2022-05-26

GROTE MANAGEMENT LLC v. SEPULVEDA

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF BRONX: HOUSING PART I

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GROTE MANAGEMENT LLC,

Petitioner,

L&T Index No. 15810/2020

-against- **DECISION/ORDER**

J. SEPULVEDA,
Y. SANTIAGO
783 Grote Street
Apartment 2B
Bronx, New York 10460

Respondents.

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HON. MALAIKA N. SCOTT-MCLAUGHLIN, J.H.C.

Recitation, as required by CPLR 2219(a), of the papers considered in the review of respondents' motion for, *inter alia*, permission to interpose amended answer, for leave to conduct discovery, for repairs and for an order barring collection of rent:

Papers	**Numbered**
Notice of Motion, Affirmation, Affidavit, and Exhibits Annexed	1
Opposition	0

Upon the foregoing cited papers, the Decision/Order on this Motion is as follows:

Introduction

Petitioner, Grote Management LLC, commenced this nonpayment case against Respondent J. Sepulveda and Respondent Y. Santiago (collectively "Respondents") to recover possession of rent stabilized Apartment 2B, located at 783 Grote Street, Bronx, New York 10460, based upon unpaid rent.

On or about March 7, 2020, the COVID-19 pandemic impacted in-person courthouse operations. Various Executive Orders, Administrative Orders, Directives and Procedures ("DRP") have been issued during the ongoing COVID-19 pandemic.

On or about July 14, 2020, Petitioner issued a Fourteen (14) Day Notice and sought rental arrears for the time period April 2020 through July 2020. Petitioner commenced this case by service of a Notice of Petition and Petition upon Respondents on or about September 4, 2020.

On September 4, 2020, Respondents appeared *pro se* and filed an Answer, dated September 4, 2020. Respondents asserted a general denial and the defense of partial payment and repairs.

On September 14, 2020, the Court placed this matter on the Nonpayment Administrative Calendar. Thereafter, the Court calendared this matter for April 13, 2021 in the Intake Part. Upon review of the UCMS database, the matter was marked discontinued in the Intake Part.

On or about May 17, 2021, the matter was converted to a New York State Courts Electronic Filing ("NYSCEF") case. Respondents retained counsel.

On or about August 3, 2021, Respondents, through counsel, filed a Notice of Motion and requested an order: (a) permitting Respondents to interpose an amended answer, pursuant to CPLR 3025(b), and, upon granting leave, deeming the annexed amended answer to have been served and filed nunc pro tunc; (b) granting leave to conduct discovery pursuant to CPLR 408 and/or CPLR 3101; (c) requiring Petitioner to make repairs of numerous dangerous and hazardous conditions in Respondents' apartment; and (d) an order barring Petitioner from collecting rent until the Subject Premises is properly registering with Department of Housing Community Renewal ("DHCR") in accordance with Rent Stabilization Code ("RSC") § 2528.4(a). The Court calendared the motion in Part I to be heard on September 23, 2021.

On September 23, 2021, prior to hearing oral argument on Respondents' motion, the Court conducted a status conference. Petitioner's counsel and Respondents' counsel appeared.

During the conference, Petitioner made an oral application to discontinue this proceeding and asserted that the Petition had been satisfied. Respondents opposed discontinuing the case and

requested to proceed with their motion to file an amended answer and to litigate their counterclaims. After oral argument, the Court reserved decision.

Discussion

After conference with the parties, without written opposition, service of the motion being proper, the Court denies Petitioner's oral application to dismiss this proceeding and the Court grants Respondents' motion as detailed below.

Amended Answer

Respondents request permission to interpose an amended answer. There is no written opposition from Petitioner.

CPLR 3025 (b) provides that:

> "A party may amend his or her pleading, or supplement it by setting forth additional or subsequent transactions or occurrences, at any time by leave of court or by stipulation of all parties. Leave shall be freely given upon such terms as may be just including the granting of costs and continuances. Any motion to amend or supplement pleadings shall be accompanied by the proposed amended or supplemental pleading clearly showing the changes or additions to be made to the pleading."

Thus, "[a] court may grant leave to amend pleadings "at any time" (*Norwood v City of New York*, 203 AD2d 147 [App Div, 1st Dept 1994]). In determining whether to grant a motion to amend an answer, the court should consider the merit of the proposed defense and prejudice to the petitioner caused by the delay (*see Norwood v City of New York*, 203 AD2d 147).

Here, upon review of the Proposed Amended Answer, Respondents have facially presented viable defenses as well as counterclaims in their Proposed Amended Answer. Additionally, Respondents have shown a valid reason for delay, since they initially answered *pro se* and filed this motion to amend their answer upon retaining counsel. Moreover, Petitioner has not been

prejudiced by the delay in filing. Therefore, based on the foregoing, the Court grant Respondents' request to interpose an Amended Answer (CPLR 3025[b]). The Proposed Amended Answer as Exhibit A and Document 7 on NYSCEF, to the motion is deemed filed and served.

Discovery

Respondents seek leave to conduct discovery of Petitioner, pursuant to CPLR 408 and 3101, in the form of document production for two time periods -- 2017 to present and 2000 to present.

CPLR 408 provides that:

> "Leave of court shall be required for disclosure except for a notice under section 3123. A notice under section 3123 may be served at any time not later than three days before the petition is noticed to be heard and the statement denying or setting forth the reasons for failing to admit or deny shall be served not later than one day before the petition is noticed to be heard, unless the court orders otherwise on motion made without notice."

In a summary proceeding, discovery is permitted upon leave of court (CPLR 408; *see 4 Park Ave. Assoc. v Svab*, NYLJ, Dec. 17, 2013 at 27, col 4 [Civ Ct, NY County 2003]; *see also Rubino v Eberle*, NYLJ, Jan. 18, 1990 at 24, col 1 [Civ Ct, NY County 1990]) and upon a showing of "ample need" for such disclosure (*see New York University v Farkas*, 121 Misc2d 643, 647 [Civ Ct, NY County 1983]).

The party seeking disclosure must demonstrate "ample need" and the court in *New York University v Farkas,* 121 Misc2d 643, set forth the criteria to establish ample need: (1) whether petitioner has asserted facts to establish a cause of action; (2) whether there is a need to determine information directly related to the cause of action; (3) whether the requested disclosure is carefully tailored and is likely to clarify disputed facts; (4) whether prejudice will result from granting such

application; (5) whether prejudice can be diminished by an order fashioned by the court ... and (6) whether the court can structure disclosure so that pro se litigants will not be adversely affected.

Pursuant to Respondents' attorney affirmation annexed to their motion papers, Respondents seek the following documents listed below: (i) any and all lease agreements and/or renewal lease agreements for the Subject Premises, including attachments and/or riders from 2000 through present to submitted to DHCR by Petitioner; (ii) any and all records for the Subject Premises showing the amounts of rent charged and collected from 2017 to present; (iii) any and all records of individual apartment improvements for the Subject Premises from 2017 to present, including but not limited to, proposals, contracts, invoices, alteration applications, alteration permits, contractors' statements and payments records; and (iv) any and all orders issued by DHCR ("DHCR Orders") for the Subject Premises, including but not limited to (a) orders granting or denying rent increases for Major Capital Improvements, (b) orders granting or denying any rent overcharge complaint, (c) order grants or denying any application for high rent/high income deregulation, (d) orders granting or denying any application for building-wide or individual apartment rent reduction, and (e) any summaries or lists of any DHCR Orders, dated from 2017 to present. There is no written opposition from Petitioner.

Here, without written opposition, the Court finds that Respondents have demonstrated ample need for discovery on their overcharge claim in the form of document production and the Court grants Respondents' request for leave to conduct discovery*(see Turin Holding Development Fund Company, Inc. v Maor et. al.*, 2003 NY Slip Op 51554 [U][Civ Ct, NY County 2003]). However, in this instance, the requested time period for leases agreements and renewal lease agreement, approximately 22 years, from 2000 to 2022, is overly broad. Hence, the Court limits the relevant time period to 2017 to present, without prejudice to renew upon proper application.

Petitioner is directed to produce the requested documents to Respondents within thirty (30) days of service of a copy of this order on Petitioner with notice of entry.

Repairs

Respondents request an order directing Petitioner to make repairs in the Subject Premises. Pursuant to the DHCR Rent Reduction Order, issued March 15, 2021, the following services have not been maintained by Petitioner: (i) intercom, (ii) toilet bowl/tank and (iii) bedroom window. Pursuant to the HPD Report, dated June 24, 2021, annexed to Respondents' motion, there are open "A" violations, "B" violations and "C" violations for the Subject Premises.

Here, based on the foregoing, Petitioner is directed to inspect and repair as required by law, the above referenced conditions and violations within thirty (30) days of access. Access dates to be arranged by the parties through counsel, 9:00 am to 5:00 pm and workers to arrive by 11:00 am.

Barring Rent Collection

Additionally, Respondents request an order barring Petitioner from collecting rent until proper registering of the Subject Premises with DHCR in accordance with RSC § 2528.4(a). There is no written opposition from Petitioner.

RSC § 2528.4 provides, in pertinent part, that:

> "(a) The failure to properly and timely comply, on or after the base date, with the rent registration requirements of this Part shall, until such time as such registration is completed, bar an owner from applying for or collecting any rent in excess of: the base date rent, plus any lawful adjustments allowable prior to the failure to register. Such a bar includes but is not limited to rent adjustments pursuant to section 2522.8 of this Title. The late filing of a registration shall result in the elimination, prospectively, of such penalty, and for proceedings

> commenced on or after July 1, 1991, provided that increases in the legal regulated rent were lawful except for the failure to file a timely registration, an owner, upon the service and filing of a late registration, shall not be found to have collected a rent in excess of the legal regulated rent at any time prior to the filing of the late registration. Nothing herein shall be construed to permit the examination of a rental history for the period prior to four years before the commencement of a proceeding pursuant to sections 2522.3 and 2526.1 of this Title."

In support of their argument and annexed to their motion via NYSCEF, Respondents submitted the following documentation: (i) a DHCR Registration Apartment Information, dated September 8, 2020, which provides that the Subject Premises was last registered with DHCR in 2018 for the legal regulated rent of $1164.15 for the lease period February 1, 20218 through January 14, 2020 with Rafaelina Figueroa listed as the tenant of record; and (ii) a DHCR Rent Reduction Order, issued March 15, 2021, and effective date June 1, 2020 ("Rent Reduction Order"). Petitioner did not submit documentation in opposition.

Here, Petitioner has registered the Subject Premises with DHCR through 2018 and there is a Rent Reduction Order still in effect for the Subject Premises. "The penalty for a failure to properly and timely comply with the annual rent registration requirements of the RSC § 2528.3 is a rent freeze barring an owner from applying for or collecting any rent in excess of the base date rent, plus any lawful adjustments allowable prior to the failure to register, until the registration is completed (RSC § 2528.4, *Yorkroad Assocs. v. N.Y. State Div. of Hous. & Cmty. Renewal*, 19 AD3d 217 [App Div, 1st Dept 2005]). Therefore, the rent should be frozen until that filing (*see Foster v Corona Park Realty Inc.*, 2019 NY Slip Op 33324[U]). The rent is already frozen pursuant to the Rent Reduction Order in effect. Thus, the Court denies, without prejudice to renew, Respondents' request to bar Petitioner from collecting any rent for the Subject Premises.

Conclusion

Accordingly, Respondents' motion is granted in part and denied in part in accordance with this Order.

Petitioner is directed to comply with the document requests in accordance with this order within 30 days of service of a copy of this order with notice of entry.

Accordingly, this matter is restored to the Part I calendar to July 8, 2022 at 10:45 a.m. for all purposes.

The foregoing constitutes the Decision and Order of this Court, copies of which are being sent to all parties.

Dated: May 26, 2022
Bronx, New York

HON. MALAIKA N. SCOTT MCLAUGHLIN, J.H.C.