

Quinatoa v Hewlett Assoc., LP

2023 NY Slip Op 33094(U)

September 7, 2023

Supreme Court, New York County

Docket Number: Index No. 151132/2018

Judge: Sabrina Kraus

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This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. SABRINA KRAUS **PART** **57TR**

Justice

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STELLA QUINATOA AND ANA CABRERA, ON BEHALF
OF THEMSELVES AND OTHERS SIMILARLY SITUATED

Plaintiff,

- v -

HEWLETT ASSOCIATES, LP,

Defendant.

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INDEX NO. 151132/2018

MOTION DATE 9/7/2023

MOTION SEQ. NO. 007

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 007) 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321 were read on this motion to/for RENEW/REARGUE/RESETTLE/RECONSIDER.

BACKGROUND

In this class action which seeks damages for rent overcharge and related relief, Defendant seeks to challenge, through renewal and or re-argument this Court’s order dated January 13, 2023 (the “January Order”) which rejected its’ request to limit discovery to a four-year period and instead set the discovery period as beginning in 1984.

Plaintiffs have cross-moved for fees and costs as they assert the motion constitutes frivolous conduct.

For the reasons set forth below, both motions are denied.

DISCUSSION

Pursuant to a decision and order dated May 31, 2022, the Appellate Division, First Department affirmed the denial of Defendant’s motion to dismiss this action and held in pertinent part:

On appeal, defendant contends that the motion court erred in determining that the complaint adequately alleged a fraudulent scheme to deregulate apartments in the building, an assertion that could have been raised in its initial motion to dismiss, and therefore we decline to reach it (*Kattan v 119 Christopher LLC*, 204 AD3d 470, 470 [1st Dep't 2022] [renewal providently denied where intervening decision “merely reaffirmed the existing law”]).

Were we to reach the issue, we would find that **the motion court properly rejected defendant's contention that the complaint did not assert a claim that defendant engaged in a fraudulent scheme to evade the rent stabilization laws well after the Court of Appeals decided *Roberts v Tishman Speyer Props., L.P.* (13 NY3d 270 [2009]), which held that rent-regulated apartments cannot be removed from rent stabilization while the building receives J-51 benefits (*id.* at 280). Here, the complaint sufficiently sets forth the elements of “representation of material fact, falsity, scienter, reliance and injury” (*Regina*, 35 NY3d at 356 n 7) by alleging that defendant “deceived tenants” with respect to the rent-regulated status of their apartments by providing leases that stated that the apartments were not subject to rent stabilization, that defendant “knew to be false” its statement to tenants that the apartments were deregulated, that the “deception” deprived plaintiffs of their Senior Citizen Rent Increase Exemption benefits, and that defendant “flouted” their obligations under the rent stabilization laws.**

Quinatoa v. Hewlett Assocs., LP, 205 A.D.3d 654, 654–55 (2022)(*emphasis added*).

CPLR §2221 establishes the requirements for motions for leave to renew or to reargue. Subsection (e) provides that a motion for leave to renew “shall be based upon new facts not offered on the prior motion . . . or shall demonstrate that there has been a change in law that would change the prior determination.” CPLR §2221(e). Absent identification of new facts or a change in law, the motion should be denied. *See Kreisler v. B-U Realty Corp.*, 198 A.D.3d 568, 568-69 (1st Dep't 2021) .New case law that simply “applie[s] the existing law” is insufficient to support renewal of a motion. *Shatz v. Chertok*, 203 A.D.3d 527, 527 (1st Dep't 2022). To succeed on a motion to renew, the movant must show that the change in law they identify would actually change the prior determination. *See 515 Ave. I Corp. v. 515 Ave. I Tenants Corp.*, 44 A.D.3d 707, 708 (2d Dep't 2007).

Under CPLR §2221(d), a motion for leave to reargue “shall be based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion.” CPLR 2221(d). A motion for reargument “is addressed to the sound discretion of the court” and “is not designed to afford the unsuccessful party successive opportunities to reargue issues previously decided.” *William P. Pahl Equip. Corp. v. Kassis*, 182 A.D.2d 22, 27 (1st Dep’t 1992).

The court finds that Defendant has set forth neither a basis for renewal nor a basis for reargument. Defendant has identified no case law that purports to change the standard that Plaintiffs must meet to be entitled to pre-base date discovery. As noted above, the First Department, in affirming denial of Defendant’s renewed motion to dismiss, found that “the complaint sufficiently sets forth the elements of ‘representation of material fact, falsity, scienter, reliance and injury.’” *Quinatoa*, 205 A.D.3d at 655 (*quoting Regina*, 35 N.Y.3d at 356 n. 7). That Court has further held that failure to re-register apartments that were deregulated after the *Roberts/Gersten* decisions provided some indicia of fraud warranting a review of the rent history. *Najera-Ordonez v. 260 Partners, L.P.*, 217 A.D.3d 580, 581(2023); *Montera v KMR Amsterdam LLC*, 193 AD3d 102, 107 (2021).

Finally, while discovery covering such an extensive period is not ordered lightly, the Court notes that the parties at argument indicated that they have worked to narrow the scope of ESI and that paper discovery has been identified to comprise of approximately 8 boxes of documents.


Based on the foregoing, Defendant’s motion for renewal and or reargument is denied.

Notwithstanding the denial of the motion, the Court does not find that the making of the motion constituted frivolous conduct. As such, Plaintiffs' cross-motion for costs and fees is also denied.

WHEREFORE it is hereby:

ORDERED that Defendants' motion for renewal and reargument is denied in its entirety; and it is further

ORDERED that Plaintiff's cross-motion for fees and costs is denied.

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9/7/2023
DATE

SABRINA KRAUS, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE