2022-02-10

PIMOR ASSOCIATES LLC v. DELVALLE

Pimor Assoc. LLC v Delvalle
2022 NY Slip Op 30765(U)
February 10, 2022
Civil Court of the City of New York, Queens County
Docket Number: Index No. L&T 301055/21
Judge: Clinton J. Guthrie
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CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF QUEENS: HOUSING PART E

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PIMOR ASSOCIATES LLC,

Index No. L&T 301055/21

Petitioner,

-against-

DECISION/ORDER

CASSIE DELVALLE,

Respondent.

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Present:

Hon. CLINTON J. GUTHRIE
Judge, Housing Court

Recitation, as required by CPLR § 2219(a), of the papers considered in the review of petitioner's order to show cause to reject the respondent's hardship declaration, for a vacatur of any stay of this proceeding, to strike respondent's first, second, third, and sixth affirmative defenses, and to place this proceeding on the trial calendar:

Papers	**Numbered**
Order to Show Cause & Affidavit/Exhibits Annexed.....	1 (NYSCEF #13-19)
Affirmation in Opposition & Exhibits Annexed.....	2 (NYSCEF #20-21)
Reply Affirmation & Exhibits Annexed.....	3 (NYSCEF #22-25)

Upon the foregoing cited papers, the decision and order on the portions of petitioner's order to show cause held in abeyance in the court's July 7, 2021 Decision/Order is as follows.

PROCEDURAL HISTORY

Petitioner commenced this holdover proceeding predicated upon a notice of termination dated June 10, 2020 in April 2021. Petitioner brought the instant order to show cause on May 24,

2021. The order to show cause was signed and opposition and reply were submitted prior to the return date of June 17, 2021. On June 17, 2021, the court heard argument via Microsoft Teams and reserved decision. On July 7, 2021, the court rendered a Decision/Order disposing of a portion of the order to show cause, namely denying the requests to vacate respondent's COVID-19 hardship declaration and to vacate the stay imposed by Part A, Section 6 of the COVID-19 Emergency Eviction and Foreclosure Prevention Act [L 2020, ch 381] (hereinafter "EEFPA"). As the proceeding was subject to a stay under EEFPA, the July 7, 2021 Decision/Order specifically held in abeyance the portion of the order to show cause seeking to strike certain affirmative defenses and to place the proceeding on the trial calendar. Further stays were afforded by L 2021, ch 104, and L 2021, ch 417. As the stay under L 2021, ch 417 expired on January 15, 2022, the court deemed decision to be reserved on the remaining portions of petitioner's order to show cause in a Court Notice dated January 21, 2022.

DISCUSSION

Petitioner's motion seeks to strike respondent's first, second, third, and sixth affirmative defenses. Pursuant to CPLR § 3211(b), "[a] party may move for judgment dismissing one or more defenses, on the ground that a defense is not stated or has no merit." In reviewing a motion to dismiss a defense or defenses under the statute, "the court must liberally construe the pleadings in favor of the party asserting the defense and give that party the benefit of every reasonable inference…[and] if there is any doubt as to the availability of a defense, it should not be dismissed." *Staropoli v. Agrelopo, LLC*, 136 AD3d 791, 792 [2d Dept 2016]. However, defenses that consist only of "conclusions of law without any supporting facts" are subject to dismissal. *Fireman's Fund Ins. Co. v. Farrell*, 57 AD3d 721, 723 [2d Dept 2008].

Respondent's first affirmative defense asserts respondent's entitlement to a stay pursuant to EEFPA since she filed a hardship declaration. The court already addressed this issue in the context of the July 7, 2021 Decision/Order, holding that the EEFPA stay applied. Nonetheless, as the relevant stay provisions of EEFPA and its successor statutes have expired, the court dismisses the first affirmative defense as moot.[1]

Respondent's second affirmative defense states that the notice of termination is defective because it refers to respondent as a month-to-month rent-stabilized tenant. Petitioner claims that the defense should be stricken, as there was no lease in effect (since petitioner had brought a prior holdover proceeding) when the notice was served, and that respondent was indeed a month-to-month tenant at the time. On this specific issue, the Appellate Term, Second Department recently held that "[a] rent-stabilized tenancy cannot be monthly because the respective rights and responsibilities of a landlord and tenant under a month-to-month tenancy cannot be reconciled with the respective rights and responsibilities of a landlord and tenant of a rent-stabilized apartment." *Fairfield Beach 9th, LLC v. Shepard-Neely*, 2021 NY Slip Op 21339 [App Term, 2d Dept, 2d, 11th & 13th Jud Dists 2021]. Accordingly, while the court does not determine whether respondent's second affirmative defense will succeed on the ultimate merits, the defense does not lack potential merit and is not subject to dismissal.

Respondent's third affirmative defense seeks to dismiss the petition on the basis that the notice of termination does not state a ground permitting termination, as required under Rent

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[1] The court stresses that the defense is moot because it specifically referenced a stay in conjunction with the filing of the hardship declaration. This determination does not affect the hardship declaration's validity under EEFPA Part A, Section 11 and its analogues in the successor statutes.

Stabilization Code (R.S.C.) § 2524.2(b) (9 NYCRR § 2524.2(b)). Petitioner's motion argues that the specific ground is not required under the applicable Rent Stabilization Code provision, only the facts necessary to state the ground and permit respondent to prepare a defense. Further, petitioner asserts that the facts alleged in the notice at bar are sufficient for those purposes.

Rent Stabilization Code § 2524.2(b) states, in relevant part, that "[e]very notice to a tenant to vacate or surrender possession…shall state the ground under section 2524.3 or 2524.4 of this Part, upon which the owner relies for removal or eviction of the tenant, the facts necessary to establish the existence of such ground, and the date when the tenant is required to surrender possession." Contrary to petitioner's argument, the requirements of stating the ground and stating the facts are discrete within the Code and both are necessary for a notice to pass judicial muster. *See e.g. Berkeley Assoc. Co. v. Camlakides*, 173 AD2d 193 [1st Dept 1991], *affd* 78 NY2d 1098 [1991]; *Matter of Giancola v. Middleton*, 73 AD3d 1056, 1057 [2d Dept 2010]. While the court reads the appellate case law as being flexible as to the exact wording of each relevant ground under the Code, respondent's third affirmative defense is potentially meritorious insofar as the notice of termination includes, as its initial "ground" (termination of a month-to-month tenancy), one that is nowhere to be found in either R.S.C. 2524.3 or 2524.4. Accordingly, the court denies dismissal of respondent's third affirmative defense.

Respondent's sixth affirmative defense asserts that, even assuming the truth of the allegations in the notice of termination, petitioner has not stated a cause of action for nuisance under the law. Petitioner seeks to strike this defense on the bases that it is unsupported by the law and is not accurate, insofar as it references only noise coming from a child playing at the subject premises. The Appellate Division, Second Department has held that a defense asserting a failure to

state a cause of action is "harmless surplusage" and not subject to dismissal pursuant to CPLR § 3211(b). *Butler v. Catinella*, 58 AD3d 145, 150 [2d Dept 2008] [quoting *Citibank [S.D.] N.A. v. Coughlin*, 274 AD2d 658, 660 [3d Dept 2000]]; *see also Mazzei v. Kyriacou*, 98 AD3d 1088, 1089 [2d Dept 2012]. As a result, petitioner's request to strike respondent's sixth affirmative defense is denied.

CONCLUSION

Petitioner's order to show cause is granted only to the extent that: (1) respondent's first affirmative defense is dismissed as moot; and (2) the proceeding shall be restored for all purposes, including trial. The order to show cause is denied in all other respects. The proceeding will be restored to the Part E (Room 404) calendar on March 18, 2022 at 9:30 AM for all purposes, including trial. Virtual appearances are permitted, subject to any further administrative directives of the court. This Decision/Order will be filed to NYSCEF.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

Dated: Queens, New York
February 10, 2022

HON. CLINTON J. GUTHRIE, J.H.C.

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SO ORDERED - HON. CLINTON J. GUTHRIE