2022-05-05

# 102 EAST 116 LLC v. ICL, INC.

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

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102 EAST 116 LLC,

Petitioner,

against-

ICL, INC., AS SUCCESSOR IN INTEREST TO THE MENTAL HEALTH ASSOCIATION OF NEW YORK CITY D/B/A VIBRANT EMOTIONAL HEALTH,

Respondent,

"JOHN DOE" and "JANE DOE,"

Respondent-Undertenants.

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Index No. L&T 63620/19

Motion Seq. No.: 003, 004

**DECISION/ORDER**

Recitation, as required by CPLR § 2219(a), of the papers considered in review of this motion by petitioner for an order dismissing respondent's defenses and counterclaim, granting summary judgment in favor of petitioner with a final judgment of possession, and awarding petitioner a money judgment for past due use and occupancy and directing payment of ongoing use and occupancy pendente lite and of this cross motion by respondent granting summary judgment in favor of respondent and dismissing this proceeding.

| PAPERS | NUMBERED |
|---|---|
| Notice of Motion & Affidavits Annexed | 1, 2b (NYSCEF #27-41, 42-44 & 47) |
| Order to Show Cause and Affidavits Annexed | |
| Answering Affidavits | 2a, 3b (NYSCEF #42-44 & 47, 46) |
| Replying Affidavits | 3a (NYSCEF #46) |
| Exhibits | |
| Stipulations | |
| Other | |

**VANESSA FANG, J.:**

Petitioner commenced this summary holdover proceeding to recover possession of Apt. 5-E located at 102 East 116th Street, New York, New York ("subject premises") on the grounds that respondent, ICL, INC., is a successor in interest to the former tenant of record, The Mental Health Association of New York City d/b/a Vibrant Emotional Health (hereinafter "Vibrant"), as

a month-to-month tenant and that the subject premises is exempt from rent regulation due to the leasing of the premises to a not-for-profit institution pursuant to Rent Stabilization Code ("RSC") § 2520.11(f).

Petitioner maintains it is the fee owner of the subject building. It is undisputed that Vibrant was the former tenant of record for the subject premises and that both Vibrant and respondent, ICL, are not-for-profit institutions. Respondent provides, among other programs, supportive housing services. Respondent and Rafael Lara (sued herein as John Doe) appeared in this proceeding by independent counsel. Mr. Lara was a former Vibrant client and subsequently became and remains respondent's client. Mr. Lara occupies the subject apartment.

After many court appearances, this proceeding was discontinued against Mr. Lara and Jane Doe pursuant to a two-attorney stipulation in August, 2021. This matter proceeded against respondent and was transferred to a trial part after petitioner withdrew its first motion for summary judgment. At the trial part, respondent filed an amended answer to its previously deemed general denial answer. This matter was then transferred back to the resolution part for petitioner to file this motion for an order striking respondent's defenses and counterclaim, granting petitioner summary judgment, awarding petitioner a money judgment for past due use and occupancy and directing payment of ongoing use and occupancy pendente lite. Respondent opposes petitioner's motion and cross-moves for an order granting respondent summary judgment.

Petitioner's Motion to Strike Defenses & Counterclaim

Petitioner moves pursuant to CPLR §§ 3211(b), 3013 and/or 3014 to dismiss respondent's first, second and third defenses and first counterclaim.

CPLR § 3211(b) permits a party to seek dismissal of a defense "on the ground that the defense is not stated or has no merit." In determining whether to dismiss a defense, the pleading is liberally construed such that the facts alleged in the pleadings are accepted as true and the defense is afforded the benefit of every possible favorable inference. *Leon v. Martinez,* 84 NY2d 83, 87-88 (1994) (*citing Morone v. Morone*, 50 NY2d 481, 484 (1980); *Rovello v. Orofino Realty Co.*, 40 NY2d 633, 635 (1976)); *Ideal Mut. Ins. v. Becker*, 140 A.D.2d 62, 67 (1st Dept. 1988).

CPLR § 3013 provides that a pleading "shall be sufficiently particular to give the court and parties notice of the transactions, occurrences, or series of transactions or occurrences, intended to be proved and the material elements of each cause of action or defense."

CPLR § 3014 provides that each pleading be comprised of "plain and concise statements."

Respondent's first defense alleges that the verified petition fails to state a cause of action. The defense of a failure to state a cause of action is considered surplusage and there is no prejudice to permitting this defense as it gives notice of this alleged deficiency and can be raised at a later date. *Riland v. Todman & Co.*, 56 AD2d 350, 352-353 (1st Dept. 1977); *see Butler v. Catinella*, 58 AD3d 145, 150 (2d Dept. 2008). Therefore, that prong of petitioner's motion to dismiss respondent's first defense is denied.

Respondent's second defense alleges that the apartment is subject to rent stabilization and that the termination notice is defective for failure to state a ground pursuant to the Rent Stabilization Law and Code as a basis for the termination of respondent's tenancy. Petitioner commenced this proceeding on the grounds that the premises is not subject to rent regulation in reliance on a DHCR order that denied a rent overcharge complaint upon determining that the apartment was exempt as long as the tenant is a not-for-profit entity paying rent on behalf of an

occupant affiliated with the entity. In a summary holdover proceeding, whether or not a premises is rent regulated is a material fact germane to the parties' claims and defenses. Petitioner has not established that respondent's second defense lacks merit at this juncture. Therefore, that prong of petitioner's motion to dismiss respondent's second defense is denied.

Respondent's third defense denies that the subject premises is exempt from rent regulation pursuant to RSC § 2520.11(f) on the grounds that the exemption was not intended to permit a for-profit landlord to evict an educational or charitable institution. Petitioner disputes respondent's contention based on its interpretation of the DHCR order previously cited. As stated above, the rent regulatory status of an apartment is material to the parties' claims and defenses. In addition, if the premises is exempt, the issue remains whether the exemption under RSC § 2520.11(f) may be used to permit petitioner to evict respondent, a charitable organization. Petitioner has not established that respondent's third defense lacks merit at this juncture. Therefore, that prong of petitioner's motion to dismiss respondent's third defense is denied.

Respondent's counterclaim seeks an award of legal fees. Respondent maintains that it is entitled to legal fees based on a lease between petitioner and the prior tenant with whom respondent asserts lacks any privity. Absent privity of contract with either petitioner or the former tenant, respondent's basis for this counterclaim is without merit and is thus subject to dismissal. Therefore, that prong of petitioner's motion to dismiss respondent's first counterclaim is granted and respondent's counterclaim is dismissed.

Accordingly, petitioner's motion to strike respondent's defenses and counterclaim is granted to the extent of dismissing respondent's counterclaim only.

Respondent's Cross Motion for Summary Judgment

Respondent cross-moves for summary judgment seeking an order dismissing the petition. Respondent argues that the appellate court in *2363 ACP Pineapple, LLC v. Iris House, Inc.*, 55 Misc3d 7 (AT 1 2017), held that petitioner could not maintain this type of holdover proceeding based on respondent's exemption status pursuant to RSC § 2520.11(f). Petitioner opposes and argues that a DHCR order has res judicata effect and contradicts *Pineapple*'s holding.

Section 2520.11 of the Rent Stabilization Code provides in relevant part that the Code

> shall apply to all or any class or classes of housing accommodations made subject to regulation pursuant to the RSL or any other provision of law, except the following housing accommodations for so long as they maintain the status indicated below:
>
> (f) housing accommodations owned, operated, or leased or rented pursuant to governmental funding, by a hospital, convent, monastery, asylum, public institution, or college or school dormitory or any institution operated exclusively for charitable or educational purposes on a nonprofit basis, and occupied by a tenant whose initial occupancy is contingent upon an affiliation with such institution; however, a housing accommodation occupied by a nonaffiliated tenant shall be subject to the RSL and this Code;

In *Pineapple*, the landlord commenced four consolidated holdover proceedings against the tenants. The landlord served 30-day notices alleging that the apartments were not subject to and exempt from rent stabilization pursuant to RSC § 2520.11(f), as the apartments were rented to a non-profit, charitable institution for occupancy by individuals who were affiliated with the institution. *Pineapple*, 55 Misc3d at 9-10. The Appellate Term, First Department reasoned that the exemption provided by RSC § 2520.11(f)

> was not intended to allow a for-profit landlord to evict an educational or charitable institution. As the Court of Appeals noted in analogous circumstances, the exemption "refers to accommodations provided, that is, let, by a [charitable or educational institution] as landlord or sublandlord in relation to its tenants or subtenants, and not to [said institution] as tenant or subtenant in relation to a real estate entrepreneur landlord or sublandlord" (*520 E. 81st St. Assoc. v. Lenox Hill*

> *Hosp.*, 38 NY2d 525, 528 [1976]; *see Melohn v. New York Province of Socy. of Jesus*, NYLJ, Mar. 27, 1989 at 25, col 4 [Civ. Ct, NY County 1989]).
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> *Pineapple*, 55 Misc3d at 9-10.

The Appellate Term, First Department affirmed dismissal of the holdover proceedings holding that a landlord could not seek eviction relief pursuant to the specific exemption from rent stabilization provided by RSC § 2520.11(f). *Pineapple*, 55 Misc3d at 9.

The New York State Division of Housing and Community Renewal ("DHCR") issued an Order Denying Application or Terminating Proceeding, dated February 14, 2019, under docket number FQ 410140 R, for the subject premises. The DHCR order denied the prior tenant Vibrant's rent overcharge complaint finding that the subject apartment was exempt from regulation so long as the apartment was leased or rented to a non-profit charitable institution and the individual occupying the apartment was doing so based on the individual's affiliation with the charitable institution pursuant to RSC § 2520.11(f).

The doctrine of stare decisis compels this court to be bound by appellate court authority within its judicial department. McKinney's Cons. Laws of N.Y., Book 1, Statutes § 72[b]; *see State Farm Mut. Auto. Ins. Co. v. Fitzgerald*, 25 NY3d 799, 819-820 (2015); *Palladino v. CNY Centro, Inc.*, 23 NY3d 140, 150-151 (2014); *People v. Peque*, 22 NY3d 168, 194 (2013). The Appellate Term First Department decision in *Pineapple* held that a for-profit building owner could not evict the not-for-profit tenant in a holdover proceeding commenced by a 30-day notice on the grounds that the apartment was exempt from rent stabilization pursuant to RSC § 2520.11(f). *Pineapple*, 55 Misc3d at 8-9. Therefore, this holdover proceeding which was commenced on identical grounds as in *Pineapple* cannot be maintained, as RSC § 2520.11(f) does not provide a permissible legal basis on which petitioner, a for-profit landlord, may seek to

evict respondent, a charitable not-for-profit organization. Accordingly, respondent's cross motion is granted and the petition is dismissed.

Based on the foregoing, that petitioner's motion to strike respondent's defenses and counterclaim and respondent's cross motion for summary judgment are granted as set forth herein. The remainder of petitioner's motion seeking summary judgment and a money judgment is denied as moot.

This constitutes the decision and order of this court.

Dated: May 5, 2022
New York, New York

HON. VANESSA FANG, J.H.C.