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501 WEST 143 STREET HDFC v. PARK

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CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK: HOUSING PART F

501 WEST 143 STREET HDFC

Index No. 306518-21

Petitioner,

DECISION/ORDER

-against-

Motion Sequence No. 1

OLIEVER PARK, DEBORAH PARK, ET AL

Respondents.

HON KAREN MAY BACDAYAN, JHC

David A Kaminsky & Associates, PC, for the petitioner
Northern Manhattan Improvement Corporation for the respondent-Oliever Park

Recitation, as required by CPLR 2219 (a) of the papers considered in review of this motion by NYSCEF Doc No: 13-40.

PROCEDURAL HISTORY AND BACKGROUND

This is a holdover summary proceeding brought against respondents based on the expiration and or termination of their license to occupy the subject premises. Oliever (“Olivia”) Park (“respondent”) is the ex-wife of the former superintendent of the building, Gavin Park, who occupied the premises “as a condition of his employment. . . .” (NYSCEF Doc No. 25, Cheng affidavit ¶ 3.) Mr. Park permanently vacated the premises on or about June 2019. (*Id.*)

Respondent claims that she is not a licensee because in 1993 she “moved into the subject premises to reside with Mr. Park and her children,” NYSCEF Doc No. 14, respondent’s attorney’s affirmation ¶7, and in 1994 she bought shares in the Housing Development Fund Corporation cooperative apartment (“the coop”) from which petitioner seeks her eviction. (NYSCEF Doc No. 12, answer ¶ 17-18.) Respondent spent over “\$15,000 to renovate the bathroom and kitchen of the subject premises, something not typical of a mere renter. (NYSCEF Doc No. 14, ¶ 13.) As prima facie evidence of this, respondent attaches emails from the then managing agent indicating that she is a shareholder. (*Id.* ¶¶ 14-15; NYSCEF Doc nos. 17-18, respondent’s exhibits C and D, respectively.) Between June 2019 and August 2019, Veritas Management contacted respondent to request proof of ownership as a shareholder, including a letter from the coop board president or a copy of the proprietary lease and stock certification. (NYSCEF Doc No. 14, ¶¶ 17 – 19; NYSCEF Doc Nos. 19 – 21, respondent’s exhibits E – G, respectively.) Respondent states through her attorney that there is evidence that “Respondent served

as an officer of Petitioner, which she could not have done if she was not a shareholder.” (NYSCEF Doc No. 40, respondent’s affirmation in reply ¶ 5.)

In opposition, petitioner argues that respondent ought to themselves have a copy of the proprietary lease and/or stock certificate, and that petitioner has already conducted a diligent search for same and failed to unearth the documents. (NYSCEF Doc No. 26, petitioner’s attorney’s affirmation ¶ 4; NYSCEF Doc No. 25, Cheng affidavit ¶¶ 5-6.) Petitioner also casts aspersions on the former managing agent, blaming them for creating confusion regarding respondent’s status as a shareholder, and suggesting that petitioner ended its business relationship with the former managing agent in part because “they were frequently inaccurate in their statements.” (NYSCEF Doc No. 26 ¶ 6, NYSCEF Doc No. 25, Cheng affidavit ¶ 9.) Petitioner argues that that a discovery order is unnecessary as petitioner has already conducted a diligent search for the records, that respondents have not shown ample need, and that the delay caused by a discovery order is prejudicial because respondent is not paying use and occupancy.

In reply, respondent through her attorney states that respondent does not have a copy of the stock certificate or proprietary lease. (NYSCEF Doc No. 14, respondent’s attorney’s affirmation ¶ 9.) While it is true that it may have been wise to be more careful with these documents, it is also true, and not disputed, that the coop board is required to maintain these documents if they exist, *id.*, and it is of no moment that the former managing agent whom petitioner entrusted business dealings may be been less than competent. Ample need exists here, respondent urges, because there is, at the very least, a bona fide dispute regarding the existence of these dispositive documents, and respondent faces eviction from her home of nearly 30 years. Respondent’s attorney states that under similar circumstances petitioner has, after an initial diligent search, located the same documents requested here once an order from the court was issued. (*Id.* ¶ 8; *501 W 143 Street HDFC v Diane Berry*, Civ Ct, New York County, Jul 1, 2019, Nembhard, J., Index No. 670016/16.)

DISCUSSION

Discovery in summary proceedings is available only by leave of court upon a showing of “ample need.” (CPLR 408; *Mautner-Glick Corp. v Higgins*, 64 Misc 3d 16 [App Term, 1st Dept 2019].) In determining whether a party has established ample need for discovery, courts consider a number of factors, not all of which need be present in every case, including: (1) whether the movant has asserted facts to establish a claim or defense; (2) whether there is a need to determine information *directly related to the claim or defense*; (3) whether the requested disclosure is carefully tailored and likely to clarify the disputed facts; (4) whether prejudice will result from granting leave to conduct discovery; and

(5) whether any prejudice caused by granting a discovery request can be diminished by an order fashioned by the court for that purpose. (*New York Univ. v Farkas*, 121 Misc 2d 643, 647 [Civ Ct, NY County 1983].)

The court rejects petitioner’s argument that respondent has not demonstrated ample need to conduct discovery in this proceeding. Respondent has properly interposed a defense that respondent is not a licensee; rather, she is a shareholder. This defense goes to the heart of the proceeding and discovery will clarify this issue for trial. It is without merit for petitioner to simply state through its attorney that the documents do not exist and for that reason alone the requested documents will not clarify the issue. (NYSCEF Doc No. 25, petitioner’s attorney’s affirmation ¶ 16.)

Petitioner opposition to respondent’s motion is prejudicial as the delay caused by engaging in discovery will “allow an unauthorized person to reside in the subject premises without providing compensation to the Petitioner” is not persuasive. (*Id.*) Petitioner has the ability to formally move for use and occupancy pursuant to RPAPL 745 (2) and has not availed itself of this remedy to ameliorate the very prejudice claimed.

The court notes that, given ample opportunity to brief this issue and to argue it during the 15 minute discourse with the court, petitioner has not objected to the scope of the discovery requested. Thus, this argument is not before the court and cannot be inferred or ruled upon.

CONCLUSION

Accordingly, it is

ORDERED that respondent’s motion to conduct discovery pursuant to CPLR 408 is GRANTED and the document demands provided at NYSCEF Doc no. 15 are deemed served upon petitioner; and it is further

ORDERED that petitioner shall respond to the document demands within 45 days from the date of this decision; and it is further

ORDERED that the proceeding is marked off calendar for the parties to engage in discovery as directed by this court, and that either party may restore this proceeding to the court’s calendar on written notice of motion after 45 days for trial, use and occupancy, or other appropriate relief.

This constitutes the decision and order of this court.

Dated: October 18, 2022
New York, NY

So Ordered

Karen May Bacdayan

HON. KAREN MAY BACDAYAN
Judge, Housing Part