2023-04-10

717 Sterling Corp. v. Cook

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2023 NY Slip Op 50345(U) [78 Misc 3d 1224(A)]
Decided on April 10, 2023
Civil Court Of The City Of New York, Kings County
Jimenez, J.
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Decided on April 10, 2023

Civil Court of the City of New York, Kings County

717 Sterling Corp., Petitioner,

against

Jerome Cook, Respondents.

Index No. 301084/20

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Sergio Jimenez, J.

Recitation, as required by CPLR § 2219(a), of the papers considered in the review of [*2]respondent's motion (seq. 4) seeking discovery in the form a rent breakdown and any other relief as the court may find appropriate:

Papers Numbered
Notice of Motion with affidavits and exhibits 1 (NYSCEF #36-38)
Affirmation in Opposition 2 (NYSCEF #39)
Affirmation in reply 3 (NYSCEF #40)

This nonpayment proceeding was commenced August 25, 2020, where petitioner alleged that $6,268.45 sought possession of the subject premises located at 717 Sterling Place, Apartment 12A, in Brooklyn, New York 11216 from the respondent. The instant motion seeks leave of court to engage in discovery, namely respondent requests a breakdown, leases and receipts from the petitioner dating back to 2017. The parties, both represented by counsel, fully briefed the issue, and the court heard argument on March 9, 2023. Upon hearing argument, the court reserved decision.

Motion for Discovery

Respondent moves for discovery pursuant CPLR §408 and §3101 seeking all leases, receipts and rent ledgers/breakdowns issued for the subject premises since October 2017. Petitioner opposes on the procedural ground that an affidavit of the tenant does not support the motion and on the substantive grounds that similar information has previously been given by stipulation and by affidavit. This dispute dates back months from when the respondent attempted to obtain a breakdown from petitioner through use of a demand for bill of particulars. This court denied said motion in its December 23, 2022 decision stating that the demand was improper as it sought a specific document and not an amplification of the pleadings. Petitioner's counsel has steadfastly refused to give a breakdown to respondent's counsel, in part, because petitioner's counsel's office does not want to be subject to a "motion to dismiss" using his own documentation, that it is an attorney-client privileged document and that he would gladly turn it over if respondent, through counsel, would agree that it is only for settlement purposes. Respondent has not agreed to those terms and, as such, the instant motion was brought. As a housekeeping issue, the parties agreed by stipulation to limit the substance of the non-payment to February 2020 forward by waiving any and all rents due prior to February 2020. As such, the court denies all requests for discovery prior to that date.

The test for seeking discovery in summary proceedings has been set forth by case law for about 40 years — does "ample need" exist (see *New York University v Farkas,* 121 Misc 2d 643 [Civ Ct New York County, 1983]; *Lonray, Inc. v Newhouse,* 229 AD2d 440 [App Div 2d Dep't, 1996]; *Georgetown Unsold Shares, LLC v Ledet,* 130 AD3d 99 [App Div 2d Dep't, 2015]). Leave of court is required (CPLR §408). The court in *Farkas* set forth a list of non-exhaustive factors that could help the court determine "ample need." This list includes:

> 1. Whether the petitioner has asserted facts to establish a cause of action;
>
> 2. Whether a need to determine information directly related to the cause of action has been demonstrated;
>
> 3. Whether the requested disclosure is carefully tailored so as to clarify the disputed facts;
>
> 4. Whether any prejudice will result;
>
> 5. Whether the court can fashion or condition its order to diminish or alleviate any resulting prejudice; and
>
> 6. Whether the court may structure discovery so that pro se tenants will be protected and not adversely affected by discovery requests;

Id. In the proceeding before the court, it is not in dispute that petitioner has asserted facts to establish a cause of action. This is a non-payment proceeding, petitioner alleges that respondent owes some rent. The legislature has created an entire body of law to litigate those claims and is recognized, as a matter of law, as a cause of action. Respondent has alleged that some or all of the rent has been paid in their pleaded answer (*Groschlaude v Lawlor*, 183 NYS3d 266 [Civ Ct New York County, 2023, J. Bacdayan]). As such, the first prong of the test has been met. The breakdown being sought, as a matter of law, is directly related to the cause of action. While receipts and leases may, on a factual case-by-case basis, be discoverable there is no analysis available here as respondent did not include any factual statements in their motion. The second prong has been met for the breakdown. The disclosure is tailored to the amount of time that the parties have agreed by stipulation constitutes the dispute: February 2020 through present. The third prong has been met. Petitioner also did not include any affidavit from their client, as such no tangible prejudice exists in the record. The fourth prong has been met. The last prong seeks judicial intervention where prejudice exists to limit the requested disclosure. While unnecessary here, as no prejudice was asserted, the court has whittled down the request as per the parties' two-attorney stipulation limiting the time frame. Since neither party is unrepresented, the court may ignore analysis of the sixth

factor. As such, respondent has met their ample need requirement with regard to the breakdown.

Petitioner opposes on the grounds that respondent has not provided an affidavit laying out why this information was needed. The court agrees with petitioner that respondent has, by failing to attach an affidavit, failed to bring up any aspect of ample need as to the leases and the receipts. However, the court disagrees that this is necessary with regard to the breakdown, given the prima facie pleading and that petitioner has put the alleged arrears into contention by bringing this proceeding (see *DHPD v Joseph*, 73 Misc 3d 1211[A][Civ Ct Kings County, 2021, J. Poley]; but see *3630 Holland LLC v Davis*, 66 Misc 3d 1221[A][Civ Ct Bronx County, 2019, J. Ibrahim]). Here, there is a pleading contesting the amount sought in the petition. Without some reasoning from the petitioner as to why this would be prejudicial, this defense is not convincing to the court. Petitioner has exclusive control of what they believe is owed. Were petitioner an actual person, instead of a corporate entity, the information could be said to be held in petitioner's head. Here, it is held exclusively in the corporate entity's business records and processes. Petitioner has chosen to seek alleged rent arrears in this proceeding, they have, therefore, put the matter into controversy.

In addition to the *Farkas* test, the court has to consider the very nature of summary eviction proceedings, that is the speedy efficient dispensing of justice. The history behind the creation of the housing court itself evinces its purpose, namely the quicker resolution of disputes that what is available in higher courts (*Dubowsky v Goldsmith*, 202 AD 818 [App Div 2d Dep't, 1922]). This impetus also belies not allowing discovery as per right (CPLR §408; *New York University v Farkas,* 121 Misc 2d 643 [Civ Ct New York County, 1983]). However, in most uncomplicated proceedings, disclosure of certain documents/information would serve the purpose of speeding up the litigation, to the benefit of all parties (see *50th Street HDFC v Abdur-Rahim*, 72 Misc 3d 1210[A][Civ Ct Kings County, 2021]). The *Abdur-Rahim* doctrine, while [*3]secondary to the *Farkas* test, helps inform the court as to what is appropriate summary proceeding discovery. Here, in a 2020 nonpayment proceeding where the only information being sought is the lease agreement under which the proceeding is brought and a breakdown of what is being sought. The court is explicitly excluding copies of the receipts given to respondent by petitioner, because respondent should have them and, as pointed out by the petitioner, there is no affidavit by respondent to show why petitioner should provide them. The lease request suffers from the same failure as the receipts. With the information as ordered here, respondent should be able to make a very quick determination as what defenses are available to them and whether they need to litigate the proceeding or offer a settlement. The respondent, having shown ample need as a matter of law, would

further the aims of speedy resolution with this information.

The court does not find petitioner's argument that a breakdown is a privileged document to be convincing. Petitioner has not demonstrated any reason as to why it would merit such protections. CPLR §3101(b) and (c) limit the type of documents which must be disclosed. However, an attorney merely making the conclusory statement that privilege or attorney work product applies does not satisfy the court for allowing those protections to attach (*Ligoure v City of New York*, 128 AD3d 1027 [App Div 2d Dep't, 2015]; *New York Schools Ins. Reciprocal v Milburn Sales Co., Inc.*, 105 AD3d 716 [App Div 2d Dep't, 2013]). Without the party themselves attesting to the privilege, an attorney affirmation alone are not grounds for exercising such a claim.

Setting aside that providing breakdowns in court is standard practice, even when seeking default judgments the law requires an accounting based on personal knowledge — in most instances a breakdown or a sworn statement outlining the alleged rental arrears (*Sella Properties v Deleon*, 25 Misc 3d 85 [App Term 2d Dep't, 2nd, 11th and 13th Jud Dists, 2009]). It would be an absurd result to require presentation of said document against a defaulting party while simultaneously prohibiting the same document from a present-and-appearing party.

The court may take judicial notice of what is common knowledge and of its own records (see *Hunter v New York, O. & W. Ry. Co.*, 116 NY 615 [1889]; *Ocean Diagnostic Imaging P.C. v Prudential Property & Case, Ins. Co.*, 7 Misc 3d 136[A][App Term 2d Dep't, 9th and 19th Jud Dists, 2005]). It is undisputed that the Department of Social Services (DSS) through its Human Resources Administration (HRA) issues is intimately tied to housing court in a way that outpaces every other court. In Fiscal Year 2022, HRA received 25,323 **[FN1]** applications for "one-shot deals," which are grants to pay rental arrears issued in order to prevent homelessness and shelter entry. Of that number, HRA approved 67.9% or 17,194 of those applications. Housing court, in the same fiscal year, saw 69,440 **[FN2]** petitions filed, out of those 54,806 were nonpayment petitions. Accounting for the fact that some holdover petitions settled with payment of money and that some one-shot deal applications are approved for respondents to move, HRA is involved [*4]in about 36-46% of housing court cases over the course of a year **[FN3]** .

HRA, however, does not only act as a separate third-party benefactor. Instead, they have multiple offices in the Kings County Housing Court building. There is currently a pilot program being overseen by HRA that funnels all litigants through both its public benefits

system as well as the Office of Civil Justice (OCJ) which seeks to connect respondent-tenants with civil legal services attorneys. Given the massive impact of this government agency in the functioning and resolution of this court, some consideration needs to be given to the HRA process. Executives at HRA have stated, both publicly and to the court, that there are a variety of documents which are not required to apply to for a one-shot deal. However, anecdotally, respondents have heard from various levels of HRA caseworkers that stipulations, breakdowns, updated breakdowns and a wide range of documents are required to complete the application. While these problems generally arise with self-represented litigants, they still sometimes require attention from a more sophisticated advocate (such as their lawyer or GAL) or a neutral information gathering arbiter (such as the court) (see *1106 Remsen Realty LLC v Hayden*, 77 Misc 3d 1235 [A][Civ Ct Kings County, 2023, J. Weisberg]). Until such point as HRA has published, executed and enforced a standard operating procedure across their entire portfolio which does not mandate a breakdown, the court cannot be complicit in adding another obstacle to respondents' ability to resolve their non-payment proceedings, without an articulated showing of significant prejudice by petitioner.

Conclusion

Respondent's motion is granted in part for the reasons set forth above. Petitioner is ordered to provide a rent breakdown dating from February 2020 to present to respondent's counsel by May 16, 2023. Petitioner is not ordered provide receipts given to the respondent as ample need was not proven. Petitioner is also not ordered to provide any leases from 2020 forward because respondent has not put forth any reason as to why they do not have them or why they would need them. Should petitioner determine that this document does not exist, petitioner to provide an affidavit stating that said breakdown does not exist and would then be precluded from presenting any breakdown at trial. Proceeding adjourned to May 23, 2023 at 10:30am in Part E, Room 504 for all purposes, including possible transfer of the proceeding to Part X for referral to trial. Should the parties appeal this decision they are instructed to inform the court of any stays put into place by the Appellate Term. This constitutes the Decision and Order of the Court.

Dated: April 10, 2023
Brooklyn, New York

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Sergio Jimenez, JHC

Footnotes

Footnote 1: For fiscal year 2022. See Mayor's Management Report, https://www.nyc.gov/assets/operations/downloads/pdf/mmr2022/2022_mmr.pdf.

Footnote 2: Universal Access to Legal Services — A Report on Year Five of Implementation in New York City https://www.nyc.gov/assets/hra/downloads/pdf/services/civiljustice/OCJ_UA_Annual_Report_2022.pdf

Footnote 3: The court notes that post-pandemic the number of petitions filed have decreased.

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