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16 Post Ln Ventures LLC v. Vega

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CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF RICHMOND: HOUSING PART Y

-----X
16 Post Ln Ventures LLC
Petitioner-Landlord, L&T Index No. 300853/21
Motion Seq. No. 003

-against- DECISION/ORDER

Lakesha Monique Vega,
et al.
Respondents-Tenants.

Premises: 16 Post Lane
Staten Island, New York 10303
-----X

Hon. ELEANORA OFSHTEIN
Judge, Housing Court

Recitation, required by CPLR § 2219(a), of the papers considered in the review of the motion:

Papers	Numbered/NYSCEF
Respondent's Motion to Dismiss	1/ #31-39
Petitioner's Opposition	2/ #40-41
Respondent's permitted Supplemental papers	3/ #42-44
Prior Decision	4/ #28

Upon the foregoing cited papers, decision and order is as follows:

Respondents, by their attorney, brings this pre-answer motion to dismiss, pursuant to CPLR §3211(a)(7), arguing that Petitioner's affirmative actions, taken after terminating Respondents' tenancy, evidenced an intent to reinstate that tenancy, thereby vitiating the Notice of Termination. Respondents' papers make a related argument, that after Petitioner offered and Respondent accepted a new lease term, Petitioner's submission to Section 8, for its approval of the rent, precludes Petitioner from unilaterally withdrawing its application prior to Section 8 determination. Petitioner counters that since paragraph 23¹ of the lease agreement makes it

¹ Paragraph 23 of lease: SECTION 8 APPROVAL: This Agreement and all the provisions contained herein shall be binding between the Owner and Tenant only if fully executed between the parties AND approved by Section 8, if applicable. Since this Agreement is subject to Section 8 approval, should Section 8 deny or reject this agreement for any reason whatsoever, then this Agreement shall be deemed null and void and the Owner and Tenant shall not be legally bound by any of the provisions set forth herein, without any liability.

binding upon approval by Section 8, and since such determination had not yet been made by Section 8, Petitioner was free to withdraw the agreement.

The parties also raise tangential issues in their papers, including whether, in an unregulated tenancy, such a conditional lease (conditioned on Section 8 approval) is a valid contract until Section 8 makes its determination; whether prior to Section 8 determination, Petitioner may unilaterally withdraw the contract it had already submitted to Section 8; whether Petitioner's method of rejection of the contract was valid and/or timely; and whether paragraph 23 of the lease, which makes the agreement conditioned upon approval by Section 8, precludes Petitioner from rejecting the contract until Section 8 makes its affirmative determination.

However, the Court does not reach these arguments, and arguably cannot reach those that seek the rescinding of the contract. Under the current limited record, where Respondents seek a pre-answer motion to dismiss based upon Petitioner's vitiation of the Notice of Termination, the Court finds in favor of Respondents.

In this case, the substantive facts are not in dispute. After the expiration of Respondents' unregulated lease, Petitioner commenced this summary holdover in November 2021, by Notice of Petition and Petition, after serving a 90-Day Notice of Termination. Respondents' filing of the ERAP application administratively stayed the case (ERAP application was filed September 2021). Petitioner does not deny that they initially provided documents to OTDA for consideration for ERAP approval, but subsequently changed their mind.

Petitioner also does not deny that a new lease was offered to Respondent, with a new rent, for the period after it terminated the tenancy. The new lease term was offered for October 1, 2022, through September 23, 2023. Neither side denies that Respondent signed and returned the lease to Petitioner, and that Petitioner countersigned and submitted the lease to HPD Section 8 for determination. The lease has a conditional provision, paragraph 23, which makes it subject to Section 8 approval and would be deemed null and void in the event Section 8 denied or rejected the agreement. (See HPD document NYSCEF #44).

However, before Section 8 made any affirmative determination on the submitted lease, Petitioner withdrew the lease from consideration, and sought to withdraw its participation with ERAP. Petitioner, by its attorney, makes it clear that they had grown tired of waiting, and that their 'change of mind' was caused by the 'bureaucratic delays and red-tape' having to do with both, Section 8 and ERAP. Consequently, in November 2022, Petitioner filed a motion seeking

to vacate the ERAP stay, indicating its intention not to participate in the program, and agreeing to waive rent/use and occupancy. This Court granted the motion to vacate the ERAP stay based upon Petitioner’s waiver of rent/use and occupancy. (Decision dated December 13, 2022, NYSCEF #8).

The HPD Section 8 representative, appearing pursuant to a subpoena, states that since Petitioner withdrew the lease from Section 8 consideration, prior to Section 8 determination, the lease was no longer under Section 8 review. The representative added that, in order for Section 8 to reconsider the application, the lease would need to be re-submitted for processing.

In summary, Respondents argue that Petitioner cannot unilaterally undue a fully executed lease and that the lease vitiated the Termination Notice. Petitioner argues that since the lease was conditional, and since HPD had not yet made its determination, the document could be withdrawn without liability.

Regardless under which subsection of CPLR §3211(a) a motion to dismiss is brought, the court must accept the facts alleged in the pleading as true, afford the petitioner the benefit of every possible inference, and determine only whether the facts, as alleged, fit within any cognizable legal theory (see, Goshen v Mutual Life Ins Co of NY, 98 NY2d 314, 326 [2002]; and Leon v Martinez, 84 NY2d 83, 87 [1994]).

In the context of a rent stabilized unit, where Petitioner adheres to the requirements of the Rent Stabilization Code in properly offering a lease, Appellate Courts in the First Department have held that such an offer of a renewal lease is “in conformity with the requirements of the Rent Stabilization Code, (and) does not revive the landlord-tenant relationship. FM United LLC v Wollin, 46 Misc 3d 126(A)(App Term, 1st Dept 2014) (“...since the act of renewing the lease was not one of free will but of adhering to the requirements of law.”)

Under these circumstances, however, where the unit is a one-family house and is not subject to rent stabilization, and where Petitioner was not under an obligation to follow the Code by timely providing a renewal lease, Petitioner’s decision to offer one, and Respondents’ decision to accept it, clearly evidenced an intention to renew the tenancy. Whether or not Section 8 would have accepted or rejected the lease, and whether or not Petitioner was within its right to change its mind and withdraw it, that intent, evidenced by the affirmative act of offering, accepting and submitting the lease to Section 8, is what vitiated the Termination Notice. (See, 123 W. 15, LLC v Compton, 4 Misc 3d 138(A) (App Term, 1st Dept 2004) (“A tenant should not

be placed in the position of having to parse equivocal notices given by the landlord in renewal situations. Here, the tenant would reasonably have relied upon the latest expression of landlord's intent -- i.e., the offer of renewal, and would have had no cause to prepare to vacate or to defend legal proceedings.”)

Even if the Court were to agree with Petitioner's argument that the document offered and accepted was not 'binding' as a valid lease until Section 8 approved it (based on paragraph 23), the offer, acceptance and submission to Section 8 was sufficient to express to Respondents that they need not search for a new place to live, need not vacate as required by the Termination Notice, and need not seek a Section 8 voucher to transfer to another apartment, all substantive reasons why the service of a predicate notice is required in the first place. Petitioner clearly had a choice and chose to offer a lease. Respondent also had a choice and chose to accept the lease and await Section 8 determination. In doing so, the intent was clear and such intent vitiated the Notice of Termination. Therefore, the motion is granted, and the case is dismissed.

This constitutes the decision and order of this Court.

Dated: Richmond, New York
August 18, 2023



HON. ELEANORA OFSHTEIN
JHC

cc: HPD Section 8 representative