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Rochdale Vil. Inc. v. Lomax

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[*1]

Rochdale Vil. Inc. v Lomax
2020 NY Slip Op 50443(U) [67 Misc 3d 1207(A)]
Decided on April 17, 2020
Civil Court, Queens County
Guthrie, 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This opinion is uncorrected and will not be published in the printed Official Reports.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 April 17, 2020

Civil Court, Queens County

<p>ROCHDALE VILLAGE INC., Petitioner,</p> <p>against</p> <p>WALTER LOMAX, Respondent.</p>
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Index No. L & T 66396/19

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Clinton J. Guthrie, J.

Recitation, as required by CPLR § 2219(a), of the papers considered in the review of Respondent's motion for summary judgment and/or partial summary judgment pursuant to CPLR § 3212:

Papers

Numbered

Notice of Motion & Affidavits/Exhibits Annexed1

Affirmation in Opposition & Affidavit/Exhibit Annexed2

Affidavit of Reply3

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

PROCEDURAL HISTORY

This nonpayment proceeding is based on a Notice of Petition and Petition dated August 28, 2019. The Petition alleges that Respondent the tenant in possession of the premises, a Mitchell-Lama cooperative. Respondent filed a *pro se* answer on September 11, 2019. Following adjournments for Respondent to obtain counsel through the Universal Access program, Queens Legal Services appeared as his attorney on December 3, 2019. On December 3rd, the parties, through counsel, consented to a schedule for motion practice. Subsequently, Respondent moved for summary judgment based on an alleged defective rent demand stemming from a dispute about rents due after the discontinuance of a prior nonpayment proceeding between the parties (Index No. L & T 68606/18, discontinued on December 24, 2018). Petitioner submitted opposition and Respondent submitted a reply; the Court then heard argument on the motion on January 15, 2020 and reserved decision.

[*2] ANALYSIS

A party moving for summary judgment pursuant to CPLR § 3212 must "establish his cause of action or defense 'sufficiently to warrant the court as a matter of law in directing judgment' in his favor and he must do so by tender of evidentiary proof in admissible form." *Friends of Animals, Inc. v. Associated Fur Mfrs.*, 46 NY2d 1065, 1067 (1980) (citing CPLR § 3212(b)). Contrariwise, "to defeat a motion for summary judgment, the opposing party must 'show facts sufficient to require a trial of any issue of fact.'" *Id.* (citing CPLR § 3212(b)).

Respondent argues that he is entitled to summary judgment because the rent demand is defective. Respondent focuses on the resolution of the parties' prior nonpayment proceeding (Index No. L & T 68606/18) and the amount of rent, if any, due upon its conclusion. The parties, through counsel, settled the proceeding via stipulation on September 6, 2018. The stipulation included a judgment in the amount of \$5,524.22, which represented all rent due through September 30, 2018, as well as issuance of a warrant of eviction. [\[FN1\]](#) Execution of the warrant was stayed through October 24, 2018 for various payments towards the arrears and October 2018 rent. Of paramount relevance to Respondent's motion, the stipulation also included a provision stating that "[a]ll moneys received to current rent first and then to arrears." The proceeding was ultimately resolved by stipulation (signed only by Petitioner's then-counsel) discontinuing the proceeding "w/o prejudice" on December 24, 2018 and vacating the judgment and warrant. The December 24, 2018 stipulation also stated that the "[s]tipulation dated 9/6/18" is satisfied. Respondent argues that since the September 6, 2018 stipulation included a current rent provision, the language in the December 24, 2018 stipulation should be interpreted to mean that all arrears and current rents through December 2018 were paid in full. Consequently, Respondent claims that he should have had a zero balance at the beginning of January 2019.

Petitioner opposes Respondent's motion, primarily highlighting the fact that Respondent does not actually demonstrate that he had paid all arrears and current rent through December 2018. Petitioner also disputes Respondent's interpretation of the language in the December 24, 2018 stipulation of settlement, noting the fact that the proceeding was discontinued "without prejudice."

Although Respondent's counsel does not frame it as such, the crux of Respondent's argument is that Petitioner is barred by *res judicata* from collecting any rents through

December 2018. The doctrine of *res judicata* "holds that, as to parties in a litigation and those in privity with them, a judgment on the merits by a court of competent jurisdiction is conclusive of the issues of fact and questions of law necessarily decided therein in any subsequent action." *Gramatan Home Investors Corp. v. Lopez*, 46 NY2d 481, 485 (1979) (Internal citations omitted). The doctrine is "grounded on the premise that once a person has been afforded a full and fair opportunity to litigate a particular issue, that person may not be permitted to do so again." *Id.*

The Appellate Division, Second Department has recognized that "[t]he general rule is that a stipulation of discontinuance 'with prejudice' is afforded *res judicata* effect and will bar litigation of the discontinued causes of action." *Van Hof v. Town of Warwick*, 249 AD2d 382 (2d Dep't 1998). The prior proceeding between the parties here, however, was discontinued "without prejudice." Moreover, the plain terms of the September 6, 2018 stipulation only [*3]specifically required payments the judgment amount (covering rents through September 2018) and October 2018 rent. The proof submitted by Respondent shows that he paid \$7,500.00 between September 2018 and December 2018. However, the total rent due between September 2018 and December 2018 was \$9,848.15 (\$5,524.22 through September [judgment amount], \$1,441.31 for October, \$1,441.31 for November, and \$1,441.31 for December). [FN2] Therefore, \$2,348.15 was objectively due after all of Respondent's alleged payments through December 2018. If Petitioner had *actually* applied Respondent's payments to current rent between September and December 2018, the judgment amount would not have been satisfied. Since the judgment and warrant were vacated, the only logical interpretation of the December 24, 2018 stipulation is that the payments made through that date were applied to the judgment amount and October 2018 rent (which were required to be paid under the terms of the September 6, 2018 stipulation), and Petitioner otherwise reserved its rights to rents due thereafter.

Accordingly, Respondent's motion for summary judgment is denied insofar as he has not demonstrated that Petitioner's rent demand failed to either "set forth the approximate good faith amount of rent owed" (*Dendy v. McAlpine*, 27 Misc 3d 138(A), 911 N.Y.S.2d 691 (App. Term 2d, 11th & 13th Jud. Dists. 2010)) or "fairly apprise [him] of the periods for which rent is allegedly due and in what amounts." *Pantigo Professional Ctr. LLC v. Stankevich*, 60 Misc 3d 133(A), 2018 NY Slip Op 51039(U) (App. Term, 9th & 10th Jud. Dists. 2018)). The proceeding shall be restored to Part A, Room 401, for trial on June 17, 2020 at 9:30 AM. This date, however, remains subject to administrative adjournment in the event that the COVID-19 public health crisis continues to impact court operations.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

Dated: Queens, New York

April 17, 2020

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

Footnotes

Footnote 1: However, the stipulation also indicates that a bounced check charge and legal fees were included.

Footnote 2: The Court is only considering rent/maintenance amounts for these purposes. The Court does not make any determination as to whether any other amounts were due as "additional rent" under Respondent's occupancy agreement at the time.

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