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STEWARD HOUSING L.L.C. v. GODLEY

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

-----X
STEWARD HOUSING L.L.C.,

L&T Index No. 026956/19

Petitioner,

-against-

DECISION/ORDER

UNIQUA GODLEY,

Respondent.
-----X

Present: Hon. OMER SHAHID
Judge, Housing Court

Recitation, as required by C.P.L.R. § 2219(a), of the papers considered in the review of Petitioner’s Motion to Execute Upon the Warrant (Motion #8 on N.Y.S.C.E.F.) and Respondent’s Cross-Motion to Dismiss (Motion #9 on N.Y.S.C.E.F.):

Papers	Numbered
Notice of Motion (Motion #8 on N.Y.S.C.E.F.).....	<u>1</u>
Notice of Cross-Motion (Motion #9 on N.Y.S.C.E.F.).....	<u>2</u>
Affirmation in Opposition to Cross-Motion (Entries 31-36 on N.Y.S.C.E.F.).....	<u>3</u>
Affirmation in Reply in Support of Cross-Motion (Entry 37 on N.Y.S.C.E.F.).....	<u>4</u>

Petitioner commenced this nonpayment proceeding alleging that Respondent is indebted to Petitioner in the amount of \$16,401.00, representing all rent due and owing through May 31, 2019, for the letting of 2025 Seward Avenue, Apartment 3S, Bronx, N.Y. 10473 (the “subject premises”). The Petition alleges that “the [subject] premises is not subject to the City Rent Law (Rent Control) and it is no longer subject to the Rent Stabilization Law of 1969, as amended, because when stabilized, it became vacant and consistent with rent stabilization, was rented at a legal regulated rent of at least \$2,000.00 per month.” ¶ of 7 of the Petition. The Notice of Petition and Petition were filed with the court on May 28, 2019. On June 10, 2019, Respondent filed a pro se answer stating a general denial defense and claiming that she is unsure of the amount owed and that she experienced a financial difficulty due to a loss in employment. The parties received a court date of June 17, 2019.

On June 17, 2019, the matter was adjourned to July 9, 2019. On the adjourn date, a default judgment was entered in favor of Petitioner due to Respondent’s failure to appear. Respondent thereafter filed an Order to Show Cause (Seq. #1) to vacate the default judgment

which was made returnable on July 19, 2019. On that date, the parties entered into a stipulation whereby the default judgment was vacated and a final judgment was entered in favor of Petitioner in the amount of \$20,382.00, representing all rent due and owing through July 31, 2019. The parties entered into another stipulation on January 30, 2020 where the execution of the warrant was stayed through February 14, 2020 for Respondent to pay \$32,869.00, representing all rent due and owing through January 31, 2020. Respondent was pro se when she signed these two stipulations.

Petitioner filed the instant motion to execute upon the warrant of eviction on N.Y.S.C.E.F. on March 1, 2022. The motion was calendared on March 17, 2022 and on that date the motion and the proceeding were marked off the calendar pending determination of Respondent's recently filed E.R.A.P. application. Respondent thereafter retained the Legal Aid Society as counsel on March 23, 2022. Respondent filed the cross-motion to dismiss on N.Y.S.C.E.F. on August 18, 2022. After a determination had been made on Respondent's E.R.A.P. application, both motions and the proceeding were restored to the court's calendar on September 6, 2022. The parties then agreed to adjourn the matter to October 25, 2022 for a briefing schedule. On the October 25, 2022 appearance, both motions were marked submitted for determination.

Petitioner moves for permission to execute upon the warrant of eviction based upon Respondent's breach of the terms and conditions of the January 30, 2020 stipulation.

Respondent opposes and cross-moves. Among the various relief requested, Respondent seeks a dismissal of this proceeding pursuant to C.P.L.R. § 3211(a)(7) on the ground that Petitioner violated R.P.A.P.L. § 741 by failing to properly plead the controlling regulatory agreements which encumber the subject premises in that the Petition fails to mention that Respondent is a recipient of an H.P.D. Section 8 subsidy.

Petitioner opposes the cross-motion. Petitioner acknowledges that Respondent was receiving a Section 8 subsidy administered by H.P.D. but argues that at the time of the commencement of the instant proceeding, this subsidy was terminated on May 10, 2019 based upon Respondent's failure to provide necessary recertification documents. Respondent counters this argument by stating that the subsidy terminated on June 30, 2019 and, hence, Respondent was still a Section 8 tenant at the time of the commencement of this proceeding and Petitioner should have pleaded the regulatory status accordingly. Respondent argues that the Petition is completely devoid of statements concerning the Section 8 status and the failure to plead such prevents Respondent from being informed of defenses that may be available to her based upon her status as a Section 8 recipient and, furthermore, deprives the court with needed information to allow it to properly adjudicate the matter.

Another, but related, contention between the parties is whether a lease executed by the parties on April 10, 2019 is valid. This lease is effective July 1, 2019 through June 30, 2020 for \$2,629.00 per month. However, there was already a lease in effect within the confines of the Section 8 framework at the time and which commenced on July 1, 2018 with Respondent's share of the rent being \$1,610.00 per month. Petitioner argues that the lease executed on April 10, 2019 is a "new agreement" between the parties due to the termination of Respondent's Section 8 subsidy and that Petitioner is entitled to collect rent pursuant to that agreement. Respondent maintains that this lease is invalid because at the time that this lease was executed, Respondent's Section 8 subsidy was not terminated and, hence, cannot be considered a "new agreement." There is no question that a portion of the amount in the January 30, 2020 stipulation is based upon this agreement.

On a motion to dismiss for failure to state a cause of action pursuant to C.P.L.R. § 3211(a)(7), the pleading is afforded a liberal construction and the court will accept the facts as alleged therein as true and determine whether those facts fit within any cognizable theory of law. See Leon v. Martinez, 84 N.Y.2d 83 (1994).

Pursuant to R.P.A.P.L. § 741, a “petition shall (1) [s]tate the interest of the petitioner in the premises from which removal is sought[;] (2) [s]tate the respondent’s interest in the premises and his relationship to petitioner with regard thereto[;] (3) [d]escribe the premises from which removal is sought[;] (4) [s]tate the facts upon which the special proceeding is based[;] [and] (5) [s]tate the relief sought.” R.P.A.P.L. § 741. The applicable regulatory status of the subject premises is among the facts necessary to be plead in a petition. See M.S.G. Pomp Corp. v. Doe, 185 A.D.2d 798 (1st Dep’t 1992). A petition must plead all the regulatory agreements governing the subject premises including any government contracts which would provide a tenant with potential defenses and would allow the court to properly adjudicate the matter. See Matter of Volunteers of Am.-Greater N.Y., Inc. v. Almonte, 65 A.D.3d 1155 (2d Dep’t 2009). Where the government is so intertwined with the subject premises, constitutional due process protections come to fruition. See 512 E. 11th St. H.D.F.C. v. Grimmet, 181 A.D.2d 488 (1st Dep’t 1992). A bare statement concerning the regulatory status will result in a dismissal if it does not strictly comply with the statute as it deprives the court of jurisdiction. See Giannini v. Stuart, 6 A.D.2d 418 (1st Dep’t 1958); see also M.S.G. Pomp Corp., 185 A.D.2d 798 (dismissing the petition because the misstatement concerning ownership did not strictly comply with R.P.A.P.L. § 741).

The court agrees with Respondent that the Petition does not comply with R.P.A.P.L. § 741. The Petition fails to plead the regulatory agreements, including government contracts, that govern the regulatory scheme of the subject premises. Failure to do so results in significant prejudice to Respondent as being a recipient of a Section 8 subsidy directly informs Respondent’s defenses and failure to plead such does not enable Respondent to formulate a defense to this proceeding. Although Respondent received a termination notice from H.P.D. dated May 10, 2019, the subsidy termination did not go into effect until June 30, 2019. Hence, Respondent was still a Section 8 recipient at the time of the commencement of this proceeding. Moreover, the Petition seeks rent related to Respondent’s share of the rent pursuant to the Section 8 program. Yet the Petition is silent as to this regulatory scheme.

Petitioner’s failure to properly plead the regulatory status herein did not provide the court with information needed to allow this court to properly adjudicate the matter. To illustrate this point, the court addresses the lease agreement that the parties executed on April 10, 2019. It is well-settled law that, unless a landlord shows that there is a new agreement between the parties, a Section 8 tenant is not liable for the Section 8 portion of the rent even after the subsidy terminates. See Soumas v. Gregg, 57 Misc. 3d 135(A) (App. Term, 1st Dep’t 2017). Petitioner maintains that this lease constitutes a “new agreement.” The court disagrees. Respondent’s subsidy had not terminated at the time the lease was executed. Since the subsidy was still in effect at the time the parties executed the lease and it was, moreover, executed prior to both the termination of the subsidy and the receipt of the H.P.D. termination notice, this is not a “new agreement” that would make Respondent liable for the contract rent. See generally OUB Court Housing Company, Inc. v. Alston, 70 Misc. 3d 1219(A) (Civ. Ct., Bronx Co. 2021). Hence, the monthly rent charge on this lease was erroneously used towards the total amount in the January 30, 2020 stipulation.

If Petitioner had pleaded that Respondent was a Section 8 recipient, the court would have had the opportunity to investigate whether a valid “new agreement” was in effect prior to the so-

ordering of the January 30, 2020 stipulation which explicitly incorporates the amount in the lease executed on April 10, 2019. The regulatory status, as pleaded in the Petition, suggests that a market relationship exists between the parties and that the lease executed on April 10, 2019 is a market lease and would not allow the court to infer the existence of a possible “new agreement” that would entitle Petitioner to collect the contract rate after a subsidy has been terminated. If the Section 8 status had been pleaded, the court would have become aware that the new contract charge is based upon a termination of a Section 8 subsidy and it would then obligate the court to inquire whether such a lease constitutes a “new agreement.” Such an omission misled the court in the allocation of an agreement with a pro se tenant and, in turn, required her to pay arrears which incorporates monthly contract rent charges from an invalid lease when she was only responsible for her share, even when the subsidy was terminated.

If the court had been aware on January 30, 2020 that Respondent was a recipient of a Section 8 subsidy and that the subsidy had been recently terminated, the court would have had the option to allow Respondent an opportunity to reinstate the subsidy upon a proper request. See id. Furthermore, the court denied Orders to Show Cause (Seqs. #6 & #7), which Respondent filed after the January 30, 2020 stipulation, on the grounds that Respondent does not demonstrate an ability to pay the arrears pursuant to the January 30, 2020 stipulation which includes the improper contract rent charges. These Orders to Show Cause were denied on February 18, 2020 and March 11, 2020. Respondent may have been evicted for an amount she did not correctly owe had Petitioner not been prevented from executing upon the warrant of eviction due to the onset of the pandemic. Hence, the omission did not allow this court an opportunity to properly adjudicate the matter. This scenario demonstrates the reason why, in the First Department, strict compliance with R.P.A.P.L. § 741 is required and failure to do so subjects a proceeding to a dismissal. Accordingly, Petitioner’s failure to strictly comply with R.P.A.P.L. § 741 warrants a dismissal of this proceeding.

Based upon the foregoing, Respondent’s cross-motion to dismiss is granted to the extent that the proceeding is hereby dismissed without prejudice due to Petitioner’s failure to strictly comply with R.P.A.P.L. § 741 by not correctly pleading the regulatory status of the subject premises that existed at the time of the commencement of the proceeding. The judgment and warrant are vacated accordingly. The court need not address Respondent’s remaining arguments. Petitioner’s motion to execute upon the warrant of eviction is denied due to the dismissal.

The foregoing constitutes the decision and order of the court.

Dated: November 21, 2022
Bronx, N.Y.



Omer Shahid, J.H.C.