10 Misc.3d 672, 808 N.Y.S.2d 545, 2005 N.Y. Slip Op. 25487

Motions, Pleadings and Filings View New York Official Reports version

Supreme Court, New York County, New York. SKF REALTY LLC, Plaintiff,

٧.

Stefanie BRESLIN, Shay Levy and "John Doe" and "Jane Doe," the names being fictitious and unknown to the Plaintiffs, the persons intended being occupants of Apartment No. 9 at the premises located at 306 East 119th Street, New York, New York, Defendants.

SKF Realty LLC, Plaintiff,

٧.

Coy Lasister and "John Doe" and "Jane Doe," the names being fictitious and unknown to the Plaintiffs, the persons intended being occupants of Apartment # 5 at the premises located at 306 East 119th Street, New York, New York, Defendants.

SKF Realty LLC, Plaintiff,

٧.

Marco Bustamante, Luis Silva and "John Doe" and "Jane Doe," the names being fictitious and unknown to the Plaintiffs, the persons intended being occupants of Apartment # 3 at the premises located at 306 East 119th Street, New York, New York, Defendants.

SKF Realty LLC, Plaintiff,

٧.

Maria Lezama and "John Doe" and "Jane Doe," the names being fictitious and unknown to the Plaintiffs, the persons intended being occupants of Apartment # 7 at the premises located at 306 East 119th Street, New York, New York, Defendants.

SKF Realty LLC, Plaintiff,

٧.

Judith Klein, Begine White-Klein and "John Doe" and "Jane Doe," the names being fictitious and unknown to the Plaintiffs, the persons intended being occupants of Apartment # 6 at the premises located at 306 East 119th Street, New York, New York, Defendants.

Nov. 16, 2005.

Background: Apartment building owner brought action to eject tenants.

Holding: The Supreme Court, New York County, <u>Edward H. Lehner</u>, J., held that tenants were entitled to remain in possession, pursuant to the Rent Stabilization Law (RSL), as consequence of leases they had entered into with individual whose deed to building was subsequently set aside on ground he had acquired it through fraud.

Judgment for tenants.

West Headnotes

[1] KeyCite Citing References for this Headnote

€ 233 Landlord and Tenant

€=233VIII Rent and Advances

233k200.10 k. Statutory and Municipal Regulations in General. Most Cited Cases

Laws regulating rents are remedial in nature and designed to promote public good, with the intent of

favoring protection of tenants.

- [2] KeyCite Citing References for this Headnote
- - ≈233VIII Rent and Advances
 - □ 233VIII(A) Rights and Liabilities
 - 233k200.10 k. Statutory and Municipal Regulations in General. Most Cited Cases

Public policy sought to be advanced by Rent Stabilization Law (RSL) is to promote availability of affordable housing units.

- [3] KeyCite Citing References for this Headnote
- 233 Landlord and Tenant
 - 233VIII Rent and Advances
 - 233VIII(A) Rights and Liabilities
 - 233k200.10 k. Statutory and Municipal Regulations in General. Most Cited Cases

Overarching goal of Rent Stabilization Law (RSL) is to afford some measure of security to occupants so that they do not lose their scarce dwelling space due to unilateral oppressive activities from more powerful entities in societal equation, whether they be landlords or employers or both.

- [4] KeyCite Citing References for this Headnote
- 361 Statutes
 - 361VI Construction and Operation
 - ≈361VI(B) Particular Classes of Statutes
 - 361k236 k. Remedial Statutes. Most Cited Cases

Remedial statutes should be liberally construed to carry out reform intended and spread its beneficial effects as widely as possible.

- [5] KeyCite Citing References for this Headnote
- 242 Lis Pendens
 - 242k22 Operation and Effect in General
 - ≈242k22(1) k. In General. Most Cited Cases

Lease agreements entered into after filing of notice of pendency of action against lessor may be voidable.

- [6] KeyCite Citing References for this Headnote
- 233 Landlord and Tenant
 - 233IX Re-Entry and Recovery of Possession by Landlord
 - 233k278.1 Suspension of Remedies
 - 233k278.4 Persons and Premises Subject to Regulations
 - 233k278.4(4) k. Landlord and Tenant Relationship. Most Cited Cases

Apartment building tenants were entitled to remain in possession, pursuant to the Rent Stabilization Law (RSL), as consequence of leases they had entered into with individual whose deed to building was subsequently set aside on ground he had acquired it through fraud; tenants were unaware of fraud at time they signed renewal leases, and current owner had purchased building with knowledge

of tenants' existing leases.

**546 Winograd & Winograd, New York City, for plaintiffs.

Collins, Dobkin & Miller, New York City, for Stefanie Breslin and others, defendants. Burton & Burton, New York City, for Coy Lasister, defendant.

EDWARD H. LEHNER, J.

*673 The prime issue raised on the motions in these five separate actions is whether the defendant-tenants therein are entitled to remain in possession pursuant to the Rent Stabilization Law ("RSL") as a consequence of leases they had entered into with an individual who a court subsequently determined acquired the deed to the subject building through fraud and therefore set aside the transfer nunc pro tunc.

**547 On August 26, 1994 the decedent Agnes Seals, as sole shareholder of 306 East 119th Street, Inc., conveyed title to the property at 306 East 119th Street (the "Building") to David Aviles. In October 1998, the executors of her estate (the "Executors") commenced an action in this court to set aside the transfer on the ground that it was procured through fraud and undue influence upon the 81-year old Seals. In connection therewith a notice of pendency was filed on October 23, 1998. A jury at the initial trial rendered judgment in favor of Aviles finding that the conveyance was valid. However, that determination was overturned on appeal [Sepulveda v. Aviles, 308 A.D.2d 1, 762 N.Y.S.2d 358 (1st Dept.2003)]. Upon retrial, the deed was, by judgment dated August 17, 2004, "set aside nunc pro tunc (and) ... deemed null and void," and the Building was transferred to the Executors who, on August 30, 2004, sent notice to the tenants to pay "your rent or use and occupancy" to the new managing agent.

While defendant Lasister apparently leased his apartment from Aviles shortly prior to the filing of the notice of pendency (Tr. p. 24), the other defendants in these actions first leased their apartments from him subsequent thereto. None of the defendants was made a party to the Aviles litigation, nor is any claim made that any of them was in any way involved in the fraud (Tr. p. 17) or aware of the claim thereof at the time of the leasing, other than constructively through the filing of the notice of pendency. It is acknowledged that Aviles registered the leases under the RSL (Tr. p. 23) and treated defendants as tenants under said law, giving them appropriate renewal leases. Defendants paid their rent to Aviles until notified of the judgment against him in August 2004.

These five actions were commenced by the Executors in April 2005 seeking i) declarations that the defendants have no valid leasehold interests, ii) judgments of ejectment, and iii) orders for the payment of use and occupancy from September 1, 2004. After the commencement of these actions and the filing of the present motions by the Executors, the Building was conveyed by *674 them to SKF Realty LLC in May 2005 (Tr. p. 13). By stipulation dated June 27, 2005 said transferee was substituted as party plaintiff in each of the actions.

Before the court are motions by plaintiff in each action for a declaration that the defendants therein have no valid leasehold interest, and a request for an immediate trial on the claim of ejectment and a requirement for the payment of use and occupancy. While the defendants' cross-motions to dismiss for lack of jurisdiction were withdrawn (Tr. pp. 36-38), there remains before the court their motions to dismiss pursuant to CPLR 3211(a)7.

The question to be resolved herein requires a balancing of the rights of the defendants, all but one of whom became tenants of Aviles after the filing of the notice of pendency but none of whom possessed any knowledge of the fraud committed, as contrasted with that of plaintiff who acquired title to the Building with full knowledge of the claims of defendants but claims to stand in the shoes of the Executors.

[1] [2] [3] [4] The laws regulating rents "are remedial in nature and designed to promote the public good" (with the) "intent of favoring the protection of tenants" [Braschi v. Stahl Associates Company, 74 N.Y.2d 201, 208-209, 544 N.Y.S.2d 784, 543 N.E.2d 49 (1989)]. "[T]he public policy sought to be advanced ... (by said laws) is to promote the availability of affordable housing units" [**548 Cox v. J.D. Realty Associates, 217 A.D.2d 179, 185, 637 N.Y.S.2d 27 (1st Dept.1995)]. "An overarching goal of the RSL ... is to afford some measure of security to occupants so that they do not lose their scarce dwelling space due to unilateral oppressive activities from more powerful entities in the societal equation, whether they be landlords or employers or both." [Manocherian v. Lenox Hill Hospital, 84 N.Y.2d 385, 397, 618 N.Y.S.2d 857, 643 N.E.2d 479 (1994)], and "[r]emedial statutes should be liberally construed to carry out the reform intended and

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spread its beneficial effects as widely as possible" [Lesser v. Park 65 Realty Corp., 140 A.D.2d 169, 173, 527 N.Y.S.2d 787 (1st Dept.1988)].

[5] While lease agreements entered into after the filing of a notice of pendency may be voidable [West 56th and 57th Street Corp. v. Pearl, 242 A.D.2d 508, 662 N.Y.S.2d 312 (1st Dept.1997); Blanchard v. Eisenpress, 200 F.Supp.2d 334 (S.D.N.Y.2002)], here the equities of the unique fact pattern alleged in the complaints clearly warrant declarations that the defendants are entitled to have the opportunity to remain in possession as tenants under the RSL. As indicated above, there is no claim that any of the defendants were in any way involved in the fraud upon *675 Ms. Seals or had any knowledge thereof at the time of entering into their respective leases, nor is there any dispute that they have executed appropriate renewal leases under the RSL tendered to them by Aviles during their periods of occupancy. To permit the eviction by the plaintiff, which acquired title to the Building after the Executors filed the instant motions and which does not in any manner assert that it was not fully aware of the facts set forth herein, would not be consonant with the afore-described intent behind the enactment of the RSL.

However, the right of any defendant to remain in possession as declared herein is conditioned on that tenant paying to plaintiff by December 15, 2005 all monies that have not been paid as rent or use and occupancy for the period from September 1, 2004 to December 2005 at the rate set forth in the tenant's most recent lease. Should any tenant not make such payment by said date, plaintiff may move on notice for a judgment of ejectment and a warrant of eviction. Any tenant timely making such payment shall be entitled to a renewal lease in a form in compliance with the RSL for a one or two year period, at the tenant's option, the decision with respect to which the tenant shall notify plaintiff by December 15. The rental to be set forth in such renewal shall be at the rate set forth in the most recent lease executed by the tenant and Aviles, increased by the current Guidelines Board authorizations. Plaintiff is directed to send such leases by December 31, 2005 to each tenant who fully and timely pays the afore-directed past-due monies, which leases shall provide for terms to commence on February 1, 2006. To be effective, the renewal must be returned by the tenant to plaintiff by January 15, 2006.

The foregoing decision and declaration constitutes the order of the court in each of the five actions, and the Clerk shall enter judgments accordingly. N.Y.Sup.,2005.

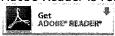
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