CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK: PART C

230 RIVERSIDE LLC

Petitioner(s),

-against-

GWENDOLE DE CHARETTE AND
YOUNG DE CHARETTE
230 Riverside Drive, Apt. 18D
New York, New York 10025

Respondent(s),

Index No.: L&T 083099/11

DECISION/ORDER

HON. JOHN HENRY STANLEY, J.H.C.

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DECISION/ORDER:

Petitioner commenced this non-payment of rent action in September of 2011. On October 6, 2011, Respondents submitted an answer, asserting breach of warranty of habitability as both a defense and counterclaim and seeking an abatement of rent arrears. On October 1, 2012, Respondents e-mailed Petitioner two Subpoenas Decus Tecum, one seeking records and decisions from the New York State Division of Housing and Community Renewal ("DCHR") and the other seeking records and decisions from Naci Baybura, Petitioner's agent. Petitioner moves to quash the subpoenas and makes a motion in limine seekingto limit the scope of time for Respondents' abatement claim.

The Court denies Petitioner's motion to quash the subpoenas, but limits the time period covered by the subpoenas. The DHCR subpoena requests, "Certified copies of *all* DHCR records

and decisions pertaining to the premises, 230 Riverside Drive, Apt. 18D" (emphasis added), including specifically named documents dated between 1985 and 1987. The Baybura subpoena requests various written correspondence to and from Petitioner regarding conditions of the facade of 230 Riverside Drive and Apartment 18D. There is no time period mentioned in the Baybura subpoena.

Respondents state that the statute of limitations applicable to their breach of warranty claim is six years, the time period to bring an action upon a contractual obligation or liability. Therefore, Respondents assert that the subpoenas should be limited at most to October 6, 2005, six years prior to their answer and counterclaim. Respondents maintain that all the documents requested in the DHCR subpoena are relevant to show the extent and longevity of damages that have existed in the premises. They also note that the subpoena is not unduly burdensome to Petitioner since DHCR would be the party responsible for production of the documents.

The motion to quash is hereby denied. "The standard to be applied on a motion to quash a subpoena duces tecum is whether the requested information is 'utterly irrelevant to any proper inquiry.'" *Ayubo v. Eastman Kodak Co., Inc.*, 158 A.D.2d 641, 642, 551 N.Y.S.2d 944, 946 (2nd Dep't 1990). It is the responsibility of the party receiving the subpoena to make a claim that the subpoena is overly broad or that particular information is irrelevant. *Gen. Elec. Co. v. Rabin*, 184 A.D.2d 391, 392, 585 N.Y.S.2d 374, 375 (1st Dep't 1992). In this case, Petitioner has made a claim that the subpoenas seek overly broad and irrelevant information. However, the Court does not find that the requested information is "utterly irrelevant." The production of the documents and information from DHCR and Baybura can aid Respondents' breach of warranty of habitability claim.

Although the motion to quash is denied, the Court limits the time period covered by the subpoenas to October 6, 2005. New York law clearly states that "an action upon a contractual obligation or liability, express or implied . . . must be commenced within six years." N.Y. C.P.L.R.

213(2) (2013). Based on New York Real Property Law, there is an implied warranty of habitability by the landlord in every written or oral lease. N.Y. REAL PROP. LAW § 235-b(1) (2013). Therefore, the time limit for Respondents to commence an action based on a lease violation, such as breach of the warranty of habitability, is six years. Both subpoenas require the production of requested documents from October 6, 2005 to the present, the applicable time period covered by Respondents' warranty of habitability claim. Accordingly, the Court grants Petitioner's motion in limine to limit the scope of Respondents' abatement.

Petitioner seeks to limit Respondents' abatement to May 6, 2009, the date the parties entered into a general release, or, in the alternative, July 1, 2008, the date Petitioner acquired ownership of the premises. Respondents reject these arguments because Petitioner was aware of failing conditions in the building and Respondents' apartment on the date Petitioner purchased the building. Respondents contend that the general release solely addressed claims relating to the amount of the legal regulated rent and maximum collectable rent.

The general release states, in pertinent part:

> The Tenants acknowledge that the rent set forth in Schedule A is the legal regulated rent or maximum collectible rent for their respective apartments. The Tenants hereby waive and release the Landlord [230 Riverside LLC] and Former Landlord [BCRE 230 Riverside LLC], as well as their officers, directors, employees, principals, agents, predecessors, successors and assigns, from all claims, actions, causes of action, suits, debts, sums of money, accounts and demands whatsoever, relating in any way to the amount of the legal regulated rent or maximum collectible rent for their respective apartments . . . or are based upon any facts that existed, at any time through the date of the execution of this Agreement, except for the obligations set forth in this agreement. Nothing herein shall prevent the Tenants from filing future claims against the Landlord, but shall not be permitted to challenge the existing rent . . . as part of any future claims.

Respondents are correct that the general release does not preclude them from bringing claims against Petitioner that arose prior to May 6, 2009 which are unrelated to rent. The release terms are limited only to the tenants' rent amounts. The release states that the tenants are not prevented from

filing future claims against Petitioner, but those claims may not challenge the existing rent.

Case law supports the proposition that a general release is not a complete bar to future claims against other parties to the release. In *Lefrak SBN Assocs. v. Kennedy Galleries, Inc.*, 203 A.D.2d 256, 257, 609 N.Y.S.2d 651, 652 (2nd Dep't 1994), the parties were involved in litigation concerning construction costs, and in settlement signed a general release. Five days later, the landlord, Lefrak SBN Associates, sent the tenant, Kennedy Galleries, Inc., a statement for operating expenses. Kennedy Galleries explained it would not be paying the operating expenses and argued that the release barred Lefrak from pursuing any claims arising before the date of the release. The court held that the general release did not serve as a complete defense to the new action and that "the meaning and coverage of a general release depends on the controversy being settled and upon the purpose for which the release was actually given." *Id.* at 257, 652. Additionally, a "release is to be limited only to particular claims, demands, or obligations, the instrument will be operative as to those matters alone and will not release other claims, demands or obligations." *Perritano v. Town of Mamaroneck*, 126 A.D.2d 623, 624, 511 N.Y.S.2d 60, 61 (2nd Dep't 1987) (quoting 49 N.Y. Jur, Release and Discharge, § 33, at 405). Based on the aforementioned, Respondents' breach of warranty of habitability claim is not barred by the general release, nor is it limited to May 6, 2009 when the parties executed the general release.

As stated previously, Respondents' breach of warranty of habitability claim may extend six years from the filing of an answer. In this instance the relevant period is from October 6, 2005 until the present. The Court hereby grants Petitioner's motion in limine to limit the scope of Respondents' abatement to the same time period.

The New York Property Law states in pertinent part:

> In every written or oral lease or rental agreement for residential premises the landlord or lessor shall be deemed to covenant and warrant that the premises so leased or

> rented . . . are fit for human habitation and for uses reasonably intended by the parties and that the occupants of such premises shall not be subjected to any conditions which would be dangerous, hazardous or detrimental to their life, health or safety." N.Y. REAL PROP. LAW § 235-b(1) (2013).

As stated in this law, there is an implied warranty of habitability based upon a lease or agreement between the landlord and tenant. "Ordinarily an agreement or stipulation between a prior landlord and tenant is binding on a successor landlord, regardless of whether it is contained in the lease or rider." *Rocky 116, LLC v. Weston*, 284 A.D.2d 139, 139, 726 N.Y.S.2d 94, 95 (1st Dep't 2001). The landlord who signs the initial lease with a tenant and each landlord in succession becomes obligated to the same warranty.

In *Stasyszyn v. Sutton East Assocs.*, 161 A.D.2d 269, 555 N.Y.S.2d 297, 300 (1st Dep't 1990) the court found that a stipulation between a landlord and tenant whereby the landlord agreed to renovate the premises by a certain date was enforceable against successor landlords. In *Sutton East* the property was sold twice between the date of the stipulation and the agreed date of completion. The renovation was not timely completed and the premises were rendered uninhabitable. The court found that the tenant had a right to relief as a result of the successive landlord's breach.

Similarly, in this case where there has been an alleged breach of the warranty of habitability and the tenant seeks an abatement from a successor landlord, the successor landlord is held accountable.

The proceeding is restored to the calendar on May 14, 2013 Part C, at 9:30am at which time all subpoenaed documents must be produced.

This constitutes the decision and order of the court.

HON. JOHN HENRY STANLEY
JUDGE, HOUSING COURT

Dated: New York, N.Y.
April 4, 2013

Hon. John Stanley
Judge, Housing Court