2019-11-01

57 Elmhurst, LLC v. Williams

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2019 NY Slip Op 51778(U) [65 Misc 3d 1221(A)] [65 Misc 3d 1221]

Decided on November 1, 2019

Civil Court Of The City Of New York, Queens County

Guthrie, J.

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Decided on November 1, 2019

Civil Court of the City of New York, Queens County

57 Elmhurst, LLC, Petitioner-Landlord,

against

Asia Williams, Charles Whitfield, Respondents-Tenants, "JOHN DOE" & "JANE DOE," Respondents-Under-tenants.

L & T 57293/19

Curtis Harger, Esq.

166-07 Hillside Avenue, Suite #1

Jamaica, NY 11432

Attorney for Petitioner

Bohee Rhee, Esq.

Queens Legal Services

89-00 Sutphin Boulevard, 5th Floor

Jamaica, NY 11435

Attorneys for Respondent Asia Williams

Clinton J. Guthrie, J.

Recitation, as required by CPLR § 2219(a), of the papers considered in the review of Respondent Asia Williams's Order to Show Cause to vacate the stipulation of settlement dated June 4, 2019, to vacate the judgment and warrant, for leave to file an answer and counterclaim, and for other relief:

Papers Numbered

Order to Show Cause & Affirmation/Affidavit/Exhibits Annexed 1

Affirmation in Opposition & Affidavit/Exhibits Annexed 2

Reply Affirmation & Exhibits Annexed 3

Notice of Petition & Petition 4

Court File Jacket 5

Upon the foregoing cited papers, the decision and order on Respondent's Order to Show Cause is as follows:

PROCEDURAL HISTORY

The immediate nonpayment proceeding was commenced on March 28, 2019. The Petition alleges that the subject apartment, located at 94-25 57th Avenue, Apt No.5X, Elmhurst, New York 11373, is subject to the Rent Stabilization Law (RSL) of 1969, as amended, and that the rent does not exceed the legal regulated rent determined in compliance with the RSL.[FN1] Initially, Petitioner moved by Order to Show Cause to amend the body of the Petition to include Charles Whitfield and

for a default judgment. On the return date of the Order to Show Cause, June 4, 2019, Respondents Asia Williams and Charles Whitfield appeared *pro se* and entered into a stipulation of settlement with Petitioner, who was represented by counsel. According to the terms of the June 4th stipulation, the body of the Petition was amended to include Charles Whitfield, *nunc pro tunc*. In addition, Respondents agreed to a judgment in the amount of $5,700.00, all rent due at the time following a $1,700.00 payment in court. Issuance of the warrant was stayed 5 days and execution of the warrant was stayed for multiple payments, the latest of which was due by August 30, 2019. Petitioner also agreed to inspect and repair various conditions as required by law.

In July 2019, after receiving a marshal's notice of eviction, Charles Whitfield filed an Order to Show Cause seeking additional time to pay the rents due. On the return date of the Order to Show Cause, the Court granted it to the extent of staying execution of the warrant for payments on July 30th, August 15th, and August 30th. Thereafter, on August 12, 2019, Respondent Asia Williams, through counsel (Queens Legal Services, appearing through the Universal Access to Counsel program)[FN2] , filed the immediate Order to Show Cause, which seeks vacatur of the June 4, 2019 stipulation, vacatur of the judgment and warrant, leave to interpose a proposed answer and counterclaim, or in the alternative, a further stay of execution of the warrant to pay outstanding arrears. After two adjournments of the Order to Show Cause for opposition and reply, the Court heard argument on October 9, 2019 and reserved decision.

ANALYSIS

The Court of Appeals has held that "[s]tipulations of settlement are favored by the courts and not lightly cast aside . . . [and] [o]nly where there is cause sufficient to invalidate a contract, such as fraud, collusion, mistake or accident, will a party be relieved from the consequences of a stipulation made during litigation." *Hallock v. State*, 64 NY2d 224, 230 (1984). Respondent (Asia Williams) does not specifically allege fraud, collusion, mistake, or accident. Instead, she relies on the standard set out in *In re Estate of Frutiger*, 29 NY2d 143, 150 (1971), which held that a party may be relieved from a stipulation where it was entered "inadvertently, inadvisably [*2]or improvidently" such that it took the case "out of the due and ordinary course of the proceeding in the action, and in doing so doing may work to [the party's] prejudice." *See also 1420 Concourse Corp. v. Cruz*, 135 AD2d 371, 373 (1st Dep't 1987); *443-445 Jefferson Ave., LLC v. Severin*, 55 Misc 3d 140(A), 58 N.Y.S.3d 73 (App. Term 2d, 11th & 13th Jud. Dists. 2017); *Park Props. Assoc., L.P. v. Williams*, 38 Misc 3d 35, 37, 959 N.Y.S.2d 798, 799 (App. Term 9th & 10th Jud. Dists. 2012).

Respondent's affidavit generally states that she was not properly advised of her rights. She also states that she has retained counsel and did not have an opportunity to raise defenses and counterclaims. A proposed verified answer is attached to the Order to Show Cause. In addition to breach of the warranty of habitability, Ms. Williams asserts a defense of rent overcharge. The proposed overcharge defense alleges that Petitioner increased rent more than the permissible amount and that the overcharge is willful. In the affirmation in support of the Order to Show Cause, Ms. Williams's attorney highlights a large rent increase on the Division of Housing and Community Renewal (DHCR) rent registration history [FN3] immediately prior to Respondents' tenancies. The rent increased from $1,250.00 in 2017, when there was a vacancy, to $2,474.99 (with a preferential rent of $1,800.00) in 2018, when Respondents became tenants. The registration notes that the increase was due to a vacancy and improvements. Finally, Ms. Williams's attorney argues that the June 4th stipulation should be vacated because Ms. Williams did not have the benefit of counsel at the time that she entered into it, citing to *144 Woodruff Corp. v. Lacrete*, 154 Misc 2d 301, 585 N.Y.S.2d 956 (Civ. Ct. Kings County 1992) and *2247 Webster Ave. HDFC v. Galarce*, 62 Misc 3d 1036, 90 N.Y.S.3d 872 (Civ. Ct. Bronx County 2019).

In opposition, Petitioner refers to a prior nonpayment proceeding between the parties, Index No. L & T 67410/18 (Queens County), and argues that Ms. Williams's co-respondent, Mr. Whitfield, was represented by counsel (indeed, the same office as the one currently representing Ms. Williams) and executed a stipulation settling the proceeding without raising any overcharge defense. Petitioner also attaches various proof in support of the rent increase that was taken prior to Respondents' tenancy, specifically the lease and lease rider with vacancy lease and IAI (Individual Apartment Improvements) calculations, a copy of a check to Elite Renovations LLC for $61,424.73, and invoices from Elite Renovations LLC. Finally, Petitioner attaches a Maintenance Request form purportedly signed by Ms. Williams and dated June 18, 2019, acknowledging completion of various repairs.

In her reply papers, Ms. Williams's attorney points out that the address for Elite Renovations LLC (appearing on the letter from Felix Reyes of Elite Renovations LLC attached to Petitioner's opposition papers), 500 Frank W Burr Boulevard, Suite 47, Teaneck, NJ 07666, is the same address for the former owner, 94-25 57th Avenue Holdings LLC, that appears on the current deed for the subject premises, recorded on April 12, 2018, and the New York State Department of State Division of Corporations Entity Information page for 94-25 57th Avenue Holdings, LLC.[FN4] As to the significance of the common address, Ms. Williams's attorney attaches DHCR Fact Sheet #26, which

states that work for IAIs "must be done by a licensed contractor [*3]and there is a prohibition on common ownership between the contractor and the owner." This provision mirrors an amendment to NYC Admin. Code § 26-511(c)(13) (Rent Stabilization Law) contained in the Housing Stability and Tenant Protection Act (HSTPA) of 2019, which provides that DHCR shall promulgate rules and regulations prohibiting common ownership between the landlord and contractor or vendor. The amendment took effect immediately upon the passage of the HSTPA on June 14, 2019. *See* Laws 2019, ch 36 at Part K, §§ 2, 18.

The amendment to NYC Admin. Code § 26-511(c)(13) was not in effect at the time that the purported work for the IAI was done here (which was in 2017). However, "identity of interest" between a landlord and contractor was subject to enhanced scrutiny by DHCR and the courts before passage of the HSTPA. *See, e.g.*, *Matter of 125 St. James Place LLC v. New York State Div. of Hous. and Community Renewal*, 158 AD3d 417 (1st Dep't 2018) (citing DHCR Policy Statement 90-10, which permitted DHCR to request additional proof of cost and payment for work done to support an IAI when there was an identity of interest between landlord and contractor). With the expanded scope of records, set out in NYC Admin. Code § 26-516(h), that shall be considered by courts to determine legal rents and overcharges under the HSTPA, Ms. Williams has demonstrated an adequate basis for her overcharge defense to be litigated on the merits. *See Dugan v. London Terrace Gardens, L.P.*, 2019 NY Slip Op 06578 (1st Dep't 2019) (HSTPA overcharge and statute of limitations amendments apply to all pending cases).[FN5]

To the extent that Mr. Whitfield was represented by counsel in the prior nonpayment proceeding and did not raise rent overcharge, the Court does not find that any potential waiver of that claim by Mr. Whitfield is binding upon Ms. Williams. The stipulation of settlement in Index No. L & T 67410/18 (which is annexed as part of Petitioner's Exhibit 2) specifies that Ms. Williams did not appear, while Mr. Whitfield appeared by counsel. Waiver is "an intentional abandonment or relinquishment of a known right or advantage which, but for such waiver, the party would have enjoyed." *Alsens American Portland Cement Works v. Degnon Contracting Co.*, 222 NY 34, 37 (1917). Where one rent-stabilized tenant makes an agreement affecting his or her rights, it does not act as a waiver of a co-tenant's rights. *See, e.g., Niagara Capital LLC v. Cruz*, 61 Misc 3d 45, 87 N.Y.S.3d 792 (App. Term 1st Dep't 2018); *ACP 140 W. End Ave. Assoc. v. Kelleher*, 9 Misc 3d 139(A), 862 N.Y.S.2d 806 (App. Term 1st Dep't 2005).

As for Ms. Williams's proposed warranty of habitability defense, the Court of Appeals has recognized that the statutory warranty of habitability (Real Property Law (RPL) § 235-b) creates a

right to an abatement of rent if the warranty is breached. *See Park West Management Corp. v. Mitchell*, 47 NY2d 316 (1979); s*ee also Ketchakeu v. Secka*, 2019 Slip Op 29260 (Civ. Ct. Bronx County 2019). Furthermore, any waiver of the warranty of habitability is void as contrary to public policy. *See* RPL § 235-b(2); *Bldg Mtg. Co., Inc. v. Halabi*, 44 Misc 3d [*4]134(A), 997 N.Y.S.2d 97 (App. Term 1st Dep't 2014); *Fraley Realty Corp. v. Stocker*, 115 Misc 2d 52, 454 N.Y.S.2d 579 (App. Term 1st Dep't 1982).

Here, although Petitioner agreed to undertake repairs as part of the June 4th stipulation, Respondents did not obtain an abatement, nor was any warranty of habitability defense before the Court since Respondents entered into the stipulation without having first answered (since they appeared on Petitioner's Order to Show Cause to amend the petition and for a default judgment). Although it is correct, as Petitioner points out in its opposition papers, that the Court allocuted the stipulation with Respondents on June 4, 2019, they did not have an attorney at the time. As Judge Karen M. Bacdayan observed, upon citing statistics demonstrating the differences in outcomes between represented and unrepresented tenants in *Galarce*, "full representation by an attorney makes a quantifiable and qualitative difference for poor tenants in the outcome of proceedings in Housing Court." 62 Misc 3d at 1043, 90 N.Y.S.3d at 877. As the court file indicates, Respondents initially declined the UA program; however, the Court does not find that this should deprive Ms. Williams of the ability to litigate this proceeding on the merits at this juncture, especially when she has now retained counsel through the UA program. *See Galarce*, 62 Misc 3d at 1044-1045, 90 N.Y.S.3d at 878 ("[T]o hold respondent to [the] stipulation in the context of the Universal Access to Counsel law would take the case out of the due and ordinary course of today's Housing Court where respondent was entitled to litigate her case with the benefit of full representation by an attorney."). Although Petitioner's opposition papers include a purported maintenance request sign-off from June 18, 2019, the fact that Petitioner may have completed repairs in June does not foreclose an abatement for periods prior thereto, particularly since the Petition seeks rent back to March 2019. *See Park West Management Corp.*, 47 NY2d at 329 ("[T]he proper measure of damages for breach of the warranty is the difference between fair market value of the premises if they had been as warranted, as measured by the rent reserved under the lease, and the value of the premises during the period of the breach.")

For each of these reasons, the Court finds that Ms. Williams improvidently waived potentially meritorious defenses without the benefit of counsel and exercises its discretion to vacate the June 4, 2019 stipulation, judgment, and warrant. *In re Estate of Frutiger*, 29 NY2d at 150. As a result, the prong of Ms. Williams's Order to Show Cause seeking to vacate the June 4, 2019 stipulation,

judgment, and warrant is granted. The Court also grants Ms. Williams leave to file her answer and counterclaim (Respondent's Exhibit A). Although Petitioner argues that the proposed defenses and counterclaim are without merit (citing *Daniels v. Empire-Orr*, 151 AD2d 370 (1st Dep't 1989)), this standard applies only in the context of amending pleadings. Since Respondents never answered, the proposed answer is the initial responsive pleading, not an amendment. Moreover, in any event, the Court finds that it is not "clear and free from doubt" that the proposed defenses and counterclaim based on overcharge and breach of the warranty of habitability are without merit, as discussed extensively herein. *Daniels*, 151 AD2d at 371. Accordingly, the proposed answer is deemed served and filed. Petitioner may serve a reply to Respondent's counterclaim within 20 days of service of the immediate Decision/Order with notice of entry. The proceeding is restored to the Part A calendar for all purposes on December 3, 2019 at 9:30 AM.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

Queens, New York

November 1, 2019

HON. CLINTON J. GUTHRIE

J.H.C.

Footnotes

Footnote 1: The Petition alleges that Respondents' lease includes a preferential rent of $1,850.00 per month.

Footnote 2: The Court notes that the file jacket for the immediate proceeding includes a notation that Respondents "declined UAC" at the June 4, 2019 appearance.

Footnote 3:A certified copy of the rent registration history is attached to the Order to Show Cause.

Footnote 4: The Division of Corporations Entity Information page lists "Teaneck, New York" but the zip code is the same (07666).

Footnote 5: Under NYC Admin. Law § 26-516(h), DHCR and the courts "shall consider all available rent history which is reasonably necessary to make such determinations [of overcharge and

determination of legal regulated rents], including but not limited to: (i) any rent registration or other records filed with the state division of housing and community renewal, or any other state, municipal or federal agency, regardless of the date to which the information on such registration refers; (ii) any order issued by any state, municipal or federal agency; (iii) any records maintained by the owner or tenants; and (iv) any public record kept in the regular course of business by any state, municipal or federal agency."

Return to Decision List