgment that they are rent regulated tenants of the apartment and a judgment for alleged rent overcharges including statutory treble damages. The seven formal causes of action are for 1) rent overcharge, 2) breach of the implied warranty of habitability, 3) violations of General Business Law (GBL) section 349, 4) violations of New York City Consumer Protection Law 20-700, 5) conversion of the security deposit, 6) discrimination based on national origin and 7) legal fees. Defendants served an answer on or about September 9, 2016 an amended answer on or about November 4, 2016.

A nonjury trial was conducted on April 8-9, 2019 and September 26, 2019 in front of Judge Carol Feinman. The parties stipulated on July 9, 2021 for the trial to be decided on the prior record by the undersigned (NYSCEF Doc. No. 193). Defendant Steven Croman was called to the stand on July 19, 2021 for additional testimony. The central issue of the trial is whether the defendants' claimed

expenditures to renovate the apartment, after the previous tenants vacated it, are sufficient to bring the legal rent of the apartment above the luxury decontrol threshold, allowing defendants' to charge free market rent. See Ruggierino v Prince Holdings 2012, LLC 170 AD3d 568 [1st Dept 2019]. At the 2019 trial proceedings Francesco Ruggierino, Mary Beth Frizzell and Shawn Dahl were called as plaintiff witnesses. Sean O'Sullivan, Kevin Tram, Steven Yow and Bianca Marie Ortiz were called as witnesses for the defendants.

As a preliminary matter, the Court dismisses claims against 9300 Realty, Inc., Steven Croman, Harriet Croman a/k/a Harriet Kahan Croman a/k/a Harriet Kahan, Oren Goldstein and Ritchell Laraque. Plaintiff failed to establish the existence of a lease or contract with these entities/individuals nor did they present more than conclusory evidence to allow for the piercing of the corporate veil. See Matter of Morris v New York State Dept of Taxation & Fin., 82 NY2d 135 [1993].

Plaintiffs rented the apartment in November 2014 pursuant to a market rate lease for a \$3,295 monthly rent. The last registered rent with DHCR for the apartment was on August 1, 2014 for a \$1,560 monthly rent for a lease that ran from January 1, 2013 to December 31, 2014. The apartment was registered on July 25, 2015 as "exempt," "high rent vacancy."

Rent Stabilization Code (9 NYCRR) § 2520.11(r)(10)(i) permits rent increases for post vacancy individual apartment improvements (IAI). A vacancy increase can be included when calculating the legal rent when determining whether an apartment has met the deregulation threshold amount. See Altman v 285 W Fourth LLC, 31 NY3d 178 [2018]. It is ultimately the landlord's burden to prove entitlement to an IAI increase. See Matter of Ador Realty, LLC v Division of Hous & Community Renewal, 25 AD3d 128 [2d Dept 2005].

After reviewing the trial record, including testimony and admitted evidence, the Court concludes that the plaintiffs established their entitlement to judgment in their favor on the rent overcharge claim

(first cause of action). Plaintiffs demonstrated that the rent increases attributable to the vacancy and IAI's in the apartment prior to their tenancy did not raise the rent above the \$2,500 high rent vacancy deregulation. The Court finds that the documentary evidence including DHCR registration filings, leases, and the failure of defendant Prince to file required documents with DHCR require judgment for the plaintiffs. Defendants failed in their burden to prove entitlement to an IAI increase. RSC § 2524.4[a] states that an owner is barred from collecting "any rent in excess of the legal regulated rent in effect from on the date of the last preceding registration statement" if the owner failed to file proper and timely registrations. See also Jazilek v Abart Holdings, LLC, 72 AD3d 529 [2010]. Further, a registration that does not accurately reflect a legal rent is not proper. See RSL § 26-517[e]. The testimony of defense witness Yow established that Prince expended \$231,509.82 renovating three apartments in the building but failed to show how that amount was apportioned between the apartments. Same for \$11,159.69 divided between two apartments for appliances. An IAI rent increase pursuant to RSC § 2522.4[a][6] must be based on the actual cost of the work actually done on each specific apartment. That was not credibly established by the defendants here. As for the asserted building wide electrical upgrade, the defendants were required to, but did not, seek approval from DHCR for it, under the regulations governing major capital improvements (MCI) (See AC § 26-511; 9 NYCRR 2522.4 [a][2][i][a]-[d]). It was not established what electrical work was done in the apartment. Further, defendants were not permitted to split a building wide cost evenly among all apartments as an IAI. Therefore, the apartment was not legally deregulated.

Based on the foregoing, plaintiff's rent for their initial one year lease for the period December 1, 2014 to November 31, 2015 should have been the last registered rent of \$1,560. Moreover, there is no credible evidence that the defendants properly registered the apartment with DHCR since 2014 so the freeze remains in effect. See Grady v Hessert Realt, LP, 178 AD3d 401 [1st Dept 2019]. The plaintiffs

are entitled to the overcharge amount of \$3,295 minus \$1,560, which is \$1,735 a month. Plaintiffs were offered a renewal lease of \$3,350 a month, which is a \$1,790 a month overcharge once the \$1,560.00 last registered rent is subtracted. \$1,735 a month for twelve months is \$20,820 and \$1,790 a month for twelve months is \$21,480. Plaintiff stopped paying rent in April 2016.¹

Plaintiffs failed to prove their second cause of action for breach of the warranty of habitability. Plaintiff testified to minimal issues concerning disrepair and rodents. No proof was provided of notice to defendants, access provided to defendants or duration of the alleged conditions

Plaintiffs third cause of action for breach of GBL § 349 and fourth cause of action for breach of NYCCPL § 20-700 also fail. Landlord tenant disputes and overcharge complaints fall outside GBL § 349. The type of rent dispute at issue here does not implicate consumer oriented conduct that implicates the public at large. See Collazo v Netherland Prop Assets LLC, 155 AD3d 538 [1st Dept. 2017]; Haygood v Prince Holdings 2012 LLC, 186 AD 3d 1157 [1st Dept. 2020].

Plaintiffs fifth cause of action for conversion of the security deposit fails for of lack of proof. Plaintiff also fails to prove its sixth cause of action of state and federal housing discrimination based on national origin. Plaintiffs were not denied housing and there are no circumstances giving an inference of discrimination presented. See Sayeh v 66 Madison Avenue Apt. Corp., 73 AD3d 459 [1st Dept 2010].

Plaintiffs seek treble damages on a finding that defendants deregulation was willful. The Court finds that defendants have not overcome the presumption of willfulness by failing to demonstrate a good faith and reasonable belief by the preponderance of the evidence that the overcharge was permissible. See Myers v D'Agosta, 202 AD2d 223 [1st Dept 1994]. Defendants established, through the testimony of Steven Croman, that renovations were done and that expenditures were made for such improvements to three apartments in the building, including the apartment at issue. However, defendants were unable

¹ The rent freeze may be lifted prospectively upon the filing of a re-registration with DHRC reflecting the proper rent. See Matter of Cardona v New York State Div of House & Community Renewal, 214 AD2d 393 [1st Dept 1995].

to establish the exact amount of expenditures for the improvements to the apartment at issue, which is why the Court concluded that the apartment was not properly deregulated. Moreover, the Court finds that defendant witness Steven Croman was not credible in his July 19, 2021 testimony. Defendants are sophisticated property managers and owners that should know how to properly account for improvements in their properties, particularly when such improvements could lead to a financial windfall. See Matter of Obiora v New York State Div. of Hous. & Community Renewal, 77 AD3d 755 [2d Dept 2010].

The Court denies defendants counter-claims and remaining affirmative defenses. The Court has considered the remaining arguments raised by the parties and finds them unavailing.

It is hereby ORDERED that the complaint is dismissed insofar as asserted against all defendants except Prince Holdings 2012 LLC, and the Clerk is directed to enter judgment in favor of those defendants, dismissing the complaint; and it is further

ORDERED that the second, third, fourth, fifth and sixth causes of action insofar as asserted against Prince Holdings 2012 LLC are dismissed; and it is further

ORDERED that judgment in favor of the plaintiffs is granted on their first and seventh causes of action; and it is further

ORDERED, ADJUDGED and DECLARED that the plaintiffs are rent-stabilized tenants and Apartment C3 at 309 East 8th Street, New York, New York is a rent-stabilized apartment with a legal rent of \$1,560.00 per month; and it is further

ORDERED and ADJUDGED that defendant Prince Holdings LLC shall register the unit with the DHCR with the legal rent of \$1,560.00 per month within 30 days of after service of a copy of this decision and order with notice of entry; and it is further

ORDERED that the Clerk is directed to enter a monetary judgment in favor of the plaintiffs against defendant Prince Holdings 2012 LLC in the amount of \$42,300.00 representing the rent overcharges; and it is further

ORDERED that the Clerk is directed to enter a monetary judgment in favor of the plaintiffs against defendant Prince Holdings 2012 LLC in the amount of \$126,900.00 representing treble damages;² and it is further

ORDERED that the seventh cause of action for the recovery of attorney's fees is severed and the issue of the amount of reasonable attorney's fees that plaintiffs may recover against the defendants is referred to a Special Referee to hear and report; and it is further

ORDERED that counsel for the plaintiffs shall, within 30 days from the date of this order, serve a copy of this order with notice of entry, together with a completed Information Sheet³ upon the General Clerk's Office (Room 119), who is directed to place this matter on the calendar of the Special Referee's Part for the earliest convenient date; and it is further

ORDERED that such service upon the Special Referee Clerk shall be made in accordance with the procedures set forth in the Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases (accessible at the "E-Filing" page on the court's website at the address www.nycourts.gov/supctmanh).

This shall constitute the decision and order of this Court.

² No interest is awarded because interest is generally authorized from the date of the initial monthly overpayment, except when treble damages are warranted. See *Mohassel v Fenwick*, 5 NY3d 44 [2005].

³ Available on the Court's website at www.nycourts.gov/supctmanah under the "References" link on the navigation bar.

DATE: 8/24/2022

Index #
156640/2016



ALEXANDER TISCH, JSC

Check One:

Case Disposed

Non-Final Disposition

Check if Appropriate:

Other (Specify _____)