2020-10-16

1464 Gateway LLC v. Wright

[*1]

1464 Gateway LLC v Wright
2020 NY Slip Op 51283(U)
Decided on October 16, 2020
Civil Court Of The City Of New York, Queens County
Jimenez, 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This opinion is uncorrected and will not be published in the printed Official Reports.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 October 16, 2020

Civil Court of the City of New York, Queens County

1464 Gateway LLC, Petitioner,

against

Lashema Wright, Respondents-Tenant, MICHAEL HARNEY AKA "John Doe", Respondents-Undertenant.

L & T 52173/20

Mordente Law Firm, LLC

By: Blake Abrash, Esq.

71-58 Austin Street

Fresh Meadows, New York 11366

Attorneys for Petitioner — 1464 Gateway LLC

Legal Services NYC Queens

By: Mikailla Carwin, Esq.

89-00 Sutphin Boulevard

5th Floor

Jamaica, New York 11435

Attorneys for Respondent — Lashema Wright

Sergio Jimenez, J.

Recitation, as required by CPLR § 2219(a), of the papers considered in the review of Petitioner's motion for use and occupancy pursuant to RPAPL § 745 and Respondent's cross-motion for CPLR §3211 dismissal and in the alternative for CPLR §3025(b) acceptance of the annexed answer as well as for any other relief as the court may deem proper:

PapersNumbered

Notice of Motion and Affidavits Annexed 1

Notice of Cross-motion and Affidavits Annexed 2

Answering Affirmations/Affidavits 2, 3

Replying Affirmations. 3, 4

Exhibits

Memorandum of law

Upon the foregoing cited papers, the decision and order on Respondent's motion is as follows:

PROCEDURAL HISTORY

Petitioner, 1464 Gateway LLC (Petitioner), commenced the holdover on February 5, 2020 seeking possession of the subject premises located at 11-17 Grassmere Terrace, Second Floor Apartment in Far Rockaway, New York 11691. Petitioner alleges respondent was informed that the tenancy would end by notice dated December 16, 2019 giving them until January 31, 2020 to vacate the premises. A petition was filed February 5, 2020 and calendared for February 25, 2020. At that appearance, a request for an adjournment was made by respondent to have an opportunity to confer with counsel, which was granted adjourning the proceeding to March 31, 2020. As this proceeding fell under one of the Universal Access to Counsel (UA) zip codes, that day's practitioner, QLS, put in a notice of appearance on that day, February 25, 2020. Shortly thereafter, the court enacted emergency operations as a result of the global pandemic. Petitioner, by counsel, filed the instant motion seeking use and occupancy in August of 2020. Respondent, also by counsel, filed their cross-motion in late

September 2020. Once both motions were fully briefed, as per OCA directives, the court heard virtual arguments on October 15, 2020 and reserved decision.

Petitioner's Motion and Respondent's Cross-motion

Petitioner, pursuant to RPAPL 745(2)(a), moves for an order of this court for use and occupancy to be paid during the pendency of this proceeding. Respondent opposes arguing that petitioner has not met their statutory burden in seeking use and occupancy.

Respondent cross-moves, pursuant to CPLR 3211, seeking dismissal of the proceeding for petitioner's failure to apprise Human Resources Administration (HRA) of their intent to bring this proceeding. The argument is analogous to the Section 8 Williams Consent Decree requirement that petitioners must put the New York City Housing Authority (NYCHA) on notice of an impending eviction proceeding. Petitioner opposes stating that there is no requirement that they do so.

Respondent, in the alternative, further cross-moves to interpose the annexed answer. Petitioner opposes stating that there was no reasonable excuse for failure to do so up until this motion and claims that the defenses have no merit.

Analysis

RPAPL §745(2)(a) states in part:

In a summary proceeding upon the second of two adjournments granted solely at the request of the respondent, or, upon the sixtieth day after the first appearance of the parties in court less any days that the proceeding has been adjourned upon the request of the petitioner, counting only days attributable to adjournment requests made solely at the request of the respondent and not counting an initial adjournment requested by a respondent unrepresented by counsel for the purpose of securing counsel, whichever occurs sooner, the court may, upon consideration of the equities, direct that the respondent, upon a motion on notice made by the petitioner, deposit with the court sums of rent or use and occupancy that shall accrue subsequent to the date of the court's order, which may be established without the use of expert testimony

This section sets forth the requirements for the award of a court deposit of use and occupancy. It is undisputed that the motion was made in writing, so petitioner has satisfied that aspect of the request. It is also undisputed that the respondent did request the first adjournment but did so in order to secure counsel. Petitioner argues that, since respondent's counsel filed a notice of appearance on that initial date, such an adjournment should be counted against Respondent. However, the reality of the UA program is such that there is one legal services organization is assigned to all of the eligible proceedings on that day. Even with some opportunity to conduct an intake, inside the courthouse, it would be cynical to suggest that a rushed connection constitutes a meaningful conference with counsel during that truncated time frame. While the court may, under these facts, consider the first appearance to be an initial adjournment " for the purposes of securing counsel," the court does not have to reach that conclusion because even following petitioner's argument, the requisite amount of time has not passed *Id*. The proceeding on its initial date of February 25, 2020 was adjourned to March 31, 2020. This constitutes amount only constitutes 21 days, which, for the purposes of argument, could be charged against Respondent. However, prior to the subsequent appearance date, the court had entered emergency operations as a result of the global pandemic. On March 20, 2020, Governor Cuomo issued Executive Order 202.8 which suspended, for civil proceedings, "any specific time limit for the commencement, filing or service of any legal action, notice, motion or other process or proceeding as prescribed by the procedural laws of the state until April 19, 2020." Following that, there has been no interruption by subsequent EOs. This suspension of a variety of legal mechanisms is applicable here. Further March 16, 2020 Administrative Order 68/20, issued by Hon. Lawrence Marks, also suspended non-essential court functions. As such, no other days can be classified as "attributable to adjournment requests made solely at the request of the respondent" because there was no other date. Making a motion or a cross-motion did not change that outcome. The record before the court does not establish that there have been two adjournments solely at the request of the respondent or that 60 days have passed following the first appearance counting only days attributable to adjournments solely made by respondent. *Front Street Restaurant Corp. v. Ciolli*, 55 Misc 3d 104 (App Term, 2d 11th and 13th Jud Dists, 2017). As such, petitioner's motion is denied, though it may be renewed once timely.

Respondent cross-moves to dismiss on the grounds that petitioner did not serve HRA with the petition or notice to petition. Respondent relies on the Williams Consent Decree that was litigated in federal court and agreed to by the parties involved, which set up a mechanism for Section 8 due process compliance. The court does not find this argument compelling as

there is no basis for the dismissal of a proceeding for failure to serve the public assistance provider. The logic behind this argument would create a responsibility for all owners to serve HRA for any tenant that received any public assistance. The court is not prepared to demand owners force themselves into such intimate aspects of all of their tenants' private lives to determine their source of income as a condition precedent to bringing a proceeding. Even if the court was to believe respondent's argument, this is a holdover where possession is the primary concern and, also analogously, the ability to legally collect rent is not dispositive in a proceeding where only possession is sought. *Czerwinski v. Hayes*, 8 Misc 3d 89 (App. Term, 2nd and 11th Jud Dists, 2005).

Respondent also moves to interpose a late answer pursuant to CPLR 3025(b). However, since this is a holdover proceeding and no answer was previously filed, the court finds that 3025(b) does not apply. CPLR §3012(d) and 3211(f) both give the court discretion to allow an [*2]amplification of a time to appear and plead. Since petitioner did not voice any discernable prejudice, one will not be implied by the court. Respondent's answer is deemed interposed and is made part of the record. Petitioner may move, under the appropriate portions of CPLR §3211, to dismiss the defenses asserted [FN1] .

[The remainder of this page is left intentionally blank]

Conclusion

For the reasons set forth above, petitioner's motion is denied as untimely and Respondent's cross-motion is granted in part and denied in part. The branch of respondent's motion seeking dismissal is denied as being entirely meritless. The branch of respondent's motion seeking to interpose the answer is granted as no prejudice was articulated by petitioner as a result of the amendment of the answer. This proceeding is referred to the trial part and adjourned. As per emergency court operations, the parties will be apprised by the trial part as to their pre-trial conference. Every aspect of this order must comply with any court procedures, directives, administrative orders, new legislation and/or executive orders that may be in place at that time. This constitutes the Decision and Order of the Court.

Dated: October 16, 2020

Queens, New York

_____

Hon. Sergio Jimenez

Footnotes

Footnote 1: The court notes that in a true CPLR §3025 situation, petitioner's arguments to dismiss certain defenses would be part of the threshold analysis for amendment but in this situation of novel pleadings without a motion respondent would not be afforded a chance to defend their pleadings The standard for not allowing a defense is a different one than that of a CPLR §3211 motion as would be required.

Return to Decision List