2021-03-22

Yorkville Plaza Assocs. v. Reynolds

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK: HOUSING PART F

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Yorkville Plaza Associates, LLC,

Petitioner-Landlord, L & T INDEX NO.: 52673/20

-against- DECISION/ORDER

Linda Reynolds,
Respondent-Tenant,

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J. SIKOWITZ:
RECITATION, AS REQUIRED BY CPLR SECTION 2219(A), OF THE PAPERS CONSIDERED IN THE REVIEW OF THESE THREE MOTIONS:.
PAPERS NUMBERED

NOTICE OF MOTION ,AFFIRMATION AND EXHIBITS ANNEXED..... ----------1----------
ANSWERING AFFIRMATION AND EXHIBITS ANNEXED..... ----------2----------

REPLY AFFIRMATION.....3

Petitioner commenced this nonpayment proceeding seeking monthly rent of $1,271.00 for December 2019 and January 2020 for the subject unregulated apartment, #30 A, at 205 East 95th Street, New York, NY 10128. Paragraph (10) of the petition states:

"The Premises are exempt from Rent Control, New York City Rent Stabilization Law of 1969, as amended and the Emergency Tenant Protection Act of 1974, because the Rental Program Period and Petitioner's Rental Program Agreement with the New York State Housing Finance Agency expired on December 1, 2015 and the building was constructed after July 1, 1974 and Respondent entered into possession of the Premises after the June 30, 1999 expiration of the tax abatement period pursuant to Section 421-a of the Real Property Tax Law."

Respondent filed a pro se oral answer on February 21, 2020 interposing a breach of warranty of habitability defense, a general denial and a claim petitioner harassed her. The proceeding initially appeared on the Part F calendar on March 2, 2020 and was adjourned to April 7, 2020, when the housing court was on "pause" due to the Covid-19 pandemic. The case was conferenced virtually on October 19, 2020 and the parties arranged a motion schedule.

Respondent moves by notice of motion for an order pursuant to CPLR 3025(b) granting her leave to file an amended answer, and pursuant to CPLR 408 for limited discovery. Petitioner opposes both branches of the motion.

Motion to file/serve an amended answer

Respondent Linda Reynolds states in her affidavit that she has lived in the subject apartment for twenty three years, and in the building for twenty eight years. She has depended on having a rent stabilized

apartment for financial reasons since 1992. When she moved into the subject apartment in 1997, the landlord gave her a rent stabilized lease and she has receive rent stabilized lease renewals for twenty three years. She states the landlord did not give her consistent notice that the lease was subject to a regulatory agreement and petitioner did not provide the expiration date on the leases.

She states she was employed and was current on the rent until she became ill due to a brain tumor, heart condition and leg injury that has left her disabled. In 2000 she was diagnosed with cancer, and in 2003 diagnosed with a brain tumor. She was approved for social security disability benefits in 2004, and continued to work and pay the rent. In 2010, due to her heart condition, she could no longer work. The SSD became respondent's sole source of income in 2010, and in 2016 respondent's partner/roommate moved out and was no longer contributing to the rent. Respondent currently has heart failure, a brain tumor, adrenal gland tumor, chronic pain and mobility issues, back injuries, depression, pre-diabetes, and high blood pressure. Respondent states she fell behind in rent in December 2019 because she had dental surgery.

She states that in May 2020, the landlord gave her a renewal lease with a monthly rent of $1271.00. Respondent's monthly income from SSD is $1,176.00. Shortly after giving respondent the lease at $1271.00, it gave her another lease with a monthly rent of $1417.00. The landlord told her it was the first time they increased the rent by 10%, but respondent states that they also increased the rent by 10% in 2019. When respondent inquired about the different rents in the two leases, the landlord said the first lease was made in error. Respondent states the lease with a rent of $1417.00 is more than her income from SSD.

Respondent states that the petitioner offers a rent relief program to moderate and low income tenants in the building who have experienced significant hardships, and petitioner waives the 10% annual rent increase. Respondent states she told the landlord she was interested in the program, and they never gave her an application. Respondent states she is applying for CityFHEPS for rental assistance, but the cap on rent is $1265.00/month. Respondent has applied for DRIE, and she is waiting for a response.

In support of the branch of the motion seeking an order permitting respondent to file and serve her amended answer pursuant to CPLR 3025(b), respondent states she seeks to interpose the defense that the apartment is subject to rent stabilization because petitioner failed to comply with the statutory requirements for deregulating an apartment subject to a 421-a exemption. In addition, respondent is seeking limited discovery based on the need to obtain information directly related to this defense. Respondent states that pursuant to 421-a(2)(f)[ii] of the Real Property Tax Law, a landlord is required to provide "notice in at least twelve point type informing [a] tenant that the unit shall become subject to […] decontrol upon the expiration of [the] tax benefit period."

Respondent argues that an apartment subject to rent stabilization under the 421-a tax exemption can only be deregulated if the landlord provided tenants with "notice, in all of their leases in 12-point type, that the building was receiving the 421-a exemption due to expire on or about, [the expiration date,] and thereafter the building and the apartment would no longer be subject to the Rent Stabilization Law and Code. Respondent cites to *Giannattasio v. Cialini,* 165 Misc2d 249 (Civ Ct, Kings Cty, 1995) and *In Re Tribeca Equity Partners, LP v. NYS DHCR*, 144 AD3d 554 (1st Dept. 2016) Respondent states that the subject premise became subject to a 421-a exemption after 1984 and respondent has not yet vacated the apartment. Respondent's status requires that a proper notice must have been provided to respondent for deregulation to occur. Respondent states that, upon information and belief, the

landlord failed to provide respondent with a proper notice of the 421-a agreement and its expiration date in each of her leases since her tenancy began. Based on these facts, respondent's tenancy is not subject to deregulation until she vacates.

Respondent states that permitting her to file the attached amended answer will not prejudice the petitioner as petitioner knew, or should have known, of the regulatory agreements that apply to the subject unit. She argues that petitioner knew or should have known of its obligation to provide notice of their regulatory agreements to respondent, and whether or not they did so. Respondent states her affirmative defense is sufficient and has merit because the subject apartment was subject to a 421-a agreement. She argues that the burden of establishing prejudice to the non-moving party is on the petitioner, and petitioner has to establish prejudice and prove that the prejudice could have been avoided had a timely defense been asserted. Respondent's initial answer is an oral, pro se answer filed February 21, 2020, three weeks before the housing court "paused" due to Covid-19. Respondent's counsel filed a notice of appearance on March 2, 2020, and the proceeding was adjourned to April 7, 2020 when the court was "paused." The proceeding was conferenced remotely in October 2020, and respondent raised the defenses contained in her amended answer. The instant motion for leave to file an amended answer was returnable November 24, 2020, and a motion schedule was set up. Respondent, now represented by counsel, raised the defenses on the first conference following the "pause" in housing court. Two of the affirmative defenses in the amended answer were raised in respondent's pro se answer.

Petitioner opposes the branch of the motion seeking permission to serve and file an amended answer and states that the affirmative defenses and counterclaims are devoid of merit. Petitioner states that respondent fails to establish the requisite elements to amend her answer to include the defenses and counterclaims. Petitioner states the amended answer would cause prejudice to petitioner because it would lead to needless litigation. Petitioner cites to a line of cases wherein the courts found that the amendments to an answer "plainly lacked merit," and "fails to state a cause of action." Petitioner acknowledges that leave to amend a pleading should be freely given, but states the amendments herein to respondent's pro se answer are futile amendments.

In opposition to respondent's request to serve an amended answer, petitioner states the first affirmative defense is devoid of merit. Petitioner argues that its predecessor's regulatory agreement (RA) with the New York State Housing Finance Agency (HFA) led to an agreement that 20% of the units were to be occupied by low or moderate income families. The RA set forth the HFA mandated rent regulations applicable to all of the Moderate Income apartments in the building including the premises. Petitioner states the RA imposed PHFL rent regulation on the premises and all the moderate income units. The RA was terminated on December 1, 2015.

In addition to PHFL financing, petitioner received tax benefits under 421-a of the Real Property Tax Law (421-a). Petitioner's tax benefits under 421-a expired on June 30, 1999. Petitioner argues that the RA contemplated the landlord receiving 421-a tax benefits such that they were not inconsistent with PHFL regulations. The RA was in full force and effect when the 421-a tax benefits commenced and remained in effect for more than 15 years after the 421-a tax benefits expired. Because respondent took possession of the unit pursuant to a lease dated August 5, 1997, while the RA was in effect, and while the landlord was receiving 421-a tax benefits, and the PHFL exemption from stabilization jurisdiction applied to respondent's apartment. Petitioner argues that RSL 26-504(a)(1)(b) exempts from rent

stabilization coverage dwelling units that are subject to rent regulation under the private housing finance law (PHFL) or any other state law, relying on *KSLM-Columbia Apts. V. DHCR*, 5 NY 3d 303 (2005)

Petitioner argues that the apartment was not subject to rent stabilization at any time, the 421-a deregulation provisions requiring 421-a notices do not apply, and the PHFL deregulation provision of the RA control. Petitioner states that the requisite 421-a notices were attached to each of the leases informing her when the 421-a tax benefits would expire. Respondent denies receipt of these notices. Petitioner also points out that the petition does reference the RA in paragraph 10.

In opposition to respondent's first proposed counterclaim, alleging petitioner harassed her by failing to provide repairs and refusing to certify respondent's right to a roommate, petitioner states these claims lack merit. Petitioner states that respondent did, in fact, have a roommate and petitioner never took action, or commenced a holdover proceeding, against respondent based on the roommate. Petitioner states that respondent's roommate apparently moved out having nothing to do with landlord. Respondent alleges in her proposed amended answer that petitioner's agents told her she was not allowed to have a roommate. She states petitioner's employee, Retha, told her "Julia," the managing agent does not want to hear about repairs. Petitioner argues that respondent's factual claims in the proposed counterclaim is hearsay, and disputes that respondent submitted service requests.

The second proposed counterclaim alleges income discrimination, I.e., that the landlord has a hardship relief program that waives rent increases for tenants who demonstrate hardship, other tenants have received applications, and petitioner refuses to give respondent an application despite her requests. The counterclaim alleges that the landlord is aware that respondent's only source of income is social security benefits. Petitioner states this counterclaim lacks merit because the NYC Human Rights Law source of income discrimination occurs when a landlord refuses to rent to a tenant because they will be paying their rent using a subsidy, or other form of public assistance. Petitioner argues that respondent has listed social security (SSA) as her sole income source since 2010, and she has signed six renewal leases during the time SSA has been her only source of income, and based on this, there is no factual basis to support a claim of income discrimination.

Petitioner explains that its "hardship program" is created by petitioner to allow tenants for whom the rent increase after the end of the regulatory period would be a hardship, to request relief in the form of a deferral. For a tenant to be eligible, they must be in good standing with no more than one late payment during the last twelve months and having not been subject to any legal action relating to the tenancy within the last five years. Respondent was denied from the voluntary relief program because she had more than one late payment during the last twelve months, and she failed to pay her rent by the first of each month for nearly her entire tenancy. (exh 3) This nonpayment demonstrates her being subject to legal action within the past five years. Petitioner states that at no time did it refuse to rent to respondent because her sole source of income was social security, and therefore respondent failed to plead a cause of action for income source discrimination.

Petitioner does not oppose the branch of respondent's motion seeking to add the third counterclaim for legal fees to her amended answer.

In reply, respondent states that all of her proposed defenses have merit, and she has pled the requisite elements to support the affirmative defenses and counterclaims.

Respondent states that it is undisputed that the subject unit was subject to a RA with the NYS HFA until the agreement expired in 2015. It is also undisputed that petitioner received tax benefits under RPTL 421-a until June 30, 1999. Respondent states that even if petitioner is correct that RSL 26-504(a)(1)(b) provides that apartments already subject to regulation under the PHFL are exempt from permanent coverage under the RSL, such apartments still remain subject to rent stabilization for the duration of any period in which they receive 421-a tax benefits. Respondent points to the language of RPTL 421-a which states that an apartment remains rent stabilized for the entire duration of the tax benefit period, "notwithstanding the provisions of any local law for the stabilization of rents" including the RSL. [NY RPTL 421-a(2)(f)] Respondent states that this provision dictates that regardless of any other exemption contained within the rent stabilization laws, the obligations under RPTL 421-a remain throughout the duration of the tax benefit period, unless the apartment is exempt due to cooperative or condominium status.

Respondent argues that the "affidavit" of McDermott, petitioner's agent is not notarized, and respondent disputes receiving sufficient notice under RPTL 421-a. Respondent states that the riders petitioner attaches to its opposition papers state the incorrect date of expiration for the 421-a tax benefit period, and petitioner is required to provide the correct expiration date during the tax benefit period. Respondent states that since the landlord failed to provide the requisite notice under RPTL 421-a(2)(f)(ii), the apartment remains rent stabilized and is not subject to deregulation until respondent vacates, and therefore, the affirmative defense has merit.

Respondent states her harassment claims have merit pursuant to the New York City Administrative Code 27-2004(a)(48) which defines "harassment" as "any act or omission by or on behalf of an owner that […]causes or is intended to cause any person lawfully entitled to occupancy of a dwelling unit to vacate such dwelling unit or to surrender or waive any rights in relation to such occupancy" and "there shall be a rebuttable presumption that such acts or omissions were intended to cause such person to vacate such dwelling unit or to surrender or waive any rights in relation to occupancy." NYC Administrative Code 27-2004 Respondent argues that her harassment claims have merit.

Respondent argues her second proposed counterclaim has merit despite the undisputed fact that petitioner continued to rent to respondent since social security became her sole source of income. Respondent states that the landlord failed to provide adequate repair services to her or offer her an application to the relief program that other tenants have been provided. Respondent states that the instant case disqualifies respondent from the hardship program is conclusory reasoning. Respondent is experiencing legitimate hardship in paying her rent because her sole source of income is SSA benefits, which is how she fell behind in the rent. Petitioner has failed to show it has provided hardship applications to other tenants that receive SSA benefits.

Discussion

CPLR 3025(b) provides, in part:

A party may amend his pleading...at any time by leave of court...Leave shall be freely given upon such terms as may be just.

A party can amend an answer on the eve of trial, and courts have broad discretion to grant leave to interpose an amended answer. "Leave to amend the pleadings shall be given absent prejudice or

surprise..." *Fahey v. County of Ontario,* 44 NY2d 934, 935 (1978); *Akos Realty Corp v. Vandemark*, 157 AD2d 632 (1st Dept. 1990) Leave to amend a pleading should be freely given, and the decision is committed to the court's discretion. "....there must be lateness coupled with significant prejudice to the other side in order to bar amendment." *Edenwald Contracting Co, Inc v. City of New York*, 60 NY2d 957, 959 (1983)

The first and second affirmative defenses state sufficient facts to support them. This is a motion for leave to serve and file an amended answer, by counsel, for a respondent who interposed an oral pro se answer, and not a summary judgment motion. The plain language of RPTL 421-a states that an apartment remains rent stabilized for the entire duration of the tax benefit period, "notwithstanding the provisions of any local law for the stabilization of rents" including the RSL. NY RPTL 421-a(2)(f) states, in part:

Notwithstanding the provisions of any local law for the stabilization of rents in multiple dwellings or the emergency tenant protection act of nineteen seventy-four, the rents of a unit shall be fully subject to control under such local law or such act, unless exempt under such local law or such act from control by reason of the cooperative or condominium status of the unit, for the entire period during which the property is receiving tax benefits pursuant to this section for the period any such applicable law or act is in effect, whichever is shorter. Thereafter, such rents shall continue to be subject to such control to the same extent and in the same manner as if this section had never applied thereto[…]

"The legislature's intention, as reflected in the language of the statute at issue here, is clear and inescapable. During "the entire period for which the eligible multiple dwelling is receiving" RPTL 421-g benefits, it "shall be fully subject to control" under the RSL, "*notwithstanding* the provisions of" that regime or any other "local law" that would remove those dwelling units from such control, "unless exempt under such local law from control by reason of the cooperative or condominium status of the dwelling unit" (RPTL 421-g[6]. *Kuzmich v. 50 Murray Street Acquisiton LLC*, 34, NY3d 84, 92 (2019)

The first counterclaim is based on harassment as defined under NYC Admin Code 27-2004(48) and 27-2005 based on respondent's claims of a pattern of inadequate repairs and appliances to the low and moderate income, stabilized tenants. Respondent includes petitioner's failure to certify her roommate and referred to him as illegal. Respondent states facts sufficient to support her claims.

The second counterclaim is based on source of income discrimination by petitioner in refusing to provide respondent with an application to its hardship waiver program. Petitioner has provided facts, in an affirmation from its agent, to support its defense to this counterclaim. These issues shall be resolved at trial.

Petitioner does not oppose the third counterclaim for legal fees.

Respondent moved for this relief within a few weeks of filing her oral, pro answer discounting the time of the administrative adjournment of the proceeding due to the Covid-19 pause in housing court. This is a long term tenancy and respondent is entitled to the benefit of an amended answer with counsel. Petitioner states that prejudice would result if the motion is granted as it will lead to extensive litigation. When a respondent is represented by counsel, who raises affirmative defenses and counterclaims and levels the playing field in housing court, it often leads to motion practice and litigation. Respondent has met the two prong test set out in *Daniels et al v. Empire-Orr*, Inc, 151 AD2d 370, 371 (1st Dept. 1989), as

she has alleged legally sufficient facts to establish a prima facie defense, and any alleged insufficiency proposed by petitioner fails to overcome a presumption of validity in favor of respondent, the moving party. The respondent is entitled to the benefit of every reasonable intendment of the pleading, which is to be liberally construed. Respondent has pled some facts in her proposed amended answer that preclude denying her motion for permission to serve and file the amended answer. *534 East 11th St Housing Development Fund Corporation v. Hendrick,* 90 AD3d 541, 542 (1st Dept. 2011) Therefore, based on the foregoing, the branch of the motion seeking permission to file and serve an amended answer is granted, and the proposed amended answer is deemed served and filed.

Branch of respondent's motion seeking Discovery

Respondent states she has established "ample need" to conduct discovery in this proceeding because all the factors in *New York University v. Farkas*, 121 Misc2d 643 (Civ Ct, NY Cty 1983) have been satisfied. She states she alleged facts to establish a cause of action/defense, there is a need to determine information related directly to the claim, and the documents requested is a carefully tailored list. Respondent states that the exhibits attached have not been notarized and they cannot be accepted as true. In addition the documents provided with petitioner's opposition are not all the relevant documents and do not include the certificate of eligibility to prove when the 421-a tax benefits began and ended. Respondent seeks limited discovery to get the documents to prove its defense.

Respondent submits a proposed document demand for leases and riders for the subject apartment from 1997 to the present. In addition, respondent seeks documents related to the legal regulated rent, rent increases including vacancy increases, renewal increases, IAI's, and MCI's. Respondent is seeking applications, receipts, proposals, contracts, correspondence, canceled checks, proof of payment, contractor agreements, receipts, proposals and any and all documents concerning the subject apartment and building. In addition, respondent is seeking documents concerning the building's receipt of any 421-a tax benefits, including documents regarding the amount of benefits received and the periods to which these benefits correspond, as well as all communications filed with, sent to, or received from the NYC Department of Finance regarding the building's receipt of 421-a tax benefits during the time period. In addition, respondent seeks all documents and communications with the DHCR regarding the apartment, and all exhibits, documents, or other evidence petitioner intends to submit at trial.

Petitioner states in opposition that respondent has failed to demonstrate ample need based solely on her claim that each lease did not include a 421-a rider. Petitioner argues that "ample need" has not been demonstrated because the apartment was not subject to rent regulation pursuant to the PFHL. Petitioner states each lease included the requisite 421-a notice. Petitioner states that even if respondent established "ample need" for discovery, all of the leases and documents related to the RA are annexed to it agent's affidavit. This affidavit is not notarized.

The gravamen of respondent's first and second affirmative defenses is that the petition is defective because it states the apartment is not subject to rent stabilization. Respondent seeks to interpose the defense that the apartment is subject to rent stabilization because petitioner failed to comply with the statutory requirements for deregulating an apartment subject to a 421-a exemption. Respondent relies on 421-a(2)(f)(ii) of the RPTL that requires a landlord to provide "notice in at least twelve point type informing [a] tenant that the unit shall become subject to […] decontrol upon the expiration of [the] tax benefit period." In opposition to the discovery request, petitioner states that these documents were

properly provided regardless of their position that it was not necessary to comply with the statute as the apartment was deregulated pursuant to the RA in effect.

Based on respondent's affirmative defenses, she has established "ample need" to obtain the relevant leases and riders evidencing petitioner's compliance with the requirements of 421-a in deregulating an apartment. The documents provided as exhibits in petitioner's opposition are not all of the relevant leases/riders, and there is no affidavit from a person with personal knowledge attesting to the documents or their delivery to respondent. Therefore, the branch of respondent's motion seeking discovery is granted to the limited extent that petitioner shall comply with document requests number: 1 and 3. The remaining demands in the document request are overly broad. The documents shall be provided within sixty (60) days of the date of this decision which shall be emailed to the parties. The proceeding is marked off calendar pending discovery, and can be restored to the calendar in a two attorney stipulation or by motion. This constitutes the decision and order of the court.

DATED: March 22, 2021

Marcia J. Sikowitz, JHC