SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION, FIRST DEPARTMENT

Wise v. 1614 Madison Partners, LLC

2023 NY Slip Op 01495 (N.Y. Ct. App. 2023) · No. Appeal Nos. 17547-17548; Case Nos. 2022-04163, 2022-05634; Index No. 154592/22 · Decided March 21, 2023

SUMMARY

The Appellate Division, First Department affirmed orders denying a motion to dismiss a putative class action alleging rent overcharges based on manipulation of initial legal regulated rents through concessions. The court also affirmed class certification while limiting the class period to tenants residing in or formerly residing at the premises on or after May 27, 2018. It held that the former four-year statute of limitations under CPLR 213-a governed the claims.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, First Department
WRITING FOR THE COURT	Kapnick, J.P.; Kern, J.; Gesmer, J.; Moulton, J.; Higgitt, J.
JURISDICTION	New York
DECIDED	March 21, 2023
DOCKET	Appeal Nos. 17547-17548; Case Nos. 2022-04163, 2022-05634; Index No. 154592/22
DISPOSITION	affirmed
PROCEDURAL POSTURE	Plaintiff appealed and defendant cross-appealed from Supreme Court orders denying defendant's motion to dismiss a putative class action alleging rent overcharges and related declaratory relief, and certifying a class limited to tenants who resided or formerly resided at the premises on or after May 27, 2018.
STANDARD OF REVIEW	The denial of a motion to dismiss was reviewed under the CPLR 3211 standard; Supreme Court's class-certification and class-period determination were reviewed for abuse of discretion or whether the court providently exercised its discretion.
PRECEDENTIAL VALUE	published appellate decision

PARTIES	1614 Madison Partners, LLC, Brett Wise v. Brett Wise, 1614 Madison Partners, LLC

TOPICS

landlord tenant · class actions · motions to dismiss · statute of limitations · appellate procedure

PRACTICE AREAS

landlord-tenant law · class actions · civil procedure · appellate procedure

QUESTIONS PRESENTED

1. Whether the complaint adequately alleged that defendant improperly manipulated initial legal regulated rents through purported concessions, thereby stating rent-overcharge claims.
2. Whether Supreme Court properly declined to consider defendant's untimely reply papers.
3. Whether documents submitted with defendant's reply utterly refuted the complaint's allegations under CPLR 3211(a)(1).
4. Whether the class period for the rent-overcharge claims properly commenced on May 27, 2018, rather than May 27, 2016.
5. Whether the four-year statute of limitations under former CPLR 213-a governed rent-overcharge claims accruing before enactment of the Housing Stability and Tenant Protection Act.

HOLDINGS

1. The complaint adequately alleged that defendant improperly manipulated apartments' initial legal regulated rents through the offering of concessions, so denial of the motion to dismiss was proper.
2. Supreme Court properly exercised its discretion to decline consideration of defendant's untimely reply papers.
3. Even if considered, the documents submitted on reply did not utterly refute the allegations that the purported construction concessions were part of a fraudulent scheme to register inflated initial rents.
4. The class period properly commenced on May 27, 2018, and the four-year limitations period under former CPLR 213-a governed rent-overcharge claims accruing before enactment of the Housing Stability and Tenant Protection Act.

FACTUAL BACKGROUND

The complaint alleged that defendant manipulated the initial legal regulated rents of apartments in the building by offering purported concessions to tenants. Plaintiff alleged that some purported construction concessions were not reimbursements for tenant inconvenience but instead formed part of a fraudulent scheme to register initially charged rents at inflated amounts. The action sought recovery for rent overcharges and related declaratory relief on behalf of a tenant class.

PROCEDURAL HISTORY

Supreme Court, New York County, denied defendant's motion to dismiss and granted plaintiff's motion for class certification while limiting the class period to tenants residing at the premises on or after May 27, 2018. The Appellate Division unanimously affirmed both orders, without costs.

DISPOSITION

affirmed

CASES CITED

- Chernett v. Spruce 1209, LLC, 200 A.D.3d 596, 597 (1st Dep't 2021)
- Bacchus v. Bronx Lebanon Hosp. Ctr., 192 A.D.3d 553, 554 (1st Dep't 2021)
- Goshen v. Mut. Life Ins. Co. of N.Y., 98 N.Y.2d 314, 326 (2002)
- Flynn v. Red Apple 670 Pac. St., LLC, 200 A.D.3d 607 (1st Dep't 2021)
- Matter of Century Operating Corp. v. Popolizio, 60 N.Y.2d 483 (1983)
- Matter of Regina Metro. Co., LLC v. New York State Div. of Hous. & Community Renewal, 35 N.Y.3d 332, 363 (2020)
- Austin v. 25 Grove St. LLC, 202 A.D.3d 429, 430 (1st Dep't 2022)

OPINION

PER CURIAM.

Wise v 1614 Madison Partners, LLC (2023 NY Slip Op 01495) Wise v 1614 Madison Partners, LLC 2023 NY Slip Op 01495 Decided on March 21, 2023 Appellate Division, First Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports. Decided and Entered: March 21, 2023 Before: Kapnick, J.P., Kern, Gesmer, Moulton, Higgitt, JJ. Index No. 154592/22 Appeal No. 17547-17548 Case No. 2022-04163 2022-05634 [*1]Brett Wise, Plaintiff-Respondent-Appellant, v1614 Madison Partners, LLC, Defendant-Appellant-Respondent.

Sidrane, Schwartz-Sidrane, Perinbasekar & Littman, LLP, Rockville Centre (Arun Perinbasekar of counsel), for appellant-respondent. Newman Ferrara LLP, New York (Roger A. Sachar of counsel), for respondent-appellant. Orders, Supreme Court, New York County (Arlene P. Bluth, J.), entered August 29, 2022 and December 7, 2022, which, respectively, denied defendant's motion to dismiss the putative class action complaint asserting claims for rent overcharges and related declaratory relief and, to the extent appealed from, upon granting plaintiff's motion for class certification, limited the class to those tenants who reside in or formerly resided in the subject premises on or after May 27, 2018, unanimously affirmed, without costs.

The court correctly denied defendant's motion to dismiss, as the complaint adequately alleges that defendant improperly manipulated the initial legal regulated rents of apartments in the building through the offering of concessions to the tenants (see Rent Stabilization Code [9 NYCRR] § 2521.1[g]; Chernett v Spruce 1209, LLC, 200 AD3d 596, 597 [1st Dept 2021]).

The court providently exercised its discretion in declining to consider defendant's untimely reply papers (see CPLR 2214[c]; Bacchus v Bronx Lebanon Hosp. Ctr., 192 AD3d 553, 554 [1st Dept 2021]). In any event, the documents submitted on reply did not utterly refute the allegations that certain purported construction concessions were in fact not to reimburse the tenants for inconveniences arising from construction work, but rather, were part of a fraudulent scheme to register the initial rents charged at inflated amounts (see CPLR 3211[a][1]; Goshen v Mutual Life Ins.

Co. of N.Y., 98 NY2d 314, 326 [2002]). Defendant's reliance on Flynn v Red Apple 670 Pac. St., LLC (200 AD3d 607 [1st Dept 2021]) and Matter of Century Operating Corp. v Popolizio (60 NY2d 483 [1983]) is misplaced, as those cases are distinguishable on the facts and inapposite.

As the court found, the class period should commence on May 27, 2018, rather than May 27, 2016, as argued by plaintiff. The court correctly determined that the four-year statute of limitations under the former CPLR 213-a governed the rent overcharge claims, which accrued prior to the enactment of the Housing Stability and Tenant Protection Act (see Matter of Regina Metro.

Co., LLC v New York State Div. of Hous. & Community Renewal, 35 NY3d 332, 363 [2020]; Austin v 25 Grove St. LLC, 202 AD3d 429, 430 [1st Dept 2022]). We have considered the remaining arguments and find them unavailing.THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT. ENTERED: March 21, 2023