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LANDLORD-TENANT LAW

HSTPA Applies to Notice of Nonrenewal Predating the Law

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As has previously been addressed in this publication, the Housing Stability and Tenant Protection Act of 2019 (HSTPA), effective as of June 14, 2019, made significant changes to both the rent laws and the laws governing landlord-tenant proceedings in New York State. Among the many significant changes, Part I, §2, which amended Administrative Code of the City of New York ("Admin. Code") §26-511[c][9][b], provides that no rent stabilization code can be enacted unless it provides that no owner may refuse to renew a lease except: "where he or she seeks to recover possession of one dwelling unit because of immediate and compelling necessity for his or her own personal use and occupancy as his or her primary residence or for the use and occupancy of a member of his or her immediate family as his or her primary residence, provided, however, that this subparagraph shall permit recovery of only one dwelling unit."

In our last column, we addressed a decision from Civil Court, Kings County [*Fried v. Galindo*, NYLJ, 1564952675NY6633418 (Civ. Ct. Kings Co, July 31, 2019)] in which the court held that the HSTPA applied to an owner' use proceeding pending at the time of the new law's effective date, resulting in the dismissal of the proceeding in which the owner sought to recover more than one dwelling unit.

In this month's column, we write about another decision recently issued by the Civil Court, Kings County in *Zagorski v. Makarewicz*, 2019 WL 6109562 (Civ Ct Kings Co, Oct. 31, 2019) (*Zagorski*), in which the court (Judge Zhuo Wang) was faced with a different question relating to the HSTPA's impact on owners' use proceedings; namely, where the owner served the notice of nonrenewal on the tenant before the effective date of the HSTPA, are the requirements of the HSTPA applicable to such a notice? The court in *Zagorski* answered that question in the affirmative, resulting in the dismissal of the owner's proceeding.

Background

In *Zagorski*, the owner had delivered a notice of nonrenewal to the tenant seeking to recover multiple apartments in the building located at 183 Guernsey Street in Brooklyn for owner's personal use. The notice further stated that if all of the units could not be recovered, the owner "still intends to recover unit 4R, a fourth-floor apartment, to enlarge their current living space in unit 2R, on the second floor." The owner thereafter, in March 2019, commenced a

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holdover proceeding based upon the notice of nonrenewal, seeking in the petition to recover only apartment 4R for his personal use.

The tenant moved to dismiss the proceeding, arguing that the notice of nonrenewal was defective because it failed to show an "immediate and compelling necessity" to recover possession of the apartment for personal or family member's use, as now required by Admin. Code §26-511[c][9][b], as amended by the HSTPA. The owner, in opposition to the motion, maintained that the new requirements of the HSTPA should not be applied "*ex post facto*" because the "immediate and compelling necessity" requirement was not in existence at the time the notice of nonrenewal was served.

The owner further argued that "for this court to dismiss the proceeding because of the failure to meet a standard that did not exist at the time the predicate notice was served…would be 'unfair' and a 'flagrant breach of his constitutional rights.'" Alternatively, owner asked for an opportunity to meet the new standard imposed by the HSTPA by way of an attorney affirmation.

The court rejected the owner's contentions and dismissed the proceeding. It observed that "[p]ursuant to §5 of Part I, the amendment to §26-511(c)(9)(b) 'shall take effect immediately and shall apply to any tenant in possession at or after the time it takes effect.'" The court then went on to find that the owner had failed to demonstrate that the new requirement in the HSTPA that the owner allege "an immediate and compelling necessity" should not be applied in the case at bar. The court stated that with respect to the owner's contention that the application of the new law inflicted a "flagrant breach" of his constitutional rights, the owner had "failed to specify which rights have been violated, and he fails to cite any legal authority in support of his constitutional argument."

> In 'Zagorski,' the court was faced with a question relating to the HSTPA's impact on owners' use proceedings; namely, where the owner served the notice of nonrenewal on the tenant before the effective date of the HSTPA, are the requirements of the HSTPA applicable to such a notice?

It further observed that in the recent decision issued by the Appellate Division, First Department in *Dugan v. London Terrace Gardens, L.P.*, 177 AD3d 1 (1st Dept. 2019), the court held that another provision of the HSTPA "materially affecting pending claims withstood constitutional scrutiny because the Legislature's enactments carry an 'exceedingly strong presumption of constitutionality.'"

As such, the court held that because "a predicate notice cannot be amended," the owner's "conceded failure to state an 'immediate and compelling necessity" in owner's notice of nonrenewal "is not reasonable under the attendant circumstances" and therefore required the dismissal of the petition for failure to state a cause of action.

Conclusion

The HSTPA has and will continue to present the courts with a myriad of issues concerning its impact on the rent laws and landlord-tenant relations in the state of New York. As we stated in our prior column, as new decisions are issued, we will continue to try in this column to keep the landlord-tenant bar apprised of significant developments in the interpretation of this historic new body of law.