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Siguencia v BSF 519 W. 143rd St. Holding LLC

2023 NY Slip Op 31968(U)

June 12, 2023

Supreme Court, New York County

Docket Number: Index No. 158420/2017

Judge: David B. Cohen

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. DAVID B. COHEN

PART 58

Justice

-----X

INDEX NO. 158420/2017

HECTOR SIGUENCIA,

MOTION SEQ. NO. 003

Plaintiff,

- v -

BSF 519 WEST 143RD STREET HOLDING LLC,414-519
WEST 143 OWNER LLC, 519 WEST 143 OWNER LLC,
MAJESTIC PARTNERS LLC, BARBERRY ROSE
MANAGEMENT COMPANY, INC, LEWIS BARBANEL,
JOSE DIAZ, and CHRISTOPHER SCIOCCHETTI,

DECISION + ORDER ON
MOTION

Defendants.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 003) 73, 74, 75, 76, 77,
78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95

were read on this motion to/for RENEW/REARGUE/RESETTLE/RECONSIDER

In this landlord/tenant action, defendant BSF 519 West 143rd Street Holding LLC (BSF)
moves, pursuant to CPLR 2221(e), for leave to renew its motion to dismiss plaintiff's complaint,
and, upon renewal, for an order granting the motion and dismissing plaintiff's first cause of
action for rent overcharge. The motion is unopposed.

I. Factual and Procedural Background

As set forth in this Court's March 29, 2018, and November 19, 2018 orders (NYSCEF
Doc Nos. 26, 52), plaintiff was a tenant in an apartment located at 519 West 143rd Street in
Manhattan and BSF was his landlord (Doc No. 1). He commenced this action in September
2017, asserting claims of rent overcharge, conversion of a security deposit, and attorneys' fees
(Doc No. 1). BSF moved to dismiss the rent overcharge claim, arguing that the Division of
Housing and Community Renewal (DHCR) had primary jurisdiction of the claim (Doc Nos. 12-

13, 16).¹ By decision and order of March 29, 2018, the motion was granted in part and plaintiff's rent overcharge claim was dismissed after it was determined that the DHCR was the more appropriate venue for his claim (Doc No. 26).

In February 2019, plaintiff filed a complaint with DHCR asserting a rent overcharge claim (Doc No. 76). He then commenced a second action in Supreme Court in October 2019 bearing index No. 159751/2019 asserting claims identical to those from the 2017 action (i.e., rent overcharge, conversion of a security deposit, and attorneys fees) (Doc No. 1). BSF again moved to dismiss the rent overcharge claim, arguing that it was barred by collateral estoppel and not permitted under the Housing Stability and Tenant Protection Act, and plaintiff cross-moved to consolidate the action with this action bearing index No. 15820/2017 (Doc No. 11-12, 19).²

At oral argument, plaintiff's counsel indicated that he submitted a letter to DHCR in August 2019 withdrawing the complaint previously submitted to the agency (Doc No. 79), which was also included with the cross-motion to consolidate (Doc No. 36). However, when asked if the complaint had actually been withdrawn, plaintiff's counsel explained that the DHCR had not confirmed withdrawal of the complaint or even acknowledged receipt of the withdrawal letter.³ Therefore, it was determined that a triable question of fact existed regarding withdrawal of the complaint with DHCR, and BSF's motion was denied in part on the record at oral argument. By decision and order of September 23, 2020, BSF's motion was denied in part and plaintiff's cross-

¹ The motion to dismiss was made by BSF and several other named defendants. It sought to dismiss the entire complaint as against the other named defendants, but only the rent overcharge claim as against BSF.

² As with the motion to dismiss in the 2017 action, the motion to dismiss in the 2019 action was made by BSF and several other named defendants. However, it sought to dismiss the entire complaint as against all of the moving defendants.

³ When questioned further about what would happen if DHCR asked for more information, he explained that he would provide the withdrawal letter again and include a copy of the complaints filed in Supreme Court (Doc No. 79).

motion was granted for the reasons placed on the record and both actions were consolidated under index No. 15820/2017 (Index No. 159751/2019, Doc. No. 50).⁴

BSF moves for leave to renew its initial motion to dismiss, arguing that it has new factual evidence that would change the prior determination (Doc No. 73). The new factual evidence includes, among other things, a status update from DHCR's website, a DHCR request for additional information, plaintiff's response to that DHCR request, and an order from DHCR. The motion is unopposed.⁵

Relevant Documents

DHCR Request for Additional Information (Doc No. 82)

In November 2022, DHCR sent both parties a request for additional information regarding the rental history of plaintiff's apartment.

Plaintiff's Response to DHCR Request for Additional Information (Doc No. 83)

In response to DHCR's November 2022 request, plaintiff provided over 100 pages of documents related to the rental history, which were predominantly money orders and postal receipts. However, the August 2019 letter from plaintiff's counsel to DHCR withdrawing the complaint was not included in plaintiff's response.

DHCR Order (Doc No. 86).

In February 2023, DHCR issued an order denying plaintiff's complaint of rent overcharge after it was determined that all of the rent adjustments that occurred were lawful (as of February 2023, DHCR's website indicated that plaintiff's complaint had a status of "[a]ctively

⁴ The September 2020 order granted the motion to dismiss to the extent that plaintiff's remaining claims of conversion of a security deposit and attorneys fees as against all defendants were dismissed (Doc No. 50).

⁵ Although plaintiff's request for an extension of time to oppose this renewal motion was granted (Doc No. 94), he failed to submit opposition papers by the May 11, 2023, deadline.

being processed,” and provided no indication that plaintiff’s complaint had been withdrawn (*Doc No. 84*).

II. Legal Analysis and Conclusions

A motion for leave to renew is left to the discretion of the trial court (*see Wang v LaFrieda*, 189 AD3d 732, 732 [1st Dept 2020], *lv dismissed* 37 NY3d 1042 [2021]). Such leave is warranted only when a movant demonstrates that there has been “a change in the law that would change the prior determination,” or when he or she demonstrates that there are “new facts not offered on the prior motion that would change the prior determination” and provides a reasonable justification for why such facts were not included before (CPLR 2221 [e] [2], [3]; *see Abu Dhabi Commercial Bank, P.J.S.C. v Credit Suisse Sec. (USA) LLC*, 114 AD3d 432, 432 [1st Dept 2014]).

Here, BSF demonstrates that new facts exist which were not included in its initial motion to dismiss and it further provides a reasonable justification for why such new facts were not included previously: DHCR’s request for additional information, plaintiff’s response to that request, the February 2023 complaint status, and DHCR’s February 2023 order all occurred well after plaintiff’s motion to dismiss was decided in September 2020 (*see Yue Liang Wang v Qiang Lin*, 211 AD3d 1087, 1088 [2d Dept 2022] [granting leave to renew where movant offered new facts in form of deposition testimony taken after summary judgment motion filed]; *Chin v Perrucci*, 136 AD3d 653, 654-655 [2d Dept 2016] [similar]). Therefore, BSF’s request for leave to renew is granted.

Upon renewal, plaintiff’s first cause of action for rent overcharge must be dismissed. Although Supreme Court and DHCR now have concurrent jurisdiction over the enforcement of rent overcharge claims, “[a] plaintiff’s choice of forum controls” (*Collazo v Netherland Prop.*

Assets LLC, 35 NY3d 987, 990 [2020]). Here, plaintiff chose to pursue his rent overcharge claim with DHCR. Despite the assertions of plaintiff's counsel that the complaint was withdrawn from DHCR, it is apparent that no such withdrawal actually occurred. Plaintiff's substantial response to DHCR's request for additional information and DHCR's February 2023 order establish that his complaint continued to proceed through agency adjudication after this Court's September 2020 order. Plaintiff's choice to litigate his rent overcharge claim with DHCR means he cannot simultaneously litigate it in this Court (*see id.* [holding plaintiff must pursue rent overcharge claim in Supreme Court because plaintiff chose to pursue claim there initially]; *Matter of Hefti v New York State Div. of Hous. & Community Renewal*, 203 AD3d 605, 605-606 [1st Dept 2022] [affirming dismissal of plaintiff's rent overcharge claim after she chose to litigate claim with DHCR], *lv denied* 39 NY3d 955 [2022]).

The parties remaining contentions are either without merit or need not be addressed given the findings outlined above.

Accordingly, it is hereby:

ORDERED that defendant BSF 519 West 143rd Street Holding LLC's motion for leave to renew its motion to dismiss which resulted in this Court's order dated September 23, 2020, issued under Index No. 159751/2019, is granted, and, upon renewal, the motion to dismiss is granted to the extent that plaintiff's first cause of action for rent overcharge is dismissed as against it; and it is further

ORDERED that the Clerk of the Court is directed to enter judgment accordingly; and it is further

ORDERED that counsel for the moving party shall serve a copy of this order with notice of entry upon the Clerk of the Court (60 Centre Street, Room 141B) and the Clerk of the General Clerk's Office (60 Centre Street, Room 119); and it is further

ORDERED that such service upon the Clerk of the Court and the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Case* (accessible at the "E-Filing" page on the court's website at the address www.nycourts.gov/suptctmanh).

6/12/2023

DATE



HON. DAVID B. COHEN
J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE