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Mitchell v. Jackson

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CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF KINGS: HOUSING PART
---X
DEBBIE MITCHELL,

Petitioner,

-against-

DAN JACKSON, ET AL.,

Respondent.
---X

Index No. 310645/21

DECISION/ORDER

Mot. seq. nos. 1 & 2

The following e-filed documents, listed by NYSCEF document numbers 9-48 (motion nos. 1 & 2), were read on these motions for summary judgment dismissing the petition).

This is a holdover summary eviction proceeding premised on alleged termination of a two-year lease agreement for an unregulated apartment. The following facts are undisputed: By deed dated August 20, 2015, Kimberly Garrett and Leanese Garrett deeded the subject building to Nigel King and Petitioner Deborah Mitchell (NYSCEF Doc. 30). At the time, Kimberly Garrett and her husband, Respondent Dan Jackson, lived in the property with their minor child, Respondent Ashlee Garrett. Kimberly and King had been childhood friends and next-door neighbors. On the same day the deed was executed, both Garrets, King, and Mitchell executed a "House Lease" giving the Garretts the rights to occupy a portion of the house for twelve years without paying any monthly rental amount but with other obligations detailed below (NYSCEF Doc. 33). Garrett died in 2016.

Mitchell alleges that in 2017, she and Jackson entered into a new, two-year lease agreement for an apartment in the building, at a rate of $1,500.00 (NYSCEF Doc. 20). In her affidavit opposing Respondents' motions, Mitchell alleges that "Dan apparently found a new relationship and wanted to establish a lease agreement just for himself and Ashelee."[1] King is not a Petitioner in this proceeding and did not submit an affidavit in opposition to Respondents' motion. Jackson denies signing the 2017 lease.

[1] Although not relevant to the court's analysis, the court is perplexed by Mitchell's assertion for Jackson's motivation in making the new agreement, which is that Jackson desired to switch from the option to reside in the premises for rent-free for twelve years to instead limiting himself to two-year occupancy at $1,500.00 per month, because he found a girlfriend.

As the issue of whether Jackson signed the 2017 lease is not before the court on these motions (if it were would likely result in a question of fact), the court's decision hinges on the enforceability of the 2015 lease, and if that lease is enforceable, whether the 2017 lease could replace the 2015 lease. Petitioner argues that because the 2015 lease permitted Jackson and Garrett to live in the house without paying rent in the form of money, it is not enforceable for lack of consideration. While it is certainly the case that for a lease to be enforceable, it must be supported by valid consideration or by mutuality of obligation (1 Robert F. Dolan, Rasch's Landlord and Tenant – Summary Proceedings § 2:7 at 111 [4th ed 1998]), it is not the case that consideration need be in the form of payment of money (*Knepper v Rothbaum*, 104 Misc 554, 557 (App Term, 1st Dept 1918] ["It is well settled that rent need not be money"]).

"Consideration consists of either a benefit to the promisor or a detriment to the promissee. It is enough that something is promised, done, forborne, or suffered by the party to whom the promise is made as consideration for the promise made to him or her. Legally sufficient consideration does not necessarily entail a benefit flowing the promisor; instead, a promisee who has incurred a specific, bargained for legal detriment may enforce a promise against the promisor, notwithstanding the fact that the latter may have realized no concrete benefit as a result of the bargain. Indeed, the detriment suffered or the thing promised need not benefit the promisee or a third party, or be of substantial value to anyone" (*Toobian v Golzad*, 193 AD3d 778 [2d Dept 2021] [internal quotation marks and citations omitted]).

"Mutual promises or obligations of parties to a contract, either express or necessarily implied, may furnish the requisite consideration" (*Oscar Schlegel Mfg. Co. v Peter Cooper's Glue Factory*, 231 NY 459, 461 [1921]). "While mutuality of obligation does not mean equality of obligation, it does mean that each party must be bound to some extent" (*Dorman v Cohen*, 66 AD2d 411, 415 [1st Dept 1979]). "Mutuality of obligations" has been found where there was payment of rent, maintenance of insurance, and installation of improvements (*Warrant Street Assoc. v City Hall Tower Corp.*, 202 AD2d 200, 201 [1st Dept 1994]).

Here, the 2015 lease contains several obligations and restraints to which Jackson agreed to abide. Paragraph 6 of the lease requires Jackson to pay 40%-50% of the water bill (depending on the number of people in the apartment); the electric bill; and 40%-60% of the heating bill (depending on the number of people in the apartment. Paragraph 8 of the lease requires Jackson to "maintain all appliance, equipment, furniture, furnishings, and other personal property included" under the lease. Paragraph 9 requires Jackson to "maintain the grounds of the Premise

in a neat, clean and presentable condition" and to "be responsible for the upkeep of the grounds, including but not limited to snow removal, leaf removal, and the moving of the law. Paragraph 16 gives Mitchell and King the right to show the premises to potential buyers and prohibits Jackson from changing the locks to the premises without consent. Paragraph 17 requires Jackson to refrain from placing any signs in the premises "so as to be seen from outside the premises."

Significantly, paragraph 19 gives King and Mitchell the right to terminate the lease should Jackson violate the terms of the foregoing paragraphs (and others). All told, the lease contains sufficient mutuality of obligation to furnish consideration for the lease and make it enforceable.

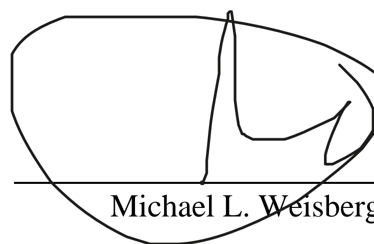
Having found that the 2015 lease is enforceable, the question becomes whether the 2017 lease, if signed by Jackson, would be enforceable. As a threshold matter, the 2017 lease, which requires a monthly payment of $1,500.00 and is for a term of two years, would not constitute a mere modification of the 2015 lease, but instead is a novation (*see Leeward Isles Resorts, Ltd. v Hilcox*, 49 AD3d 277 [1st Dept 2008] [change in time of payment and rate of interest in loan agreement was only a modification, not a novation]). For there to be a valid novation four elements must be met, one of which is that all parties to the original agreement agree to the new obligations (*Wasserstrom v Interstate Litho Corp.*, 114 AD2d 952, 954 [2d Dept 1984]). Here, there is no dispute that King did not sign the 2017 lease. Thus, a valid new contract was never created.

Accordingly, it is ORDERED that the motions are granted as follows; and it is further

ORDERED that judgment shall enter in favor of Respondents dismissing the petition.

This is the court's decision and order.

Dated: August 30, 2022



Michael L. Weisberg, JHC