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1055 Bergen St. HDFC v. Harkless

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CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF KINGS: HOUSING PART Q

-----X
1055 BERGEN STREET HDFC,

Petitioner,

Index No. 73465/2019

-against-

KAJUANA HARKLESS, et al.,

DECISION/ORDER

Respondents.
-----X

Present: Hon. Jack Stoller
Judge, Housing Court

Recitation, as required by CPLR §2219(a), of the papers considered in the review of this motion:

Pages	numbered
Respondent's Notice Of Motion and Supplemental Affidavit and Affirmation Annexed	1, 2, 3
Petitioner's Notice Of Motion and Supplemental Affirmation Annexed	4, 5
Affirmation In Opposition To Respondent's Motion	6
Affirmation In Reply On Respondent's Motion and in Opposition to Petitioner's Motion	7

Upon the foregoing papers, the Decision and Order on this motion are as follows:

1055 Bergen Street HDFC, the petitioner in this proceeding ("Petitioner"), commenced this summary proceeding against Kajuana Harkless, the respondent in this proceeding ("Respondent"), seeking possession of 1055 Bergen Street, Apt. 4C, Brooklyn, New York ("the subject premises") on the basis of a purported termination of her tenancy. On January 30, 2020, the Court transferred this matter to the trial expediter and then to the trial part. Respondent now moves for summary judgment in her favor. Petitioner moves to amend the petition. The Court consolidates these motions for resolution herein.

As Respondent's summary judgment motion raises a threshold issue, the Court will first address her motion. The petition alleges that Petitioner is a Housing Development Fund Corporation ("HDFC") and alleges that Respondent's "verbal rental agreement" was terminated

and incorporates by reference a predicate notice that says that Petitioner's board has voted to terminated Respondent's tenancy. One of the bases of Respondent's motion is that, as an HDFC, Petitioner had to plead cause to terminate Respondent's tenancy, which Petitioner did not do.

Private Housing Finance Law Art. XI establishes HDFC's. Insofar as a government agency fixes the rentals of HDFC's, Private Housing Finance Law §576(1)(a), assures the availability of units to occupants within certain income guidelines, Private Housing Finance Law §576(1)(b), and restricts an HDFC's use of profits, Private Housing Finance Law §576(1)(c), the government's involvement gives rise to Constitutional due process protections to an HDFC's tenants, such that an eviction of a tenant requires a cause other than an expiration of a lease. 512 E. 11th St. HDFC v. Grimmet, 181 A.D.2d 488, 489 (1st Dept. 1992), *appeal dismissed*, 80 N.Y.2d 892 (1992), Volunteers of America-Greater New York, Inc. v. Almonte, 65 A.D.3d 1155, 1157 (2nd Dept. 2009), Hudsonview Terrace v. Maury, 100 Misc.2d 331, 332 (App. Term 1st Dept. 1979).

Petitioner argues that even though it is an HDFC, the particular level of government involvement with it does not rise to the level that would trigger such a level of protection for Respondent. HDFC's, however, must plead a cause for eviction as a matter of law. 322 W. 47th St. HDFC v. Tibaweo, 2020 N.Y. Slip Op. 32020(U)(S. Ct. N.Y. Co.)("requirement that [an HDFC] show good cause derives from its legal status as an HDFC.") Accordingly, the Court "need not ultimately decide whether all HDFCs are so entwined [with the government]" in order to apply the requirement that HDFC's plead cause to evict a tenant. 952 St. Marks Ave. HDFC v. White, 66 Misc.3d 35, 37 (App. Term 2nd 2019). Accordingly, Petitioner does not raise an issue of material fact that would defeat Respondent's summary judgment motion.

Petitioner argues that the Court’s denial of Respondent’s prior motion to dismiss (“the Prior Order”) amounts to law of the case barring Respondent’s current motion. The law of the case doctrine is a rule of practice, an articulation of sound policy that, when an issue is once judicially determined, that should be the end of the matter as far as judges and courts of co-ordinate jurisdiction are concerned. RPG Consulting, Inc. v Zormati, 82 A.D.3d 739, 740 (2nd Dept. 2011).

Respondent previously moved to dismiss on the ground that she has a lease in effect, contrary to the allegation of the petition, and that the allegations of the petition that Respondent entered the subject premises without Petitioner’s permission were inconsistent with the petition’s allegation that Respondent lived in the subject premises pursuant to an agreement. The Prior Order denied the motion on the basis that an issue of fact as to the validity of Respondent’s lease precluded a summary determination.

Law of the case doctrine applies only to legal determinations resolved on the merits. Ramanathan v. Aharon, 109 A.D.3d 529, 530 (2nd Dept. 2013), 546-552 W. 146th St. LLC v. Arfa, 99 A.D.3d 117 (1st Dept. 2012), Allstate Ins. Co. v. Liberty Lines Tr., Inc., 50 A.D.3d 712, 713 (2nd Dept. 2008), Thompson v. Cooper, 24 A.D.3d 203 (1st Dept. 2005). The Prior Order did not determine the issue Respondent raises on the current motion, i.e., whether the petition had to plead a cause for termination of Respondent’s tenancy. Accordingly, the Prior Order does not preclude the relief Respondent now seeks. See Rufo v. Orlando, 309 N.Y. 345, 351 (1955), Pentacon, LLC v. 422 Knickerbocker, LLC, 165 A.D.3d 829, 830 (2nd Dept. 2018), Feinberg v. Boros, 99 A.D.3d 219, 224 (1st Dept. 2012). Petitioner cites Wolf Props. Assocs., L.P. v. Castle Restoration, LLC, 174 A.D.3d 838 (2nd Dept. 2019) in opposition to the motion, but the Court in that matter found that subsequent motion papers required the same result when they were “nearly

identical” as the motion papers upon the Court based a prior order. Id. at 842. While Petitioner raises a valid point about serial motions for summary relief, particularly in a summary proceeding, denial of Respondent’s motion would only require a trial, which would serve no discernible purpose given the dispositive issue Respondent successfully identifies here. Varsity Transit, Inc. v. Bd. of Educ., 300 A.D.2d 38, 39 (1st Dept. 2002)(the Court may entertain a second summary judgment inasmuch as the record demonstrates that the matter can be further disposed of without burdening the resources of the court and movants with a plenary trial).

Petitioner also argues that a summary judgment motion does not lie because Respondent has not answered. Respondent previously moved to dismiss before she answered. The Prior Order denied that motion on January 9, 2020 and adjourned the matter to January 30, 2020. Respondent’s answer, which is in the file, is dated January 30, 2020, and contains a defense that Petitioner did not plead good cause. Respondent, in reply on this motion, refers to a preliminary conference order which is in the file which provides, *inter alia*, that one of Respondent’s defenses is “good cause eviction.”

Upon a denial of a pre-answer motion to dismiss, the Court may permit a respondent to answer a special proceeding. CPLR §404(b). Unless the order specifies otherwise, the respondent must serve the answer within five days of service of the order with notice of entry. Id. The Prior Order is silent as to Respondent’s answer. There is no indication in the file of service of notice of entry of the Prior Order. Moreover, the transfer of this matter to the trial expediter demonstrates a joinder of issue, RPAPL §745(1), a joinder of issue at least as significant to support a summary judgment motion. The silence of the Prior Order as to an answer, the presence of the answer in the file, and the referral of this matter to the trial expediter on the same day as the answer is dated combine to demonstrate that Petitioner’s opposition to the

summary judgment motion on this ground to be insufficient. Stonehill Capital Mgmt. LLC v. Bank of the W., 28 N.Y.3d 439, 448 (2016), Belle Lighting LLC v. Artisan Constr. Partners LLC, 178 A.D.3d 605, 606 (1st Dept. 2019), Fein v. Cook, 153 A.D.3d 1168 (1st Dept. 2017).

Accordingly, the Court grants Respondent's motion to dismiss on the ground that the petition purports to have terminated a tenancy of an HDFC without cause. The Court does not reach the other grounds raised by Respondent and denies Petitioner's motion to amend the petition as moot. The dismissal is without prejudice to recommencement on proper grounds.

This constitutes the decision and order of this Court.

Dated: Brooklyn, New York
November 2, 2020

HON. JACK STOLLER
J.H.C.