2020-05-20

Delgado v. We All Care, Inc.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS, PART 73

Index No.: 5479 / 2016
Motion Date:
Mot. Cal. No.:

----------X

ROBIN DELGADO, TEDDIE ANN KING, PATRICIA HAMILTON, KRISTINE SHIELDS, WHITNEY BRAUN, WALIK KNOWLES, NAPHA MALCOLM, LATOYA JETER, LAVERN CADE, NAKIA McBRIDE, and KYSHA MOORE,

Plaintiffs,

-against-

DECISION/ORDER

WE ALL CARE, INC., WE ALWAYS CARE, INC., CAMBA, INC., TAPSCOTT HOLDING, LLC., 694 ROCKAWAY REALTY, LLC., and NYC DHS,

Defendants.

----------X

The following papers numbered 1 to 7 were read on these motions:

Papers: **Numbered:**

Notice of Motion/Order to Show Cause
Affidavits/Affirmations/Exhibits/Memo of Law.....1
Answering Affirmations/Affidavits/Exhibits/Memo of Law.....2
Reply Affirmations/Affidavits/Exhibits/Memo of Law.....3
Other.....
The Supplemental Submissions of Defendant-Operators
Affidavits/Affirmations/Exhibits/Memo of Law.....4
The Supplemental Submissions of Plaintiffs
Affidavits/Affirmations/Exhibits/Memo of Law.....5
Defendant-Operators' Submissions on HSTPA……..…..6
Plaintiffs' Submissions on HSTPA……..……7

The Supplemental

Upon the foregoing papers, the motion is decided as follows:

Plaintiffs commenced this action for, among other things, a judgment declaring that they are tenants under the Rent Stabilization Code directing defendants TAPSCOTT HOLDING, LLC. and 694 ROCKAWAY REALTY REALTY, LLC. to provided them with leases under the RSC in their own name. Defendants moved for an Order (a) dismissing the underlying case pursuant to CPLR 3211(a) based on documentary evidence; (b) pursuant to CPLR 3211(a) (3)

based on plaintiff's lack of capacity to seek relief; and/or (c) pursuant to CPLR 3211(a)(7) on the grounds that Plaintiffs failed to state a cause of action.[1] By order dated November 11, 2018, defendants' motion was converted into a motion for summary judgment pursuant to CPLR 3211(c) and the parties were granted leave to submit supplemental papers. Upon reviewing all the papers submitted by the parties, including their supplemental submissions as well as their briefs on the issue of how Housing Stability and Tenant Protection Act of 2019 (HSTPA) effects the issues raised herein, defendants' motion for summary judgment is decided as follows:

Background:

In the complaint, Plaintiffs alleged that they "low-income, homeless families in danger of eviction from their apartments at 49 Tapscott Street and 694 Rockaway Realty Avenue, owned by Defendants Tapscott Holding LLC ("Tapscott Holding") and 694 Rockaway Realty Realty ("694 Rockaway Realty Realty") (collectively as "Defendant-Owners") (Complaint, ¶ 1). They alleged that until December 2015, the Defendant-Owners leased the "Defendant-Operators" subject apartments to Defendant We All Care, Inc. ("We All Care") who in turn subleased the subject apartments to Defendant We Always Care, Inc. ("We Always Care") and that We Always Care then placed Plaintiffs, referred by Defendant New York City Department of Homeless Services ("DHS"), into the subject apartments as part of a scatter site housing program for homeless families" (id.). Plaintiff's maintain that "by leasing the apartments to for-profit corporation We All Care, who in turn subleased the apartments to non-profit corporation We Always Care, who then placed Plaintiffs in the building, Defendant-Operators and Defendant-Owners have colluded to create an illusory tenancy scheme, in violation of the Rent Stabilization Code ("RSC"), in order to charge rent above the legal regulated rent for the subject apartments…." (Complaint, ¶ 3). For these reasons, Plaintiffs maintain that they are should be deemed tenants under RSC and provided with leases in their own names.

The defendants also contend that the buildings are not subject to the RSC because they were substantially rehabilitated and restored to viable housing stock in 2006 and thus exempted from the RSC pursuant to RSC § 2520.(1)(e), which exempts from regulation "housing

[1] To the extent defendants' motion sought other relief, the motion has been resolved.

accommodations and buildings completed or buildings substantially rehabilitated as family units on or after January 1, 1974 , except such buildings which are made subject to the code by provision of the RSL or any other statue.…"

In support of their motion for a declaration that Plaintiffs are not entitled to leases under the RSC, the Defendant-Operators rely primarily on the affidavit of affidavit of Sam Klein, the registered managing agent and a member of both Tapscott Holding and 694 Rockway. He stated that 694 Rockway became the owner of 694 Rockaway Realty Ave, Brooklyn, New York on August 25th, 2004 and that Tapscott Holding became the owner of 49 Tapscott Street, Brooklyn, New York on March 11, 2004. He described the building located at 694 Rockaway Realty Ave, Brooklyn, New York as a residential apartment building consisting of four stories with 21 Class A units, a cellar and two stores. He described the building located at 49 Tapscott Street, Brooklyn, New York as a residential apartment building consisting of four stories with 12 Class A units and a cellar. He has been the registered managing agent of both buildings since they were acquired by Tapscott Holding and 694 Rockaway Realty and is responsible for supervising the leasing of and staff members of both properties.

He maintained that the only tenant of the buildings is defendant, We All Care, Inc. He annexed to his affidavit copies of the lease agreements between the Defendant-Operators and We All Care, Inc. (Exhibit C and D) which list We All Care, Inc. as the only tenant. Only We All Care, Inc. paid rent to the Defendant-Operators.

He believed that Plaintiffs took occupancy of their respective apartments as part of a scattered site housing program that the defendant We All Care, Inc., operated under the auspices of the New York City Department of Homeless Services ("DHS"). He stated that the Plaintiffs were initially placed in their respective apartments by defendant We Always Care, Inc. but thereafter, We Always Care Inc. became the exclusive service provider. He emphasized that 694 Rockaway Realty and 49 Tapscott Holding only had a landlord tenant relationship with and dealt solely with defendant We All Care, Inc. He averred that neither 694 Rockaway Realty or Tapscott Holding participated in the scattered site housing programs operated by We All Care Inc., We Always Care, Inc., and CAMBA, and that the New York State Department of Homeless

Services, was exclusively responsible for the selection, evaluation and placement of individuals into the buildings.

He stated that there is no contractual relationship between the Plaintiffs and 694 Rockaway Realty and Tapscott Holding and that at no time were the Plaintiffs parties to a lease agreement with these entities and never paid rent to either entity except for payments they made for use and occupancy pursuant to interim court stipulations executed in this action.

He states that the Plaintiffs had no interaction with either Tapscott Holding or 694 Rockaway Realty until Tapscott Holding and 694 Rockaway Realty terminated their lease agreements with We All Care, Inc., and sought possession of the respective units in various summary proceedings commenced in the Civil Court, the Housing Part, Kings County.

While Mr. Klien sufficiently described the relationship the Defendant-Operators had with the Plaintiffs, he provided very limited admissible evidence as to the relationship between the Plaintiffs and the Defendant-Operators. He emphasized that Tapscott Holding and 694 Rockaway Realty Realty are neither affiliated or involved with the Defendant-Operators and did not receive any financial benefits from them. While defendants attached as Exhibit F to their motion a "Transitional Cluster Lease Agreement" between We All Care and We Always Care and as Exhibit G a copy of CAMBA's agreement with the City of New York to provide services to families in shelter, these documents are unauthenticated and are inadmissible. Notably, Mr. Klein makes numerous statements in his affidavit "upon information and belief" about how Plaintiffs came to occupy their apartments at the subject buildings and their relationship with the Defendant-Operators and DHS, these statements are inadmissible hearsay.

Discussion:

This Court addressed a similar motion in an action entitled *Diana Sapp, et al v Clark Wilson*.et al, Index No. 12230/15 (“*Sapp*”) involving DHS’s scatter site housing program and the same Defendant-Operators. The Plaintiffs in that action also sought a declaration that they were entitled to leases under the Rent Stabilization Code (“RSC”). The Court granted the motion for summary judgment of the defendant building and held that since the Plaintiffs were “licensees”, they were not entitled to leases under the RSC and the doctrine of illusory tenancy did not apply. The Court noted that the Court was unaware of any precedent where a “licencee” was granted

rights under the RSC upon a finding that there was an illusory tenancy scheme. The Defendants-Owners contend that this case should be decided the same way.

In deciding *Sapp,* the Court relied heavily on *David v. # 1 Mktg. Serv., Inc.*, 113 A.D.3d 810, 979 N.Y.S.2d 375 [2014]. In *David,* the lower court concluded that the Plaintiffs, who resided in transitory housing facilities were "licensees" and not "tenants" and were therefore not entitled to the protections of the RSC. The Plaintiffs in *David* were former or current residents of three-quarter houses who were either disabled, persons with histories of substance abuse, or persons living in shelters or re-entering the community after serving time in prison or jail. As her, the operators of these facilities provided housing accommodations and social services. The Plaintiffs in *David,* as in this case, sought "a declaration that the Defendants created "illusory tenancies" in rent stabilized buildings . . . and that Plaintiffs who reside in said buildings are … entitled to leases in their own names" (*Davis* Complaint, ¶ 7). The Plaintiffs further alleged that the defendants "violated numerous provisions of the Rent Stabilization Code by ..., failing to offer Plaintiffs initial leases . . . in violation of 9 N.Y.C.R.R. 2522.5(a)" (*Davis* Complaint, ¶ 155).

The lower Court in *David* granted the defendant-building owners' motion for summary judgment dismissing these claims. The Appellate Division affirmed stating "[t]he respondents established, as a matter of law, that the Plaintiffs are licensees, rather than tenants, and as such, the Plaintiffs are not entitled to the protections of the Rent Stabilization Code (*see generally* 9 NYCRR § 2520.6 [d])" (*David,* 113 A.D.3d at 811, 979 N.Y.S.2d at 377). *David* clearly stands for the proposition that "licensees" are not entitled to leases under the RSC even upon a finding that there was an illusory tenancy scheme.

Plaintiffs contend the Housing Stability and Tenant Protection Act of 2019 (HSTPA), which came into effect during the pendency of the motion, effectively overturned *David*. HSTPA amended the Emergency Tenant Protection Act ("ETPA"), which governs housing accommodations subject to rent regulation and as amended, the ETPA now provides:

> A declaration of emergency may be made...as to all or any class or classes of housing accommodations in a municipality, except...housing accommodations which are not occupied by the tenant, not including subtenants or occupants, as his or her primary

> residence, as determined by a court of competent jurisdiction. For the purposes of this paragraph, **where a housing accommodation is rented to a not-for-profit for providing, as of and after the effective date of the chapter of the laws of two thousand nineteen that amended this paragraph, permanent housing to individuals who are or were homeless or at risk of homelessness, affiliated subtenants authorized to use such accommodations by such not-for-profit shall be deemed to be tenants...**

(N.Y. Unconsol. Law § 8625 (McKinney) [*emphasis added]*).

Notwithstanding the passage HSTPA, the Court holds that "licensees" are still not entitled to leases under the RSC. While HSTPA deems "subtenants", in certain circumstances, to be "tenants," the statute does not deem "licensees" to be tenants under any circumstances.

While the holding in *David* remains good law, the Court agrees with the Plaintiffs that based on the submissions of the Defendant-Operators', the Court cannot determinate as a matter of law that the Plaintiffs were "licensees" as opposed to subtenants. Unlike in *Sapp*, the Defendant-Owners submitted very limited admissible evidence as to the relationship between the Plaintiffs and the Defendant-Operators and the Court cannot assume relationship between the Plaintiffs with the Defendant-Operators in this case is the same as the relationship between the Plaintiffs and the Defendant-Operators in the *Sapp* case.

It is axiomatic that the proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact (*Winegrad v. New York Univ. Med Center*, 64 N.Y.2d 851, 853, 487 N.Y.S.2d 316, 476 NE2d 642 [1985]; *Zuckerman v. City of New York*, 49 N.Y.2d 557, 562, 427 NYS2d $95, 404 NE2d 718 [1980]; *Sillman v. Twentieth Century-Fox Film Corp*. 3 N., Y.2d 395. 404, I65 N.Y.2d 498, 144 N12d 387 [1957]). Failure to make such prima facie showing requires a denial of the motion, regardless of the sufficiency of the opposing papers (*Winegrad*, 64 N.Y.2d at 853, 487 N.Y.2d 316, 476 NE2d 642). Since the Defendant-Owners failed demonstrate as a matter of law that the Plaintiffs are licensees, their motion insofar as it seeks summary judgment dismissing Plaintiffs' claim that they are entitled to leases under the RSC is denied regardless of the sufficiency of the opposing papers.

Turning to that aspect of the motion in which the Defendant-Owners seek summary judgment dismissing the action on the ground that the buildings are exempt from the RSC pursuant to RSC § 2520.(1)(e), the Court finds that the Defendant-Owners established their prima facie entitlement to dismissal on this ground but Plaintiff's submissions raise triable issues of fact.

The court has considered the Defendant-Owners' remaining arguments in support of the motion and find them to be without merit.

Accordingly, it is hereby

ORDERED that the motions of the Defendant-Operators are Denied

This constitutes the decision and order of the Court.

Dated: May 20, 2020

PPS

PETER P. SWEENEY, J.S.C.

Note: This signature was generated electronically pursuant to Administrative Order 86/20 dated April 20, 2020