18 Misc.3d 1124(A)
Unreported Disposition
(The decision of the Court is referenced in a table in the New York Supplement.)
District Court, Nassau County, New York,
First District.

17 MAPLE AVENUE HOLDING, LLP,
Petitioner(s)
v.
Jacquelyn JACKSON, "John Doe" & "Jane Doe,"
Respondent(s).

No. SP 5409/07. | Feb. 1, 2008.

Attorneys and Law Firms

Warren S. Dank, Esq., Attorney for Petitioner

Ivy Alexander, Esq., Goldberg, Scudieri, Lindenburg & Block, P.C., New York, Attorneys for Respondent.

Opinion

SCOTT FAIRGRIEVE, J.

**1 This holdover proceeding was commenced by the petitioner, 17 Maple Avenue Holding LLC, against the respondents, Jacquelyn Jackson, "John Doe" and "Jane Doe". Petitioner requests a final judgment awarding judgment of possession of apartment 4 at 17 Maple Avenue, Hempstead, New York, directing the issuance of a warrant of eviction to remove the respondents, and awarding a monetary judgment in favor of the petitioner in an amount of not less than $6,300.00, which represents only rental arrears through the month of October, 2007.

A non jury trial was held on January 8, 2008. Respondent Jacquelyn Jackson claims that she is entitled to a renewal lease. She bases her contention upon the fact that the prior owner of the premises at 17 Maple Avenue, Hempstead, New York, DJVA Corp, agreed in the lease dated August 1, 2006 to subject her apartment to rent stabilization laws, even though the building was not subject to rent regulation. The petitioner claims that it is not bound by the lease executed by the prior owner of the property and is not under any obligation to offer respondent a renewal lease.

BACKGROUND

PLEADINGS

The petition states that the respondents entered into possession of the subject premises pursuant to a written rental agreement dated August 1, 2006, between the respondents and the landlord's predecessor, for a term of one year ending July 31, 2007. A 30 day notice was served upon respondents terminating respondents' tenancy and requesting respondents to vacate no later than October 1, 2007. Miss Jackson admits service of the 30 day notice.

The petition also noted that the premises is not subject to the Emergency Tenant Protection Act or subject to HUD Section 8 regulations.

PETITIONER'S TESTIMONY

Harry D. Ransom testified on behalf of the petitioner. Mr. Ransom is the CEO of Greater Hempstead Housing Development Corporation, whose business purpose is to develop affordable housing. Greater Hempstead acquired ownership of 17 Maple Avenue on November 26, 2006 from DJVA Corp. Thereafter, the property was transferred to Greater Hempstead's subsidiary, 17 Maple Avenue Holding, LLC, the present petitioner, on November 28, 2006.

The witness testified that said premises is an eight unit apartment building and that the petitioner assumed the leases from DJVA Corp., which included respondents' lease. Mr. Ransom stated that respondents' lease expired on July 31, 2007 and that the petitioner did not enter into any type of rental agreement with Miss Jackson subsequent to July 31, 2007.

Mr. Ransom further testified that the premises is not subject to any type of rent regulation. The petitioner introduced into evidence, as exhibit 4, the October 13, 2004 Order and Determination of the State of New York, Division of Housing and Community Renewal, which exempts 17 Maple Avenue from rent regulations. The order and determination states:

Based on the evidence in the record and pursuant to Operational Bulletin 95–2, it is determined that the subject building qualifies for exemption from Rent Regulations based on the substantial rehabilitation of the entire building after January 01, 1974. Since the subject building was completely vacant and all the prior tenants gave-up their right to re-occupy an apartment in the

subject building, it is Ordered that the subject building is permanently exempt from Rent Regulation.

RESPONDENT'S TESTIMONY

*2 Respondent Jackson testified that she was informed about the apartment by the Suffolk County Housing Authority. She acknowledged that she was given a lease which stated that the apartment would be subject to the Rent Stabilization Laws. Paragraph 2 of the lease states:

> 2nd.RENT ADJUSTMENT: The apartment is subject to Rent Stabilization Laws, and the rent agreed may be increased or decreased during the term of this lease as determined by the Rent Guidelines Board, NYS Division of Housing and Community Renewal (DHCR), or any other regulatory agency. The adjustment shall begin as provided for in the determination of any of these agencies.

The Landlord and Tenant agree to the following without limiting any other right the Landlord may have pursuant to law or under this lease:

a)In the event the applicable rent guideline has not been fixed by the Rent Guidelines Board by the date this Lease is executed, the rent provided herein shall be adjusted to conform to the guidelines when promulgated. Unless the Rent Guidelines Board has fixed a date later than the date of the commencement of this Lease for the guideline to become effective, the adjustment shall be effective as of the commencement date of this Lease.

b)In the event the Landlord is granted a rent increase by the DHCR, any other agency or court having jurisdiction thereof in accordance with an application for a rent increase based on a major capital improvement, hardship or other grounds permitted by code or applicable law:

1. Tenant agrees to be bound by such determination.

2. During the term of this Lease and any renewal thereof, Tenant agrees to pay any increase set forth in any Notice of Eligibility or Order issued pursuant to such application or determination in the manner and within the time limitation provided for therein; and

3. In the event the increase is pursuant to a hardship application, within thirty (30) days of receipt of a copy of the DHCR order, Tenant may cancel this lease on sixty (60) days' written notice to the Landlord. However, the Tenant agrees to pay the increase in rent as provided in the Order until the effective date of his cancellation of the Lease and date the apartment is vacated by the Tenant.

Respondent testified that she moved into the apartment because "I liked the agreement he offered and I moved in". She affirmed that the representatives of DJVA who presented the lease stated that DJVA would follow the guidelines for rent stabilization:

> THE WITNESS:They said they would follow the guidelines. They said since I'm not rent stabilized and I'm not Section 8, they will charge the same thing as rent stabilization or Section 8 and I said deal.

Respondent further testified that her claim of entitlement to a renewal lease is based upon the following:

> Q. Your only claim to your renewal lease has to do with that actual lease that you received from the predecessor?
>
> A. And all the guidelines that the rent-stabilized law provides and that's what he stated. He said he would follow it.

DECISION

*3 The issue before the Court is whether the petitioner, a subsidiary of a corporation, whose business purpose is to develop affordable housing, is bound by a lease entered into by a prior landlord to offer the respondent a renewal lease. The Court answers this question in the negative for the reasons set forth below.

The respondent relies upon *Carrano v. Castro,* 44 AD3d, 1038, 844 N.Y.S.2d 435, (2nd Dept, 2007) wherein the landlord specifically agreed in a stipulation in settlement of a prior holdover proceeding to offer the tenants a renewal lease. In addition, after the landlord who had entered into the stipulation sold the premises, the new landlord renewed the tenants' lease.

The Appellate Division held:

The Appellate Term properly reversed the final judgment of possession and granted that branch of the tenants' cross

motion which was for summary judgment dismissing the petition. Contrary to the petitioner's contention, when read as a whole, the stipulation relied upon by the tenants merely sought to confer upon them, by way of an express contract referring to the rent stabilization law, the same rights as those afforded tenants protected by the rent stabilization law. It did not seek, by contract, to evade or circumvent a mandatory rent regulation scheme (see *546 W. 156th St. HDFC v. Smalls,* 43 AD3d 7, 839 N.Y.S.2d 62).

There is also no merit to the petitioner's contention that he was not bound by the lease renewal provision of the stipulation since he was not a party to it and it did not contain language explicitly providing that it was to be binding on the successors to the former landlord and owner. The terms of the stipulation evidenced the intent of the parties to the agreement that the lease renewal provision run with the land, and the agreement touched and concerned the premises. Finally, the tenants' submissions established the privity of estate between the tenants and the petitioner (*see 328 Owners Corp. v. 330 W. 86 Oaks Corp.,* 8 NY3d 372, 865 N.E.2d 1228, 834 N.Y.S.2d 62; *Stasyszyn v. Sutton E. Assoc.,* 161 A.D.2d 269, 271–272, 555 N.Y.S.2d 297; *Arroyo v. Marlow,* 122 A.D.2d 821, 822, 505 N.Y.S.2d 892).

In the instant proceeding there was no contractual obligation expressed in paragraph 2 of the lease which supports respondent's contention that a renewal lease had to be provided nor can Miss Jackson establish a claim to a renewal lease by waiver or estoppel. In *Gregory v. Colonial DPC Corp., III,* 234 A.D.2d 419, 651 N.Y.S.2d 150, (2nd Dept, 1996), the Court held that the equitable principals of waiver on estoppel cannot be employed to make a tenant a rent-stabilized tenant.

The Appellate Division stated:

The plaintiff contends that the defendants should be estopped from denying him the status of a rent-stabilized tenant and that their actions constituted a waiver of any claim that he was not a rent-stabilized tenant. However, coverage under a rent regulatory scheme is governed by statute and cannot be created by waiver or equitable estoppel (*see, 512 East 11th St. HDFC v. Grimmet,* 148 Misc.2d 971, 972, 569 N.Y.S.2d 325 *aff'd. on other grounds,* 181 A.D.2d 488, 581 N.Y.S.2d 24; *Williams v. Gallagher,* NYLJ Mar. 6, 1991, at 23, col 3; *New York Univ. v. Owens,* NYLJ June 6, 1990, at 21, col 2; *Wilson v. One Ten Duane St. Realty Co.,* 123 A.D.2d 198, 510 N.Y.S.2d 603).

*4 In *546 W. 156th HDFC v. Smalls,* 43 AD3d 7, 839 N.Y.S.2d 62 [1st Dept 2007]) the landlord was a housing development fund company. In a prior nonpayment proceeding between the parties, a stipulation was reached in which the apartment was identified as a rent stabilized dwelling. The tenant claimed that the stipulation made her tenancy subject to the rent stabilization laws. The Appellate Division, as did the lower Court, held that even though the parties had previously treated the premises as subject to rent stabilization, this fact did not defeat the statutory exclusion from regulation.

In *100 Apartment Associates v. Estavillo,* 2007 N.Y. Slip Op 27503, 2007 WL 4303705, (App Term, 2nd Dept 2007) the tenant contended that she was protected under the Briarcliff Manor Fair Rental Agreement (BFRA). However, the Court stated:

> In any event, to the extent that landlord may have agreed in the 2001 letter agreement that the rent for the period of that agreement would be governed by the BFRA, landlord's agreement did not bind it to continue to be governed by the BFRA after the expiration of that agreement (*see Heller v. Middagh St. Assoc.,* 4 AD3d 332, 771 N.Y.S.2d 533 [2004]; *Ruiz v. Chwatt Assoc.,* 247 A.D.2d 308, 669 N.Y.S.2d 47 [1998]; *Mayflower Assoc. v. Gray,* NYLJ, Mar. 1, 1994 [App Term, 1st Dept]; *see also 546 W. 156th HDFC v. Smalls,* 43 AD3d 7, 839 N.Y.S.2d 62 [2007]).

In *Rasch's Landlord & Tenant,* including Summary Proceedings, Fourth Edition, Hon. Robert F. Dolan, writes in Section 2:40 (Supplement):

> *Ruiz v. Chwatt Associates,* 247 A.D.2d 308, 669 N.Y.S.2d 47 (1st Dept 1998). The court denied the tenant's application to recover rent overpayments, holding that the rider to the lease, which provided that the apartment was to be used "for the practice of medicine only," together with the certificate of occupancy and other evidence from tax returns and insurance policies, established that the apartment was leased exclusively for professional purposes, and was therefore exempt from rent stabilization (9 NYCRR 2520.11 [n]). Even though the tenant, without ever advising the landlord, made the apartment his residence almost as soon as he took possession of it almost 30 years earlier, and the landlord had mistakenly registered the apartment as stabilized and over the years often asked for rent increases that conformed to

stabilization guidelines, a rent regulatory scheme, the court held, is governed by statute and cannot be created by waiver or equitable estoppel. See *Gregory v. Colonial DPC Corp., III,* 234 A.D.2d 419, 651 N.Y.S.2d 150 (2nd Dept 1996); *Katz 737 Corporation v. Bernstein,* 189 Misc.2d 179, 729 N.Y.S.2d 568 (1st Dept 2001).

Based upon the above authorities petitioner is under no contractual obligation to offer a renewal lease and waiver or estoppel cannot be invoked to create a statutory right where none exists.

CONCLUSION

Respondent Jackson is not entitled to a renewal lease because the equitable principals of waiver and estoppel cannot be invoked against petitioner to create a duty to provide a renewal lease. The lease entered into by the prior owner and respondent Jackson is enforceable only for the duration of the lease signed by the parties. The Court notes that unlike several cases cited by the parties, the present petitioner never offered Miss Jackson a renewal lease and there was no contractual obligation to do so.

*5 Petitioner is awarded a judgment of possession and a warrant stayed until March 30, 2008. After March 30, 2008, petitioner may proceed to evict respondent.

So Ordered.

Parallel Citations

18 Misc.3d 1124(A), 856 N.Y.S.2d 503 (Table), 2008 WL 271238 (N.Y.Dist.Ct.), 2008 N.Y. Slip Op. 50192(U)

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