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

PRESENT: HON. JUDITH J. GISCHE J.S.C. PART 10

Justice

Index Number : 107146/2010

QUEENS LEAGUE OF UNITED

VS.

STATE OF NEW YORK

SEQUENCE NUMBER : 001

DISMISS ACTION

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. 001

MOTION CAL. NO. _____

this motion to/for _____

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	
Answering Affidavits — Exhibits	
Replying Affidavits	

Cross-Motion: ☐ Yes ☒ No

Upon the foregoing papers, it is ordered that this motion

MOTION IS DECIDED IN ACCORDANCE WITH THE ACCOMPANYING MEMORANDUM DECISION.

Dated: November 4, 2011

HON. JUDITH J. GISCHE J.S.C.

Check one: ☒ FINAL DISPOSITION ☐ NON-FINAL DISPOSITION

Check if appropriate: ☐ DO NOT POST ☐ REFERENCE

☐ SUBMIT ORDER/ JUDG. ☐ SETTLE ORDER/ JUDG.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 10

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Queens League of United Tenants, Inc.

Plaintiff (s),

-against-

The State of New York,

Defendant (s).

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DECISION/ ORDER
Index No.: 107146-10
Seq. No.: 001

PRESENT:
Hon. Judith J. Gische
J.S.C.

Recitation, as required by CPLR § 2219 [a] of the papers considered in the review of this (these) motion(s):

Papers	**Numbered**
Def's n/m (3211) (sep back) w/MID and AJT affirm, exhs	1,2,3
Pltf's opp w/RAK affirm, exhs	4
Def's reply w/MID affirm	5
Stips to adjourn	6

Upon the foregoing papers, the decision and order of the court is as follows:

GISCHE J.:

Plaintiff Queens League of United Tenants, Inc., a tenant's organization, has brought this action, seeking a declaration from the court that Rent Stabilization Law § 26-511 [c] [14] ("RSL §__") is, among other things, unconstitutional. Defendant the New York State Division of Housing and Community Renewal ("DHCR"), sued herein as "The State of New York," seeks the preanswer dismissal of the complaint on the grounds that plaintiff has failed to state a case of action (CPLR 3211 [a] [7]). Plaintiff opposes the motion.

Regardless of which subsection of CPLR 3211[a] a motion to dismiss is brought under, the court must accept the facts alleged in the pleading as true, accord the

plaintiff the benefit of every possible inference, and determine only whether the facts as alleged fit within any cognizable legal theory (*see* Goshen v. Mutual Life Ins. Co. of N.Y., 98 N.Y.2d 314, 326 [2002]; Leon v. Martinez, 84 N.Y.2d 83, 87 [1994]). The following facts are asserted in the complaint which defendant argues should be dismissed at the pleading stage:

Facts and Arguments

Plaintiff is not an individual tenant but self-identified as a "not-for-profit domestic corporation which was chartered in or about 1981" with its stated purpose as being "to aid tenants in the formation of tenant associations...obtaining proper standards of regulated housing, assisting tenants before various governmental agencies ..." and other tenant advocacy functions. According to plaintiff, it has standing to bring this action for declaratory relief "as representative [for] all rent stabilized tenants" who had a preferential lease rider "initially executed at anytime prior to June 20, 2003..." not only based upon the nature of its grievance with various landlords in New York City, but also pursuant to the order of the Hon. Emily Jane Goodman dated July 21, 2009 ("Judge Goodman's order") in Savarese v. State of New York, Sup Ct., N.Y. Co., Index No., 115657/08 ("Savarese case").

The statute that plaintiff is challenging is RSL § 26-511 [c][14], as amended in 2003. This statute provides as follows:

> Where the amount of rent charged to and paid by the tenant is less than the legal regulated rent for the housing accommodation, the amount of rent for such housing accommodation which may be charged upon renewal or upon vacancy thereof may, at the option of the owner, be based upon such previously established legal regulated rent, as adjusted by the most recent

> applicable guidelines increases and any other increases authorized by law, is two thousand dollars [$2,000] or more per month, such housing accommodation shall be excluded from the provisions of this law pursuant to section 26-504.2 of this chapter.

RSC § 2521. 2 [a] contains a similar provision:

> "Where the amount of rent charged to and paid by the tenant is less than the legal regulated rent for the housing accommodation such rent shall be known as the "preferential rent." The amount of rent . . .which may be charged upon renewal or vacancy thereof may, at the option of the owner, be based upon either such preferential rent or an amount not more than the previously established legal regulated rent, as adjusted by the most recent applicable guidelines increases and other increases authorized by law."

RSC § 2521.2 [b] [1] defines the "previously established legal regulated rent" as the rent set forth in the vacancy or renewal lease pursuant to which the preferential rent is charged, or if not set forth in the lease, then the amount set forth in an annual rent registration served upon the tenant.

Plaintiff asserts that RSL § 26-511 [c][14] is "unconstitutional, unjustifiable, unreasonable, arbitrary, capricious, and confiscatory, in total disregard of such tenants' contractual rights..." as applied to tenants who have executed a lease or renewal lease prior to effective date of the statute (i.e. June 19, 2003) because, in those circumstances, the preferential rent is a property interest, conferred by the landlord upon the tenant/leaseholder by virtue of the parties' contract (i.e. the rider to the lease) and the law, when applied, alters the contract, depriving the tenant of those property rights.

Where a tenant executed a lease or renewal lease prior to the effective date of the statute and the lease/renewal does not list both the preferential and (higher) legal

rent for the apartment, RSC § 2521.2 [b][2] allows the landlord to discontinue the preferential rent, provided the landlord can prove it registered the higher legal rent and then served the tenant with notice in accordance with RSL § 26-517. According to plaintiff, RSL § 26-511 [c][14] should not be applied retroactively to tenants who held preferential lease riders executed prior to June 20, 2003, when the law was amended.

A predecessor of plaintiff and DHCR were involved in the Savarese case. In that case, Elizabeth Savarese, "individually and as a representative of Rent Stabilized Tenants similarly situated" sued DCHR and her landlord, 43 Gardens Realty LLC ("43 Gardens"). In her case, Ms. Savarese claimed that in 1992, her landlord (43 Gardens predecessor), had granted her a preferential rent of $750 that was expressly "personal to this lease." The 1992 preferential rider to her lease stated that "future rent increases after November 30, 1993 will be subject increased and subject to all rules promulgated by the Rent Guidelines Board and/or [DHCR] . . ." The rider stated further that only when Ms. Savarese vacated the apartment would future leases be "calculated based on the Legal Rent . . ." DHCR moved to dismiss that case based upon Ms. Savarese having failed to exhaust her available administrative remedies, and other grounds.

The parties eventually settled the Savarese case in a written stipulation that Judge Goodman so-ordered. The so-ordered stipulation was concomitant with Judge Goodman's July 21, 2009 order. It was stipulated that Ms. Savarese and 43 Gardens would enter into a new lease at a preferential rent "upon which all future renewal leases shall be based." The claims against 43 Gardens were discontinued by Ms. Savarese with prejudice, however the parties (including DHCR) stipulated that "upon forwarding a copy of a receipt for a new index number in the name of [Queens League] against State

of New York . . . " 43 Gardens would reimburse plaintiff for that expense.

In her order, Judge Goodman wrote that the "action is discontinued as to 43 Gardens Realty. An action shall be commenced against NYS with summons and complaint deemed served. The parties may adopt the submissions that are now part of the instant case and continue the litigation, but shall purchase a new index number and substitute a different plaintiff..." Judge Goodman recused herself "due to her involvement [in the Savarese case] and to prevent any appearance of prejudging..." She also directed that the new case be randomly assigned and not treated as a related case..."

In support of its motion to dismiss, DHCR first argues that RSL § 26-511[c][14] permits the parties to negotiate the duration of a preferential rent benefitting a tenant while, at the same time, allowing a landlord to temporarily lower the rent without fear that the temporary reduction will become permanent.

DHCR points out that RSL § 26-511 was enacted to codify the findings of In re Missionary Sisters of the Sacred Heart v. DHCR (283 ADF2d 284 [1st Dept 2001]) ("Missionary"), an Appellate Division, First Department case. In Missionary, the court struck down DHCR's interpretation of its preferential rent policies which had, up until that time, been construed according to the so-called "Collingwood Rule." This rule and application of law was named after the decision in Collingwood v. Gribitz (NYLJ 4/24/75, p. 17, c.6.). The Collingwood rule was that once an owner agreed to a (lower) preferential rent, that preferential rent became the new base rent for the apartment, even if the tenant who had initially been granted the preferential rent moved out of the apartment. The Collingwood rule was rejected by the court in Missionary when the

court held that a landlord did not have to offer a renewal lease at the preferential rent, if the preferential lease rider specifically provided that the preferential rent was the term of that lease only. Thus, where an owner and tenant expressly agreed that a preferential rent would last for the life of the tenancy, then the tenant was entitled to have that lease provision carried over into subsequent renewal leases. Otherwise, the landlord could resume the higher legal base rent once the lease term expired.

DHCR contends that plaintiff, in bringing this action, seeks to undo years of legal precedent and rewrite the statute when there is no reason to do so. DHCR denies plaintiff has a constitutional based claimed against the state, because the law does not substantially impair any existing contractual rights, it serves a legitimate public purpose and the means chosen to accomplish this purpose (incentives to lower rent, as necessary, for a tenant's benefit during times of hardship, etc) is reasonable.

Focusing on the first argument by DHCR set forth above, defendant points out that RSL § 26-511[c][4] does not deprive parties in a landlord/tenant relationship of their contractual rights, because a court can always review the lease agreement to determine the intent of the signatories to that agreement.

In opposition plaintiff first argues that it is "unacceptable" to put the landlord in a position of being able to decide whether the preferential rent rider is durational or non-durational because, according to plaintiff, the landlord will always decide such matters in its favor, allowing it to charge the legal regulated rent. Plaintiff points out that a tenant may have taken the apartment thinking the lease, which is silent on the issue, will not allow an increase to the legal regulated rent only to be later surprised by the revision in the law. Thus, plaintiff claims the law reworks contracts to the detriment of

tenants.

Discussion

Judge Goodman did not pass on the merits of whether Queens League was a suitable plaintiff for this newly commenced action. Therefore, any argument by Queens League that it has standing to bring this action is still something that has to be decided by this court.

Although Queens League seeks a declaration about whether the application of RSL § 26-511 to pre-2003 preferential lease riders is constitutional, the complaint identifies plaintiff as being "representative of all rent stabilized tenants" that have a preferential rent rider signed prior to the change in the law. Leaving aside the issue of whether Queens League can be a class representative for a class of tenants seeking such a declaration, plaintiff has failed to provide the sworn affidavit of any representative tenant who is aggrieved by the statute in dispute.

Ms. Savarese is not a plaintiff in this action, nor a class representative. Not only was her case settled, her particular rent rider is unhelpful. Ms. Savarese's rider sets forth the legal rent and the preferential rent. It also specifies that the preferential rent was "personal to this lease" and that all "future rent increases after November 30, 1993 will be subject increased and subject to all rules promulgated by the Rent Guidelines Board and/or [DHCR] . . ." The rider further provides that when Ms. Savares vacates the apartment, future leases will be "calculated based on the Legal Rent . . ." Therefore, the exemplary lease is unhelpful because it does not fall within the paradigm that plaintiff itself describes.

Moving beyond this defect, the court is unpersuaded by plaintiff's argument that

tenants' contractual rights were abridged by the 2003 amendment to RSL § 26-511. A tenant who believes s/he has the right to a renewal lease at the preferential rent has administrative and plenary remedies. If the tenant believes his or her landlord has no basis to increase his or her rent to the higher legal rent, then the tenant can take legal action to have the dispute adjudicated. Cases abound in which these issues are litigated (Coffina v. New York State Div. of Housing and Community Renewal, 61 A.D.3d 404 [1st Dept 2009]; Matter of Pastreich v. New York State Div. of Hous. & Community Renewal, 50 A.D.3d 384, 856 N.Y.S.2d 61 [2008]; EQR 180 Riverside A, LLC v. Chu, 23 Misc.3d 126[A] [App Term 1st Dept 2009]).

Although plaintiff takes a dim view of the process before DHCR and argues that tenants cannot afford to litigate these matters, such arguments are not a reason to declare the 2003 amendment to RSL § 26-511 unconstitutional as applied. Further arguments, that the law strongly favors landlords, is undercut by examining the wide range of cases, some in favor of tenants and some in favor of landlords (see Colonnade Management, LLC v. Warner, 11 Misc.3d 52 [Sup Ct., App.Term 2006]; 218 East 85th Street, LLC v. Division of Housing and Community Renewal, 23 Misc.3d 557 [Sup Ct., N.Y. Co. 2009]; Maury v. 26 Ft. Charles Place, Inc., 2008 WL 4375420 [Sup Ct., N.Y.Sup. 2008]; Sugihara v. State Div. of Housing and Community Renewal Office of Rent Admin., 13 Misc.3d 1239 [A] [Sup Ct., N.Y. Co. 2006]; Les Filles Quartre LLC v. McNeur, 9 Misc.3d 179 [N.Y.City Civ.Ct., 2005]).

Although on a preanswer motion to dismiss the court must accept the facts in the complaint as true and accord the plaintiff the benefit of every possible inference, the court must also determine whether the facts as alleged fit within any cognizable legal

theory (*see* Goshen v. Mutual Life Ins. Co. of N.Y., supra; Leon v. Martinez, supra). N.Y.2d 83, 87 [1994]). Despite the 2003 amendment to RSL § 26-511 [c][14], a preferential rent agreement which provides that it will remain in effect for the duration of the tenancy is enforceable as a matter of contract law (see Colonnade Management, LLC v. Warner, supra; Rosenshein v. Heyman, 18 Misc. 3d 109 [Sup Ct., App. Term 2007]). Although plaintiff claims it is aggrieved by the change in the law and how it has been applied, an individual/entity does not have a vested interest in any rule of law or legislative policy which entitles him her or it to have such law or policy remain unaltered for his her or its benefit (see, Eagan v. Livoti, 287 N.Y. 464 [1942]).

Plaintiff has not pleaded any facts to support a constitutional based challenge to the law. None of the facts pleaded tend to show any deprivation of due process (Brinckerhoff v. New York State Div. of Housing and Community Renewal, 275 A.D.2d 622 [1st Dept 2000]). Under these circumstances, the motion by DHCR for the preanswer dismissal of this action for failure to state a cause of action is granted and this case is dismissed.

Conclusion

It is hereby

ORDERED that the motion by defendant New York State Division of Housing and Community Renewal ("DHCR"), sued herein as "The State of New York" for the preanswer dismissal of this action is granted; and it is further

ORDERED that the clerk shall enter judgment in favor of defendant New York State Division of Housing and Community Renewal ("DHCR"), sued herein as "The State of New York" against plaintiff, the Queens League of Tenants, Inc.; and it is

further

ORDERED that any relief requested but not specifically addressed is hereby denied; and it is further

ORDERED that this constitutes the decision and order of the court.

Dated: New York, New York
November 4, 2011

So Ordered:

Hon. Judith J. Gische, JSC