IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

COMMONWEALTH OF PENNSYLVANIA BY ATTORNEY GENERAL JOSH SHAPIRO, Plaintiff	)	
v.	)	No. 2019-2413
ASSOCIATED PROPERTY MANAGEMENT, INC., d/b/a ASSOCIATED REALTY PROPERTY MANAGEMENT, Defendant	)	

Attorney for Plaintiff: *Brandon J. Bingle*
Attorney for Defendant: *Aaron D. Martin*

Oliver, J.

Opinion and Order

I. Background

This action involves claims by the Commonwealth, through its Office of Attorney General, ("OAG"), that Defendant Associated Property Management, Inc., d/b/a Associated Realty Property Management ("ARPM") has engaged in unfair methods of competition and unfair and deceptive acts or practices under the Pennsylvania Unfair Practices and Consumer Protection Law, 73 P.S. § 201-1, *et seq.*, ("CPL"). Defendant is in the business of managing and leasing real estate in or near State College, Pennsylvania. In its Complaint, the OAG alleges that certain ARPM practices with respect to its property leases violate various provisions of Pennsylvania's Landlord Tenant Act of 1952, 68 P.S. § 250.101, *et seq.* ("LTA") and constitute unfair competition or unfair or deceptive acts or practices under section 201-3 of the CPL. (*See* Compl. generally).

Plaintiff OAG's Complaint is set forth in four separate counts. Count I involves claims related to Defendant's alleged practices in failing to provide tenants with sufficient notice of claimed damage to the leasehold premises when withholding portions of security deposits at the end of a lease term. (*See id.* ¶¶ 35-45). In Count II, Plaintiff OAG challenges Defendant's

alleged practice of unlawfully withholding an additional percentage administrative fee on any security deposit deductions (including deductions for property damages, cleaning charges, and fines), from tenant security deposits in violation of sections 250.511 and 250.512 of the LTA when those administrative fees bore no relationship to actual damages, unpaid rent, or breaches of lease conditions by tenants. (*See id.* ¶¶ 46-64). Count III charges Defendant ARPM with deceptive practices in connection with the language of its leases in light of the alleged practices in deducting various fees, charges and fines from tenant security deposits. (*See id.* ¶¶ 65-78). Finally, in Count IV, Plaintiff OAG alleges Defendant violated the CPL by engaging in leasing practices violative of LTA section 250.504-A. (*See id.* ¶¶ 79-94). With respect to each Complaint Count, Plaintiff OAG avers Defendant's alleged conduct was undertaken willfully. (*See* Compl. ¶ 9). Plaintiff OAG requests the imposition of civil monetary penalties under section 201-8 of the CPL at each Count in addition to restitution and injunctive relief. (*See* Compl., Wherefore Clauses).

In the presently pending motion, Defendant contends it is entitled to judgment as a matter of law with respect to Plaintiff OAG's claim for civil monetary penalties. Although Defendant's motion and accompanying brief request the dismissal of *all* civil penalty claims from this action, the motion and brief address only the allegations in Complaint Count II pertaining to alleged unlawful withholding from tenant security deposits in violation of LTA section 250.512. (*See* Def.'s Mot. Partial Judgm. Pleadings and Brief in Support). The gravamen of Defendant's argument is that the operative provisions of the LTA underlying the OAG's claims in Count II are ambiguous and cannot, as a matter of law, serve as the predicate for a finding of a willful violation of the CPL. (*See* Def.'s Mot. Partial Judgm. Pleadings, ¶¶ 6-8). Defendant also argues that the LTA provisions at issue are so vague as to be constitutionally unsound, and that the OAG must be prohibited from pursuing its claims for monetary penalties under the void for vagueness doctrine. (*Id.*).

II. Discussion

The standards applicable to a motion for judgment on the pleadings are well-established. A motion for judgment on the pleadings may only be granted when there are no disputed issues of fact and it is clear from the pertinent record that the moving party is entitled to judgment as a matter of law. *See* Pa. R.C.P. 1034; *Wakely v. M.J. Bruner*, 147 A.3d 1, 5 (Pa. Super. 2016), *appeal denied*, 145 A.3d 728 (Pa. 2016). In ruling on a motion for judgment on the pleadings,

courts may consider only the pleadings of record and any properly attached exhibits. *Id.* If any doubt exists as to whether the moving party is entitled to judgment, the motion for judgment on the pleadings must be denied. *See id.* ("We will affirm the grant of such a motion only when the moving party's right to succeed is certain and the case is so free from doubt that the trial would clearly be a fruitless exercise."); *Rubin v. CBC Broadcasting, Inc.*, 170 A.3d 560, 564-67 (Pa. Super. 2017).

The Court begins with a recitation of the relevant LTA provisions. Section 250.512 of the LTA provides, in pertinent part, as follows:

> (a) Every landlord shall within thirty days of termination of a lease . . ., provide a tenant with a written list of any damages to the leasehold premises for which the landlord claims the tenant is liable. Delivery of the list shall be accompanied by payment of the difference between any sum deposited in escrow, including any unpaid interest thereon, for the payment of damages to the leasehold premises and the actual amount of damages to the leasehold premises caused by the tenant . . .
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> (c) If the landlord fails to pay the tenant the difference between the sum deposited . . . and the actual damages to the leasehold premises caused by the tenant . . . the landlord shall be liable in assumpsit to double the amount by which the sum deposited in escrow . . . exceeds the actual damages to the leasehold premises caused by the tenant . . . . The burden of proof of actual damages caused by the tenant to the leasehold premises shall be on the landlord.

68 P.S. § 250.512(a), (c). In moving for partial judgment on the pleadings, Defendant argues that the phrase "actual damages" as used in LTA section 250.512(c), and as applied to Defendant's challenged practices, is ambiguous. Defendant further argues that, because the statute is being used as the predicate for a claim for monetary penalties under the CPL, the rule of lenity must be applied and the phrase "actual damages" must be strictly construed against Plaintiff OAG. (Def.'s Mot. Partial Judgm. Pleadings, ¶¶ 7-8, and Br. in Supp. at pp. 14-15). Plaintiff OAG argues Defendant's position is contrary to well-settled principles of statutory construction, and that "actual damages" as used in the LTA, and as applied to Defendant's challenged practices, is not an ambiguous phrase. (*See* Plf's. Br. Opp., at pp. 7-8).

The goal of all statutory interpretation is to ascertain and effectuate the intent of the legislature. *See* 1 Pa. C.S.A. § 1921(a); *Commonwealth by Shapiro v. Golden Gate Nat'l Senior*

Care LLC, 194 A.3d 1010, 1027 (Pa. 2018). When interpreting a statute, a court must begin with the words of the statute itself. *See id.; Mercury Trucking, Inc. v. Pa. P.U.C.*, 55 A.3d 1056, 1068 (Pa. 2012). The plain language of the statute is usually the best indicator of legislative intent. *See Brewington for Brewington v. City of Philadelphia*, 199 A.3d 348, 354 (Pa. 2018). The statutory language under scrutiny must be considered "not in isolation, but in the context in which it appears." *Commonwealth by Shapiro,* 194 A.3d at 1027. When the statutory language employed by the legislature is clear and unambiguous, effect must be given to the plain language of the statute. *Id.* Ambiguity exists when the language of the statute is susceptible to more than one reasonable interpretation. *Warrantech Cons. Prod. Svcs, Inc. v. Reliance Ins. Co. in Liquidation*, 96 A.3d 346, 354-55 (Pa. 2014).

In the case at bar, Defendant asserts that the statutory provisions allowing only actual damages to be withheld from tenant security deposits is "ambiguous as to the inclusion or exclusion of a landlord's damages in the form of overhead costs." (*See* Def.'s Br. Supp., at p. 2). Defendant devotes nearly four pages of its principle brief to a discussion of case law supporting the proposition that overhead costs may properly be included in damage awards in various contexts. The Court finds this argument to be of marginal relevance to the instant motion. Plaintiff OAG does not allege in the Complaint that overhead costs could *never* be properly included as a portion of the actual damages to leasehold premises for which security deposit deductions may be lawfully made. In its Complaint, Plaintiff OAG alleges that Defendant withheld portions of tenant security deposits for items such as administrative fees and other charges when those fees and charges *bore no relationship to damages to the leasehold premises* caused by the tenants. (*See* Compl. ¶¶ 48, 50-53, 60, 63-64; Br. Opp. at p. 4). More specifically, the alleged unlawful conduct in this case involves Defendant's practice of deducting an administrative charge from tenant security deposits that is calculated by applying a 10 to 15% multiplier to the aggregate of all other charges withheld. (*See id.*). Plaintiff OAG contends the administrative charge is nothing more than a surcharge, which would clearly not be an item of actual damage to the leasehold premises. (*See id.* at ¶ 53).

Framing the issue in terms of the Complaint allegations,[1] the Court agrees with Plaintiff

[1] Any dispute as to Plaintiff's characterization of the administrative charge is not a matter properly resolved in the context of a motion for judgment on the pleadings. To succeed on a motion for judgment on the pleadings, the moving party must establish that it is clear from the pleadings that there are no disputed issues of material fact. *See Wakely*, 147 A.3d at 5.

OAG that the phrase "actual damages" in LTA section 250.512 is not ambiguous as applied in this case. As a threshold matter, the Court observes that Defendant begins its argument with a footnoted quote and citation to subsection 250.512(c) of the LTA. That subsection pertains to the consequences of a lessor failing to properly return a tenant's security deposit funds. *See* 68 P.S. § 250.512(c).

The Court finds the more appropriate starting point for construing the phrase "actual damages" to be subsection 250.512(a). In that subsection, after first requiring that landlords provide tenants with a written list of damages to the leasehold premises allegedly caused by the tenant, the legislature further mandates that, along with the list, landlords must provide payment of the difference between the security deposit and the actual amount of damages to the leasehold premises caused by the tenant. Subsection 250.512(a) bears repeating. In pertinent part, that subsection provides: "Every landlord shall. . . . provide a tenant with a written list of any damages to the leasehold premises for which the landlord claims the tenant is liable. Delivery of the list shall be accompanied by payment of the difference between *any sum deposited in escrow . . . for the payment of damages to the leasehold premises* and the *actual amount of damages to the leasehold premises* caused by the tenant . . . ." 68 P.S. § 250.512(a) (emphasis added). Notably, each of the references to damages includes the descriptive language "*to the leasehold premises*." In identifying the payment to be delivered by landlords with the written list of damages to the leasehold premises, the legislature distinguishes between: (i) sums deposited in escrow for the payment of damages to the leasehold premises; and, (ii) the actual amount of damages to the premises caused by the tenant. *See id.* Based on the plain language of the statute, it is apparent that this distinction is between *potential* damages to the leased premises for which a security deposit is taken and the *actual* amount of such damages identified at the end of the lease term. Clearly, the statute contemplates that funds may be withheld for (properly identified) damages that have actually been visited upon the leasehold premises.

Looking to subsection 205.512(c), the Court likewise finds it to be evident from the plain language of the statute that "actual damages" refers to the amount of actual damages *to the leasehold property* at the end of the tenant's lease. Subsection 205.512(c) is a statutory remedy for the failure to comply with subsection 205.512(a) ("If the landlord fails to pay the tenant the difference . . ."). The phrase "actual damages" as used in that subsection plainly refers back to the damages to the leasehold premises as identified in the written list required by subsection (a).

In addition, each reference to actual damages in subsection (c) is accompanied by the language "to the leasehold premises." The Court does not agree that these statutory provisions can reasonably be interpreted to permit withholding of anything other than money for damage to the leased premises that actually occurred and for which the tenant is allegedly responsible.

Defendant cites to multiple other legal settings, *outside the context of the LTA*, in which the phrase "actual damage" is used, noting that there are a multitude of definitions for the phrase in these settings. It may be true that "actual damages" takes on different meanings in different contexts, but that does not equate with establishing that the phrase is ambiguous in the context of LTA section 205.512. Considering the challenged statutory language in the context of the overall statute, the Court does not agree that there is any ambiguity in LTA section 205.512 as to whether charges for items other than tenant-caused damages to the leasehold premises may be withheld from a security deposit.

Because the Court determines LTA section 205.512 is not ambiguous as applied, the rule of lenity would have no application in this case. *See Harmer v. Pennsylvania Board of Probation and Parole*, 83 A.3d 293, 300 (Pa. Commw. Ct. 2014) ("'To apply the rule of lenity, it is not enough that a statute is penal *it must be ambiguous as well.*'"). Even if the rule would otherwise be properly applied, the Pennsylvania Commonwealth Court has previously concluded that the penalty provisions of CPL section 201-8 do not render the CPL a penal statute. *See Commonwealth by Zimmerman v. National Ap't Leasing Co.*, 529 A.2d 1157, 1159-60 (Pa. Commw. Ct. 1987) (holding that penalties provided in section 201-8 of CPL are civil in nature). Thus, Defendant's argument that the section 201-8 penalties are penal in nature and, therefore, should be strictly construed, must be rejected.

Finally, the Court also rejects Defendant's argument that the void for vagueness doctrine prohibits Plaintiff OAG from pursuing its claim for civil penalties under the CPL. That doctrine is rooted in due process concepts of fair notice and warning. *See London v. Zoning Bd of Philadelphia*, 173 A.3d 847, 853 (Pa. Commw. Ct. 2017). A statute that prescribes or proscribes conduct "in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process of law." *Oppenheim v. State Dental Council and Examining Bd.*, 459 a2d 1308, 1315 (Pa. Commw. Ct. 1983). When the challenged statute "contains reasonable standards to guide prospective conduct," due process is satisfied. *Id.* Defendant's void for vagueness challenge raises the same

arguments Defendant asserted in support of its statutory construction argument. For the same reasons the Court rejects Defendant's position that the LTA is ambiguous under the circumstances of the present case, the Court rejects the argument that the LTA is unconstitutionally vague.

Consistent with the rulings above, the Court also rejects the argument that Defendant cannot be found liable, as a matter of law, for a willful violation of the CPL such as to give rise to liability for monetary penalties under CPL section 201-8.

The Court enters the following Order:

ORDER

AND NOW, this 10th day of August, 2021, for the reasons discussed in the foregoing opinion, Defendant's Motion for Partial Judgment on the Pleadings is hereby DENIED.

BY THE COURT:

Katherine V. Oliver, Judge

NOTICE OF ENTRY OF ORDER OR DECREE, PURSUANT TO PA. R.C.P. 236 NOTIFICATION. THIS DOCUMENT HAS BEEN FILED IN THIS CASE.

PROTHONOTARY, CENTRE COUNTY, PA.

DATE:_____