SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 5

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PROMETHEUS REALTY, RESHIT GJINOVIC, ASIA GJINOVIC, 68-60 108 REALTY, LLC, and THE RENT STABILIZATION ASSOC. OF NYC, INC.

Plaintiffs,

Index No.
111132/08

- Against -

DECISION/ORDER
Mot. Seq. No.: 002

THE CITY OF NEW YORK,

Defendant,

THE ASSOCIATION FOR NEIGHBORHOOD AND HOUSING DEVELOPMENT(ANHD), and THERESA PEREZ, as president of the QUEENS VANTAGE TENANTS COUNCIL,

Intervenor-defendants.

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HON. EILEEN A. RAKOWER

Plaintiffs, Prometheus Realty Corp., Reshit Gjinovic, Asia Gjinovic, and 68-60 108th Realty, LLC are owners of various residential buildings in New York City. Plaintiff, the Rent Stabilization Association of NYC, Inc. is a non-profit organization, representing the interests of approximately twenty-five thousand landlords. Plaintiffs bring this action challenging the enactment of Local Law No. 7 of 2008 (Local Law No. 7"). Specifically, plaintiffs allege that Local Law No. 7 violates the New York State Constitution, that it violates their Substantive and Procedural Due Process rights under the United States Constitution, and that it is unconstitutionally vague.

Plaintiffs now move for summary judgment pursuant to CPLR 3212. City opposes and cross-moves for summary judgment, dismissing the complaint. Intervenor-Defendants[1] also oppose and cross-move for summary judgment. Plaintiffs

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[1] By Order of this Court dated February 4, 2009, the Association for Neighborhood and Housing Development, and Teresa Perez, as President of the Queens Vantage Tenants Council, were permitted to intervene in the action.

oppose both cross-motions.

Local Law No. 7 was initiated and passed as Introductory No. 627-A by the New York City Council ("City Council") in February 2008 and was signed into law on March 12, 2008, becoming effective as of March 13, 2008. Local Law No. 7 amends certain portions of Chapter 2 (Housing Maintenance Code of Title 27 (Construction and Maintenance) of the Administrative Code of the City of New York ("HMC"), "in relation to the duty of an owner to refrain from harassment of tenants and remedies for the breach of such duty."[2] The HMC, enacted in 1967, was intended to supplement and/or expand the basic housing standards set forth in the Multiple Dwelling Law, which was enacted in 1929.

In the City Council's "Report of the Infrastructure Division," dated February 27, 2008, the Committee on Housing and Buildings released the following statement:

> On December 17, 2007, and February 7, 2008, the Committee heard testimony from the Department of Housing Preservation and Development (HPD), tenants, housing advocates, and representatives of the real estate industry . . . through this process, the Committee has found that as it becomes more profitable for some owners to remove their buildings or individual apartments from rent-regulation, Mitchell-Lama programs, Project-based Section 8, other forms of affordable housing, and in neighborhoods that are gentrifying, there is, unfortunately, an incentive for certain building owners to act in ways designed to force out existing tenants . . .

Local Law No. 7 amends Article 1, §27-2004, subdivision (a) of the HMC, by adding the following:

> 48. except where otherwise provided, the term harassment shall mean any act or omission by or on behalf of an owner that (i) causes or is intended to cause any person lawfully entitled to occupancy of a dwelling unit to vacate such dwelling unit or to surrender or waive any rights in relation to such occupancy, and (ii) includes one or more of the

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[2]See Int. No. 627-A.

following:

a. using force against, or making express or implied threats that force will be used against, any person lawfully entitled to occupancy of such dwelling unit;

b. repeated interruptions or discontinuances of essential services, or an interruption or discontinuance of an essential service for an extended duration or of such significance as to substantially impair the habitability of such dwelling unit;

c. failing to comply with the provisions of subdivision c of section 27-2140 of this chapter;

d. commencing baseless or frivolous court proceedings against any person lawfully entitled to occupancy of such dwelling unit;

e. removing the possessions of any person lawfully entitled to occupancy of such dwelling unit;

f. removing the door at the entrance to an occupied dwelling unit; removing, plugging or otherwise rendering the lock on such entrance door inoperable; or changing the lock on such entrance door without supplying a key to the new lock to the persons lawfully entitled to occupancy of such dwelling unit; or

g. other repeated acts or omission of such significance as to substantially interfere with or disturb the comfort, repose, peace or quiet of any person lawfully entitled to occupancy of such dwelling unit and that cause or are intended to cause any person lawfully entitled to occupancy of a dwelling until to vacate such dwelling unit or to surrender or waive any rights in relation to such occupancy.

Local Law No. 7 also amends §27-2005. Duties of Owner, to add the following:

d. The owner of a dwelling shall not harass any tenants or persons lawfully entitled to occupancy of such dwelling as set forth in paragraph

48 of subdivision a of section 27-2004 of this chapter.

Other sections which are amended by Local Law No. 7 are: §27-2115(h), which adds a cause of action based on a claim of harassment and, in subsection (2), requires that any harassment claims be based, at least in part, on one or more violations of record issued by the department or any other agency. Subsection (2) further states: "where any allegation of harassment is based on more than one physical condition, the existence of at least one violation of record with respect to any such physical condition shall be deemed sufficient to meet the requirements of this paragraph." Subsections (m) and (n) were also added to §27-2115. Subsection (m) classifies a violation of an owner's duty not to harass as a Class C violation (immediately hazardous violation) and specifies that such violation shall not be deemed a continuing Class C violation of record beyond the time that the conduct constituting such violation occurred. This subsection imposes a penalty of one thousand to five thousand dollars for "each dwelling unit in which a tenant . . . has been the subject of such violation." Subsection (m) authorizes the court, as opposed to an inspector, to determine if a violation occurred. Subsection (m) sets forth owners' affirmative defenses. Subsection (n) excludes owner occupied coops and condos, and tenants in one or two family dwellings. §27-2120 is amended to include a section authorizing effected tenants to apply to Housing Part for an injunction against a harassing landlord.

Plaintiffs, in support of their motion, submit the following: the pleadings; a memorandum from the Council of the City of New York Office of Communications, dated October 17, 2007; a copy of Int. No. 627-A; three documents titled "Report of the Infrastructure Division Report Newman, Legislative Director," dated December 17, 2007, February 7, 2008, and February 27, 2008, respectively; and a letter from Ann Pfau, Chief Administrative Judge, to Erik Martin Dilan, Chair, Committee on Housing and Buildings, dated December 17, 2007.

Plaintiffs contend that compliance with traditional housing standards, such as failing to provide adequate heat or cutting off a tenant's hot water, etc., are capable of objective assessment by an inspector. Plaintiffs assert that, with the passage of Local Law No. 7 however, a Housing Part judge would be required to issue a violation instead of an inspector, thereby unconstitutionally expanding the Housing Part's jurisdiction.

City, in support of its cross-motion, submits: the pleadings; a copy of "NYLS

New York City Bill Jacket for Local Law 7;" and the "Transcript of the Stenographic Record of the Hearing on Local Laws, Held Before the Honorable John V. Lindsey, Mayor, July 14, 1967, Introductory Number 215, the New Housing Maintenance Code." City argues that, since plaintiffs are making a facial challenge to Local Law No. 7, they have the burden of demonstrating that there is no possible valid application of that law. Further, City asserts that Local Law No. 7 is consistent with the scope of the HMC and the jurisdiction of the Housing Part because there is nothing contained in the code restricting housing standards to purely physical conditions. Thus, City argues, there is no unlawful expansion of the Housing Part. City argues that, in any event, plaintiffs lack standing to bring the instant action because they have not suffered any "injury-in-fact." The Intervenor Defendants, in support of their cross-motion, make essentially the same arguments as City.

> The standing of an organization . . . to maintain an action on behalf of its members requires that some or all of the members themselves have standing to sue . . . additionally, the interests which the organization seeks to protect must be germane to its purposes, the court should be satisfied that the organization is an appropriate one to act as the representative of the group whose rights it is asserting . . . It is enough to allege the adverse effect of the decision sought to be reviewed on the individuals represented by the organization . . . the complaint need not specify individual injured parties." (*Matter of Dental Society v. Carey*, 61 NY2d 330, 333-334[1984])(internal citations omitted).

Here, plaintiffs annex several Orders to Show Cause seeking to "[restrain] respondent(s) from engaging in harassment," issued to members of plaintiffs' organizations. Thus, plaintiffs have established that they have standing to bring the instant action.

The New York City Civil Court Act §110, which established the Housing Part, states, in relevant part:

> (a) A part of the court shall be devoted to actions and proceedings involving the enforcement of state and local laws for the establishment and maintenance of housing standards, including, but not limited to, the multiple dwelling law and the housing maintenance code, building code and health code of the administrative code fo the city of New York, as

follows:

> (4) Proceedings for the issuance of injunctions and restraining orders or other orders for the enforcement of housing standards under such laws.
>
> (7) Actions and proceedings for the removal of housing violations recorded pursuant to such laws, or for the imposition of such violation or for the stay of any penalty thereunder.

There is no dispute that the Housing Part was created, in part, to enforce the HMC. The HMC was intended to be a live document, flexible enough to incorporate housing issues as they arose. Such intent is demonstrated in the legislative declaration preceding the code:

> It is hereby found that the enforcement of minimum standards of health and safety, fire protection, light and ventilation, cleanliness, repair and maintenance, and *occupancy* in dwellings is necessary to protect the people of the city against the consequences of urban blight . . . In order to accomplish these purposes, and following a review of existing housing standards *in light of the present needs*, and a reexamination of methods of administration, including legal sanctions and remedies, to assure the effectiveness of enforcement, it is hereby found that the enactment of a comprehensive code of standards for decent housing maintenance, imposing duties and responsibilities for the preservation of the dwellings in the city upon owners and tenants, as well as on the municipality itself, *enforceable by a broad range of legal, equitable and administrative powers, is appropriate for the protection of the health, safety and welfare of the city.*

Several amendments to the HMC have been passed by the City Council, as such laws became necessary for the "protection of the health, safety and welfare of the city." Notable among these, for purposes of the issue presented here, is Local Law No. 19, which was passed in 1983. Local Law 19 amended the HMC to add §27-2093, "Certification of no harassment with respect to single room occupancy multiple dwellings." §27-2093(a) defines harassment in a nearly identical manner to the presently disputed anti-harassment law.

Further, Housing Part judges have always been permitted to issue violations pursuant to §27-2115(h)(1) of the HMC. That section, before it was amended by Local Law No. 7, stated:

> Should the department fail to issue a notice of violation upon the request of a tenant . . . within thirty days of the date of such request . . . the tenant . . . may individually or jointly apply to the housing part for an order directing the owner . . . to appear before the court . . .

Article IX of the New York State Constitution, as codified in §10 [1][ii] of the Municipal Home Rule Law, states, in relevant part:

> . . .every local government shall have power to adopt and amend local laws not inconsistent with the provisions of this constitution or any general law . . .

Based upon the foregoing analysis, Local Law No. 7 is a valid exercise of the powers conferred upon municipalities pursuant to the Municipal Home Rule Law.

Turning now to plaintiffs' Federal Constitutional claims, it is well settled that "legislation carries a presumption of constitutionality and that the plaintiffs bear the burden of demonstrating beyond a reasonable doubt that it is unconstitutional." (*Alliance of American Insurers v. Chu*, 77 NY2d 573, 585[1991]). To this end, it will be assumed that the Legislature intended to enact a statute in accordance with the federal and state constitutions. (see Mckinney's Cons. Law of N.Y. Book 1, Statutes §150). This presumption applies as strongly to [a] municipal enactment as to one passed by state legislature. (*Kim v. Town of Orangetown*, 1971 66 Misc.2d 364) (*see also*, McKinney's Statutes §150). Therefore, plaintiffs have a substantial burden.

Here, the passage of Local Law No. 7 is a rational legislative response to what the City Council has determined is the potential for a growing problem of tenant harassment in New York City. The legislature is not required to wait for a deluge of harassment allegations to act. Rather, they may respond to even a single instance of financially motivated harassment, and seek to discourage the same by swift enactment of relevant legislation. Mayor Bloomberg, in signing the legislation into law, made the following statement:

> Introductory Number 627-A addresses a variety of unacceptable and improper practices by landlords whose actions, either willingly or inadvertently, cause lawful tenants to vacate their homes. This practice, commonly referred to as tenant harassment, is often aimed at residents in multiple-unit dwellings in an effort to compel them to vacate their homes, so that owners may then make improvements to the apartments and re-rent them for much higher rents than previous tenants paid . . . As our City continues to grow, preserving housing - and especially affordable housing - will remain a priority of my Administration. Introductory Number 627-A takes us a step in the right direction by ensuring that tenants in such housing - and in all housing throughout the City - are protected.

The Due Process Clause of the United States Constitution requires that "deprivation of life, liberty or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case." (*Mullane v. Central Hanover Bank &Trust*, 339 US 306,313[1950]). "[D]ue process is a flexible constitutional concept calling for such procedural protections as a particular situation may demand." (*Medicon Diagnostic Laboratories, Inc. v. Perales*, 74 NY2d 539,546[1989]).

Local Law No. 7 provides for basic procedural protections (see §27-2115[h][1]), and extends further to afford additional protections to landlords.

§27-2115(m) provides, in relevant portion:

> (2) . . . It shall be an affirmative defense to an allegation by a tenant . . . that (i) such condition or service interruption was not intended to cause any lawful occupant to vacate a dwelling unit or waive or surrender any rights in relation to such occupancy, and (ii) the owner acted in good faith in a reasonable manner to promptly correct such condition or service interruption . . .
>
> (3) An owner may seek an order by the court enjoining a tenant from initiating any further judicial proceedings against such owner pursuant to this section claiming harassment without prior leave of the court if (I) within a ten-year period such tenant has initiated two judicial proceedings pursuant to this section against such owner claiming

harassment that have been dismissed on the merits and (ii) a third or subsequent proceeding initiated by such tenant against such owner pursuant to this section claiming harassment during such ten-year period is determined at the time of its adjudication to be frivolous . . .

(4) Where the court determines that a claim of harassment by a tenant against an owner is so lacking in merit as to be frivolous, the court may award attorneys fees to such owner in an amount to be determined by the court.

"A law or regulation whose violation could lead to . . . a deprivation must be crafted with sufficient clarity to give the person of ordinary intelligence a reasonable opportunity to know what is prohibited and to provide explicit standards for those who apply them." (*Piscottano v. Murphy*, 511 F.3d 247[2nd Cir. 2007])(internal citations omitted). Here, Local Law No. 7 contains clear and precise language which puts building owners on notice of what constitutes harassment. (see Article 1, §27-2004, subdivision (a) of the Housing Maintenance Code).

Wherefore it is hereby

ORDERED that plaintiffs' motion is denied; and it is further

ORDERED that defendants the City of New York and Intervenor-Defendants, the Association for Neighborhood and Housing Development, and Teresa Perez, as President of the Queens Vantage Tenants Council cross-motions are granted ; and it is further

ORDERED that the complaint is hereby dismissed in its entirety and the Clerk is directed to enter judgment accordingly.

Dated: July 31, 2009

EILEEN A. RAKOWER, J.S.C.