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Wiles v. NYCHA-Pomonok Houses

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Wiles v NYCHA-Pomonok Houses
2022 NY Slip Op 22161
Decided on May 13, 2022
Civil Court Of The City Of New York, Queens County
Kuzniewski, J.
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Decided on May 13, 2022

Civil Court of the City of New York, Queens County

<p>Lisa Wiles, Petitioner-Tenant,</p> <p>against</p> <p>NYCHA-Pomonok Houses, Respondent-Landlord.</p>

Index No. HP 688/2021

For Petitioner: Queens Legal Services by Cynthia Melissa Ramos and Matthew D. Reichert

For Respondent: NYCHA by Jonathan David Rosen and Alan Harris Liskov

Jeannine Baer Kuzniewski, J.

Recitation, as required, by CPLR §2219)(a), of the papers considered in the review of this Motion to Dismiss;

Papers Numbered
Notice of Motion, Affirmation & Exhibits 1
Affirmation in Opposition, Affidavit & Exhibits 2
Affirmation in Reply 3

The underlying proceeding is an HP action wherein petitioner seeks an Order to correct violations, a finding that respondents have harassed petitioner and an order of restraint pursuant to the New York City Administrative Code 27-2005(d). The proceeding was commenced 9/27/21 triggering an inspection by HPD which resulted in various (13) unreported violations reflected on the corresponding violation report dated 10/6/21. Petitioner had previously commenced an HP action in July 2021 (467/21) alleging similar conditions and harassment and in which unofficial violations were also reported after inspection. That case has since been transferred to Part X and is awaiting trial.

Respondent now moves for an order dismissing the underlying proceeding pursuant to CPLR §3211(a)(7) alleging petitioner has failed to state a cause of action. Respondent, relying on [*Aguaiza v. Vantage Props*, 69 AD3d 422](#), appears to argue that §27-2005(d) was created solely to address perceived efforts by landlords to empty rent-regulated apartments by harassing tenants into giving up their occupancy rights. They then directly extrapolate this to conclude that since "the Housing Authority is a public benefit corporation created to give tenants safe housing it is [*2]clearly not the type of landlord that the drafters of the harassment statute intended the statute to operate against." (Resp. Mot. Paragraph 10). They also conclude that they have not engaged in any enumerated act or omission required by §27-2004(a)(48) because their actions have only amounted to a "mere delay in completing repairs does not arise to the level of harassment as defined by the statute." (Pet. Mot. Paragraph 12).

Petitioner opposes the motion in its entirety and alleges numerous failures by NYCHA to correct hazardous conditions within her apartment over a lengthy period as well as allegations of unprofessional behavior during the course of their interactions where she alleges humiliating and dehumanizing treatment. She also provides documentation of various correspondences and prior proceedings wherein she alleged similar or the same conditions which continue to exist.

HMC §27-2005(d) provides that; "The owner of a dwelling shall not harass any tenants or persons lawfully entitled to occupancy of such dwelling as set forth in paragraph 48 of subdivision a of section 27-2004...". Respondent is an 'owner' as defined by HMC §27-2004. They can maintain proceedings against NYCHA residents and they have full authority and control of building operations. Paragraph 48 of the Code enumerates examples of acts or omissions intended to cause a tenant to vacate their dwelling or surrender or waive any rights in relation to their dwelling. Petitioner has alleged a variety of these acts were perpetrated by respondent including subsection b-"repeated interruptions or discontinuances of essential

services, or an interruption or discontinuance of an essential service for an extended duration or of such significance as to substantially impair the habitability of such dwelling unit"; & b-2-"repeated failures to correct hazardous or immediately hazardous violations of this code or major or immediately hazardous violations..."; (Pet. Opps. Affirm. Paragraph 16-25). And f-"...changing the lock on such entrance door without supplying a key to the new lock to the persons lawfully entitled to occupancy of such dwelling unit." (Pet. Opps. Affirm. Paragraph 28).

Respondent's claim that the harassment portion of the Code does not apply to NYCHA because it is presumed that it would not engage in harassing behavior as a public benefit corporation is alleged without legal support or authority, as well as devoid of any merit. While NYCHA is excluded from specific provisions of the Housing Maintenance Code, *See* §27-2056, those exclusions are expressly enumerated and §27-2005 is not such a provision. The fact that NYCHA is not specifically excluded with regard to §27-2005 empowers the assertion that they are subject to it. Additionally, their assertion that they have not violated §27-2004(a)(48) is unsupported by documentation. Petitioner has provided a substantial documentary trail of the parties' history with regard to her complaints and NYCHA's response to those complaints dating back to 2017. Although HPD inspection results are not technically filed as recorded violations against a related city agency, they can still be accepted as prima facie evidence as to the conditions in the premises as witnessed by HPD (MDL §328(3); *DHPD v. Knoll*, 120 Misc 2d 813; *DHPD v. Jim Realty LLC*, 73 Misc 3d 1211[A]) and the court can determine, after testimony, the severity of said conditions in concordance with HPD violation standards.

Further, when considering a motion under CPLR §3211(a)(7), the court must afford the pleadings a liberal construction and deem the facts alleged in the complaint as true. *Leon v. Martinez*, 84 NY2d 83. A motion to dismiss pursuant to CPLR §3211(a)(7) will fail if, taking all facts alleged as true and according them every possible inference favorable to the plaintiff, the complaint states some cognizable legal theory. *Shaya B. Pac, LLC v. Wilson et al, LLP*, 38 AD3d [*3]34. Petitioner has clearly met this standard while respondent has failed to "flatly contradict by documentary evidence" bare legal conclusions and factual allegations. *Biondi v. Beekman Hill House Apt. Corp*, 257 AD2d 76. As such, this case is ripe for trial for examination and determination of the weight of said claim.

Accordingly, respondent's motion is denied in its entirety. The case is scheduled for pre-trial conference on June 7, 2022 at 11:00, Part A, Room 401.

Dated: May 13, 2022

/S/

Hon. Jeannine Baer Kuzniewski, J.H.C.

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