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River Park Residences L.P. v. Williams

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River Park Residences L.P. v Williams
2022 NY Slip Op 50872(U)
Decided on September 16, 2022
Civil Court Of The City Of New York, Bronx County
Shahid, J.
Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431.
This opinion is uncorrected and will not be published in the printed Official Reports.

Decided on September 16, 2022

Civil Court of the City of New York, Bronx County

<p>River Park Residences L.P., Petitioner,</p> <p>against</p> <p>Celena Williams, "John Doe," "Jane Doe," Respondents.</p>

L & T Index No. 032947/19

Attorney for Petitioner: Stephen Pianoforte, Esq.

Attorney for Respondent: Paul Givargidze, Esq., NAICA, Inc.

Omer Shahid, J.

Recitation, as required by C.P.L.R. § 2219(a), of the papers considered in the review of Petitioner's Motion for Issuance/Execution of the Warrant of Eviction (Motion No.1 on N.Y.S.C.E.F.):

Papers	Numbered
Notice of Motion (Motion #2 on N.Y.S.C.E.F.)	1
Affirmation in Opposition (Entry 6 on N.Y.S.C.E.F.)	2

Petitioner commenced this summary proceeding seeking possession of 30 Richman Plaza, Apt. 19G, Bronx, NY 10453 (the "subject premises") from Respondents pursuant to R P A P L §§ 711(5) and 715, R P L § 231(1), and based upon the breach of a substantial obligation of the parties' lease due to Respondents' use of the subject premises for an illegal purpose of selling a controlled substance. The 7-day Notice of Termination, dated June 10, 2019, states that the N.Y.P.D. executed a search warrant in the subject premises on March 22, 2019 and seized the following: 1 sandwich bag filled with cocaine; 1 razor blade with cocaine residue; 1 Ziplock bag filled with marijuana; five Ziplock bags each containing multiple smaller bags; 7 small multicolored plastic containers; 1 large Ziplock bag containing multiple smaller bags; 1 cocaine white plate; 1 brown pouch; 1 small clear bottle with cocaine residue; 1 larger clear Ziplock bag; and, 1 clear straw. The items seized include 12.315 grams of cocaine and 0.706 grams of marijuana. On that same date, Respondent Celena Williams was arrested in the subject premises and charged with three felonies and two misdemeanors related to the possession of and intent to sell narcotics. In April 2019, the Bronx County District Attorney's Office notified Petitioner of its belief that the subject premises was used for the illegal purpose of selling narcotics and requested Petitioner to commence the instant proceeding pursuant to R.P.A.P.L. §§ 711(5) and 715, and R.P.L. § 231(1).

The Notice of Petition and Petition were filed with the court on July 29, 2019. The Petition states that the subject premises is in a building owned by a limited profit company [*2]organized under Article 2 of the Private Housing Finance Law and is under the jurisdiction of the Division of Housing and Community Renewal. On February 18, 2020, the court (Hon. Karen May Bacdayan) held inquest and granted Petitioner a final judgment of possession against Respondent Celena Williams only, finding that Respondent used the subject premises for an illegal purpose. The order provided that the warrant of eviction shall issue forthwith without any stay. The earliest eviction date was February 19, 2020. Petitioner was not awarded a final judgment of possession against "John" "Doe" and "Jane" "Doe" since an affidavit of non-military investigation was not submitted as to them.

Petitioner filed the instant motion to permit the issuance and execution of the warrant of eviction on N.Y.S.C.E.F. on May 4, 2022. The motion was made returnable to the court's calendar on May 18, 2022. On that date, Respondent Celena Williams retained N.A.I.C.A., Inc. as counsel and the matter was adjourned to July 12, 2022 for a motion schedule. On July 12, 2022, the matter was adjourned to August 17, 2022 for the parties to discuss settlement.

The fully briefed motion was marked submitted for decision on August 17, 2022 after conference.

The motion seeks an order granting Petitioner permission to apply for the warrant of eviction and execute upon it. Petitioner states that it was unable to apply for the warrant of eviction pursuant to the February 18, 2020 order after inquest due to the onset of the pandemic. Petitioner also states that it received \$17,717.50 in E.R.A.P. funds on September 1, 2021.

Respondent's opposition paper only consists of the affirmation of Respondent's attorney. Respondent, through counsel, argues that by accepting E.R.A.P. funds, Petitioner vitiated the instant holdover proceeding. Respondent also maintains that the motion should be denied because Petitioner does not allege ongoing drug activity.

The E R A P Statute, as amended, provides that restrictions on eviction pursuant to Sections 8 and 9(2)(d) of the statute shall not apply "if a tenant intentionally causes significant damage to the property or is persistently and unreasonably engaging in behavior that substantially infringes on the use and enjoyment of other tenants or occupants or causes a substantial safety hazard to others, provided if the court has awarded a judgment against a respondent prior to the effective date of this section on the basis of objectionable or nuisance behavior, the court shall hold a hearing to determine whether the tenant is continuing to intentionally cause significant damage to the property or persist in engaging in unreasonable behavior that substantially infringes on the use and enjoyment of other tenants or occupants or causes a substantial safety hazard to others." L. 2021, Ch. 56, Part BB, Subpart A, § 9 A(3) as amended by L. 2021, Ch. 417, Part A, § 6.

The E R A P Statute goes on to state that "[i]f the petitioner fails to establish that the tenant intentionally caused significant damage to the property or persistently and unreasonably engaged in such behavior [and] if the landlord has accepted payment of rental arrears and agreed not to evict the tenant pursuant to paragraph (d) of subdivision two of section nine of this act, the court shall dismiss the proceeding with prejudice." L. 2021, Ch. 56, Part BB, Subpart A, § 9 A(5)(ii) as amended by L. 2021, Ch. 417, Part A, § 6.

Although Respondent does not cite Section 9 A of the E R A P Statute specifically, the court assumes Respondent is seeking a denial of the motion pursuant to this provision of the

law due to Petitioner's acceptance of the E.R.A.P. funds made on behalf of Respondent, considering that this is a holdover proceeding based upon illegal use of the subject premises, and that Petitioner has not demonstrated that there is ongoing drug activity.

The issue presented before this court is whether Section 9-A of the E.R.A.P. Statute [*3] applies to proceedings commenced pursuant to R.P.A.P.L. §§ 711(5) and/or 715, and/or R.P.L. § 231(1). This court determines that it does not.

It should be noted that Section 9-A of the E.R.A.P. Statute is entitled "Expired Lease or Holdover Tenant." This section, as recited above in pertinent part, concerns the consequences of an E.R.A.P. application upon a proceeding based upon objectionable behavior on the part of a tenant. R.P.L. § 231(1) provides that when a tenant uses the subject premises for any illegal trade or business, then the lease shall "become void, and the landlord of such lessee or occupant may enter upon the premises so let or occupied." R.P.L. § 231(1). Hence, a lease in a proceeding commenced under R.P.L. § 231(1) is rendered void by operation of law and does not naturally expire pursuant to terms of the lease or terminate solely pursuant to a breach of a provision within the lease itself as in most holdover proceedings. Hence, Section 9-A of the E.R.A.P. Statute is inapplicable to proceedings where the lease is rendered void by operation of law, such as here where the subject premises was used for the sale of narcotics.

R.P.L. § 231 is read in conjunction with both R.P.A.P.L. §§ 711(5) and 715 which permit a landlord to commence a summary proceeding if the subject premises is misused by a tenant for the purpose of an illegal trade or business. Acceptance of rent payment in a "bawdy house" proceeding will not subject that proceeding to dismissal that other holdover proceedings may be subject to based upon the waiver doctrine. As one court put it: "Unlike the usual holdover proceeding, which concerns a preexisting private dispute between the parties, an illegal use proceeding involves a strong public policy: protection of the safety and welfare of neighboring tenants and the community. Indeed, the landlord has a statutory duty to end the illegal conduct, e.g., by commencing an eviction proceeding; an owner can incur liability if he or she does not act. Moreover, it would be contrary to public policy to hold that the owner's inadvertent or deliberate acceptance of rent after commission of an illegal act could operate to waive the illegality." *Hudsonview Co. v. Jenkins*, 169 Misc 2d 389, 393 (Civ. Ct., NY Co. 1996).

Here, acceptance of the E.R.A.P. funds after the commencement of this proceeding would not vitiate the instant proceeding. Since the lease has become void by operation of law, Petitioner's acceptance of rent payment, including E R A P funds, would not reinstate the tenancy as that would go against the public policy stated above. The court also notes that Respondent does not deny the allegations made in the Notice of Termination or challenge the decision entered against her after inquest.

Respondent's argument that the motion should also be denied because Petitioner does not allege ongoing drug activity is without merit as well. Whether or not Respondent is continuing drug activity after the commencement of this proceeding is not relevant since the instant proceeding is based upon Respondent's prior illegal conduct which concerns the sale of narcotics. *See City of New York v. Wright*, 162 Misc 2d 572 (App. Term, 1st Dep't 1994) (finding that other tenants' affidavits stating that the offending tenant's presence is not a continuing threat to their safety is irrelevant in that illegal use proceeding which includes drug activity). Since the continuing drug activity or lack of it, after a finding has already been made that Respondent has used the subject premises for the illegal purpose of selling narcotics, is not relevant, Section 9-A of the E.R.A.P. Statute's requirement that Petitioner establish that there is ongoing objectionable conduct on the part of Respondent is not applicable.

This proceeding may proceed since Section 9-A of the E.R.A.P. Statute does not apply to proceedings commenced pursuant to R P A P L §§ 711(5) and/or 715, and/or R P L § 231(1). Based on the reasons mentioned above, Petitioner's acceptance of E R A P funds does not [*4] require Petitioner to demonstrate that there is ongoing objectionable behavior on the part of Respondent which, failure to do so, would result in a dismissal, with prejudice, of this proceeding pursuant to Section 9-A of the E.R.A.P. Statute. Similarly, the waiver doctrine, which inspires the vitiation language of Section 9 A of the E R A P Statute, does not apply as well because Petitioner cannot reinstate the tenancy by waiving the illegality.

Based upon the foregoing, Petitioner's motion is granted as follows. The court finds that the motion satisfies the status conference requirement of AO/158/22. Accordingly, the warrant of eviction shall issue and execute forthwith against Respondent Celena Williams pursuant to the order issued after inquest on February 18, 2020. The warrant of eviction shall execute upon service of a Marshal's notice.

The foregoing constitutes the decision and order of the court.

Dated: September 16, 2022

Bronx, NY

Omer Shahid, J.H.C.

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