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Pinehurst House, Inc. v. Sanchez

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CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK: HOUSING PART F

PINEHURST HOUSE, INC.

Petitioner,

-against-

LIDIA MAGALYS SANCHEZ, ET AL.

Respondent(s).

Index No. 300363-23

DECISION/ORDER

Motions Sequence Nos. 1 and 2

CIVIL COURT OF THE
CITY OF NEW YORK

SEP 12 2023

ENTERED
NEW YORK COUNTY

HON KAREN MAY BACDAYAN, JHC

Smith Buss & Jacobs (Emanuela Lupu, Esq.), for the petitioner
Neighborhood Defender Services of Harlem (Candice Lee, Esq.), for the respondent

Recitation, as required by CPLR 2219 (a) of the papers considered in review of this motion by NYSCEF Doc No: 6-36.

PROCEDURAL HISTORY AND BACKGROUND

This is a holdover proceeding commenced by Pinehurst House Inc. ("petitioner"), a private cooperative corporation, against Lidia Magalys Sanchez (hereinafter the only "respondent" to which this decision refers). It is not disputed that Pinehurst House, Inc. comprises three separate buildings -- 5, 7, and 9 Pinehurst Avenue – which were converted into one cooperative corporation in 1988 and deeded to Petitioner. Each building has a basement, and each basement has one cooperative unit. Respondent resides in the other areas of the basement at 9 Pinehurst Avenue. The petition claims that "[t]he premises are not subject to the City Rent and Rehabilitation Law or the Rent Stabilization Law of 1969, because the dwelling is owned as a cooperative unit and is not occupied by a 'non-purchasing tenant' as defined under Section 352-eeee of the General Business Law." (NYSCEF Doc No. 1, petition ¶ 7.) Petitioner served respondent with a "ninety day notice of nonrenewalterminate (sic) monthly or month-to-month tenancy" pursuant to Real Property Law ("RPL") § 226-c. (NYSCEF Doc No. 3, termination notice.) Thereafter, petitioner commenced this proceeding, alleging it is the "owner and lessor" of the "basement" located at 9 Pinehurst Avenue, and that respondent is the "occupant[] of record . . . who entered into possession thereof under a verbal agreement" with petitioner.

(NYSCEF Doc No. 1, petition ¶ 2.) Petitioner alleges that the "premises from which removal is sought was rented for residential purposes[.]" (*Id.* ¶ 4.) The petition further claims that "[t]he premises are (sic) not subject to the City Rent and Rehabilitation Law or the Rent Stabilization Law of 1969, because the dwelling is owned as a cooperative unit and is not occupied by a 'non-purchasing tenant' as defined under Section 352-eeee of the General Business Law." (*Id.* ¶ 7.)

Respondent has moved for summary judgment (NYSCEF Doc No. 9, notice of motion [sequence 1].) Petitioner has cross-moved for same. (NYSCEF Doc No. 20, notice of motion [sequence 2].) Both motions were fully briefed; oral argument was heard on August 30, 2023.

ARGUMENTS

Respondent states that she is a 79-year-old, monolingual Spanish speaker who has lived in the basement for 20 years, has limited income, and cannot afford a monthly rental in excess of $200. (NYSCEF Doc No. 11, Sanchez affidavit ¶¶ 2-3.) Respondent argues that petitioner has failed to state a cause of action because petitioner and she never had a relationship as either landlord-tenant or employer-employee. Respondent further contends that she is a rent-stabilized tenant and thus petitioner has failed to state a cause of action. Specifically, respondent avers that she initially moved into the building as a roommate of the shareholder of Apartment 4A who vacated in or around 2004, after which respondent remained in the unit. (NYSCEF Doc No. 11, Sanchez affidavit ¶ 6.) Thereafter, Konstantine Tsiskakis the owner of unsold shares in the building, and a principle of Tsiskakis Management, Inc., the former managing agent, approached respondent and offered to rent her "a basement apartment" at 9 Pinehurst Avenue for $175 per month in exchange for janitorial services. (*Id.* ¶ 7.) Respondent attaches a copy of a money order made payable to "Tsiskos Mgt." in the amount of $175 for "Basement 9." (NYSCEF Doc No. 16, respondent's exhibit D.) For the following 16 years, respondent paid her rent via money order to "Tsiskakis Management Company" and maintained a "good relationship" with Konstantine Tsiskakis. (*Id.* ¶ 8)

In 2021, the coop board removed Tsiskakis Management, and replaced them with Impact Management. (NYSCEF Doc No. 22, Rivers affidavit ¶¶ 5-6.) Respondent argues that replacing Tsiskakis Management, Inc. with Impact Management did not create privity of contract between her and Pinehurst Avenue, Inc.; that Konstantine Tsiskakis remains the owner of unsold shares; and that Tsiskakis, who rented the basement area to respondent, is the proper petitioner herein. (NYSCEF Doc No. 10, respondent's attorney's affirmation ¶ 25.) In the alternative, respondent

argues that if the unit does not represent unsold shares owned by Tsiskakis, then she is a rent stabilized tenant of the basement unit in this formerly rent stabilized building. (*Id.*)

In opposition and in support of its cross-motion for summary judgment, petitioner states that the building used to be managed by the "sponsor of the Plan, Kostas a/k/a Konstantine Tsiskakis a/k/a Tsiskos Management Co., Inc.[.]" (NYSCEF Doc No. 22, Rivers affidavit ¶ 5.) However, "in 2021, the Coop terminated the sponsor as the managing agent of the buildings," and hired Impact Management. (*Id.*) Shortly after Impact Management replaced Tsiskakis Management, "the Coop realized that the Respondents were occupying portions of the basement." (*Id.* ¶ 7.)[1] "Not knowing how or why the Respondents came to occupy the portions of the basement in question, but realizing that the occupancy was illegal and contrary to applicable law, the [p]etitioner caused a Ninety Day Notice to Terminate . . . to be served upon the [r]espondents." (*Id.* ¶ 9.)[2]

Petitioner states that petitioner, not the sponsor (Tsistakis), owns the common areas of the building, including the basement. While not the pleaded basis for this holdover proceeding premised upon the purported termination of a month-to-month tenancy, petitioner points out that in July 2022, the Department of Buildings ("DOB") issued a partial vacate order for the "occupancy contrary and work w/o a permit for 1 SRO, sleeping quarters and 3 pc bathrm" at the "cellar level." (NYSCEF Doc No. 27, petitioner's exhibit F, DOB vacate order.)[3] The vacate order was placed one day after a violation was issued. The violation summons stated, "Occupancy contray (sic) CO# 40839 indicates cellar as 1 apt, boiler rm and storage. Noted: storage rms converted to 1 SRO at front of eastside of cellar w/bed, air conditioner, clothing, cooking appliances, refrigerator and personal items and 1 class 'A' apt w/bdrm, sleeping

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[1] Petitioner avers that "the portions that are being occupied by the Respondents in this action are storage areas and hallways, not an apartment. These areas are being illegally utilized by the Respondents for sleeping purposes, there is no kitchen, there is only a slop sink that was supposed to be used by building staff for cleaning purposes." *Id.*

[2] Such a statement begs the question as to how petitioner came to choose to serve a notice to terminate a month-to-month tenancy. It also begs the question regarding why petitioner did not allege the illegality of the unit or the vacate order in the predicate notice or the petition, in order to allow respondent to prepare a defense to same. Petitioner had notice of the violation and vacate order prior to commencement of this proceeding, but only now argues that respondent must be removed as a matter of law due to the vacate order.

[3] An SRO, or single room occupancy, is defined as "the occupancy by one or two persons of a single room, or of two or more rooms which are joined together, separated from all other rooms within an apartment in a multiple dwelling, so that the occupant or occupants thereof reside separately and independently of the other occupant or occupants of the same apartment. When a class A multiple dwelling is used wholly or in part for single room occupancy, it remains a class A multiple dwelling." NY MDL § 4 (16).

quarters, kitchen area w/electric appliances, 3pc bathrm." (NYSCEF Doc No. 26, petitioner's exhibit E, DOB violation summons.) Petitioner is informed that the "remedy" for the violation is to "[d]iscontinue illegal occupancy or amend C of O." (*Id.*) Based on the foregoing, petitioner contends, "the bottom line is that the [r]espondent occupies an illegal space . . . so she is required to vacate as a matter of law." (NYSCEF Doc No. 22, Rivers affidavit ¶ 18.)

In opposition and reply, respondent argues that the issue of standing to maintain this proceeding has not been resolved simply by the fact that Tsiskakis Management was replaced by Impact Management in 2021. (NYSCEF Doc No. 33, respondent's attorney's affirmation in opposition and reply ¶ 4.) Respondent argues that she is a rent-stabilized tenant because the area of the basement in which she resides is "a dwelling unit and housing accommodation," and she is thus entitled to the protections of the Rent Stabilization Law. (*Id.*) In addition to challenging the stated regulatory status of the subject dwelling, respondent challenges the physical description of the premises. Respondent's attorney avers that she visited the subject premises and observed that the basement of 9 Pinehurst Avenue has been subdivided into separate rooms with locked doors. (*Id.* ¶ 7 [f]) "Every room in the basement level of building 9 has either a unit marking of B# or no marking at all. As such, since the DOB partial vacate order does not specify which room(s) to which it applies, it cannot be certain whether the vacate order pertains to [r]espondent's unit or other parts of the basement." (*Id.* ¶ 7 [g].) Respondent attaches a copy of the cooperative conversion plan, Schedule A, which indicates that there is a cooperative apartment in the basement of 9 Pinehurst Avenue designated "9 Basement." (NYSCEF Doc No. 14, respondent's exhibit B.) Moreover, respondent argues that "[w]ere there a warrant issued exactly as requested by [p]etitioner, the marshal would not know which door to knock. Such ambiguity is a fatal defect of the [p]etition and as such, the case must be dismissed." (*Id.* ¶ 11.) Supporting this statement is an envelope addressed to respondent from Impact Management dated July 21, 2023, which was "returned to sender" on July 27, 2023. (NYSCEF Doc No. 35 at 8, respondent's exhibit C.) Also supporting this statement is a photograph of a door marked "B3" with a picture of Jesus on the door, which respondent alleges is the unit she rented from Konstantin Tsiskakis, and the money order referenced *supra* made payable to "Tsiskos Mgt." in the amount of $175 for "Basement 9." (NYSCEF Doc No. 35 at 2, respondent's exhibit A, picture; NYSCEF Doc No. 35 at 2, respondent's exhibit B, Sanchez affidavit ¶ 3; NYSCEF Doc No. 16, respondent's exhibit D.)

In reply, petitioner contends that respondent "masterfully confuses the reality that [r]espondent is living in the actual basement of the [b]uilding." (NYSCEF Doc No. 36, petitioner's attorney's reply affirmation ¶ 5.) Based on a recent video contained on a flash drive of respondent's living quarters, viewed by the parties and the court together without objection, petitioner claims that it is clear respondent does not live in any separated area of the building. "This is the basement. Not an SRO, not an apartment, but just the basement." (*Id.* ¶ 8.) As support, petitioner states that the process server was "easily able to locate [the basement]" when the predicate notice and notice of petition and petition were served. (*Id.* ¶ 9.) Petitioner further argues that as a matter of law, respondent is not a rent stabilized tenant and that petitioner has standing to maintain this proceeding as the "owner" of the building (and the basement common areas). (*Id.* ¶¶ 19-20.) Finally, referring to the DOB vacate order, petitioner advances that "[t]his Court is estopped from acting in contravention of an order of the City of New York, which clearly requires that the [r]espondent vacate the Premises." (*Id.* ¶ 24.)

The court notes that petitioner's video exhibit depicts a functional and carefully furnished living space. When the videographer first enters the basement, one can see a room with a door marked "baño,"[4] which has a toilet, a sink, and a plant on a shelf inside. The bathroom has a door with magazine pages and pictures taped to it. From what can be seen of what the videographer calls the "kitchen," there is a full-sized refrigerator with magnets and/or what appears to be children's art affixed to the side. Across the hallway from the kitchen and bathroom are two closed doors marked as B2 and B3. Petitioner's agent states that the occupant of B2 "disappeared the minute the inspector came in." B3 has a picture of Jesus taped to the front. Petitioner's agent narrates that respondent used to sleep in B3 but no longer does because it is "too hot." Further down the hallway through a functional reddish/brown door, the video captures a living area with a television, a table and a chair with a bowl and a utensil in it and a coffee mug. Next to the table is another table with a toy dinosaur on it, and then another table that appears to be used as a desk. There is a map and a clock over this area, and a clock on the desk. There is also a still-life painting and a photograph of George Clooney hanging on the wall. The video then depicts a bed, with a mirror handgun on the wall over it. This space is separated from a second room by a curtain with a make-shift cross taped to it. The narrator states that "she also uses this space you can see also set up as a bed." This second sleeping area has two patterned rugs, and a small bed

[4] The English translation of baño is bathroom.

made with a fleece blanket depicting snowmen and a rainbow pillow and a full length mirror. Pulling back another curtain, the narrator says, "So you can see she is taking over some of the spaces that were given to her, but she is actually doing the same in the space that was not given to her." Another curtain leads to an area with a boiler that the narrator says that respondent is using as a closet. Exiting this area, one can see a calendar on the wall, and further along in the living area there is a working television (turned on with picture and volume), three fans, a fly swatter, and more children's toys.

DISCUSSION

A court may employ the drastic remedy of summary judgment only where there is no doubt as to the absence of triable issues. (*Andre v Pomeroy*, 35 NY2d 361, 364 [1974].) On such a motion, a court's function is to find, rather than to decide, issues of fact. (*Southbridge Towers, Inc. v Renda*, 21 Misc 3d 1138 [A], 2008 NY Slip Op 52418 [U] [Civ Ct, NY County 2008], citing *Epstein v Scally*, 99 AD2d 713 [1st Dept 1984].) The facts must be considered "in the light most favorable to the non-moving party." (*Ortiz v Varsity Holdings, LLC*, 18 NY3d 335, 339 [2011].) Only upon a *prima facie* showing of entitlement to summary judgment, does the burden shift to the non-moving party to establish material issues of fact requiring a trial. (*Vega v Restani Const. Corp.*, 18 NY3d 499, 503 [2012] [internal citations and quotation marks omitted].) "The moving party's [f]ailure to make [a] prima facie showing [of entitlement to summary judgment] requires a denial of the motion, regardless of the sufficiency of the opposing papers (internal citations and quotation marks omitted)." (*Id.* at 503.)

While respondent has not carried her burden to eliminate all material questions of fact or law regarding her alleged status as a rent stabilized tenant, she *has* carried the burden to demonstrate that petitioner's pleading defects are fatal to this proceeding and are grounds for summary judgment dismissing the petition without prejudice.

First Ground for Dismissal

A proper description of the premises, which includes the regulatory status of the premises, goes to the heart of a summary eviction proceeding where possession is inextricably intertwined with every cause of action in Housing Court. Depending on the type of regulation, or the reasons why there is no regulation, a respondent will have different defenses. An accurate description of the premises sought to be recovered must be set forth in the petition pursuant to RPAPL 741. (*MSG Pomp Coro, v Doe*, 185 AD 2d 798 [1st Dept 1992].) "RPAPL 741 requires

that the petition in a summary proceeding to recover possession of real property "[s]tate the interest of the petitioner in the premises" (subd [1]), "[d]escribe the premises" (subd [3]) and "[s]tate the facts upon which the special proceeding is based" (subd [4])." (*Id.* at 800.) (*See also ABJ Chosen, LLC v Maldonado*, NYLJ, June 13, 2017, 2017 NYLJ LEXIS 1496, *1 (Civ Ct, New York County 2017] [dismissing petition as a matter of equity where there was no dispute that the respondent was not a party to a written lease].)

Directly on point is *Harway Terrace, Inc. v Petropiento*, 73 Misc 3d 137 (A), 2021 NY Slip Op 51074 (U) (App Term, 2d Dept 2021). The Appellate Term affirmed the trial court and, in so doing, considered a by answering a singular question.

> "The only issue before this court is whether there was a pleading defect, and we find that there was. *It is undisputed that the petition incorrectly states that the apartment is a cooperative apartment, which claim is the basis for the allegation therein that the apartment is exempt from rent stabilization.* Consequently, the petition failed to satisfy the requirements of RPAPL 741 and was properly dismissed (internal citations omitted, emphasis added)." (*Id.*, *1.)

In *Petropiento*, as here, the landlord alleged that respondent's tenancy was unregulated and that her agreement had expired. Here, as in *Petropiento*, the petition alleges that the premises were rented for residential purposes and that "[t]he premises are not subject to the City Rent and Rehabilitation Law or the Rent Stabilization Law of 1969, *because the dwelling* is *owned as a cooperative unit* and is not occupied by a 'non-purchasing tenant' as defined under Section 352-eeee of the General Business Law." (NYSCEF Doc No. 1, petition ¶ 7.) This alone is grounds for dismissal.

Second Ground for Dismissal

In addition, the petition broadly describes the subject premises as "basement" – not a specified portion of the basement, simply "basement." (*Id.* ¶ 4.) This is the second ground for dismissal. Although petitioner repeatedly claims that the basement is a common area and not a dwelling as stated in the petition, nor an SRO as stated in the DOB violation and vacate order, *at least* two people live in the basement. This conclusion comports with the DOB violation which states that storage rooms were converted to "1 SRO . . . w/bed, air conditioner, clothing, cooking appliances, refrigerator and personal items and 1 class 'A' apt w/bdrm, sleeping quarters, kitchen area w/electric appliances, 3pc bathrm." (NYSCEF Doc No. 26, petitioner's exhibit E, DOB violation summons.) Moreover, the video exhibit provided by petitioner depicts a door

designated "B2," another door designated "B3," and respondent's living area comprising two sleeping areas and a living room area which one enters through a hallway with a door. As correctly noted in respondent's reply, a marshal would not know, based on the description in the petition of ("basement"), against which *specific room or area* of the basement they are to execute the warrant, in order to avoid an unlawful eviction from any other area than respondent's, including the cooperative apartment that is occupied by the sublessee of a shareholder which is also in the basement.

As stated in *Ahmed v Reid*, 77 Misc 3d 1213 (A), 2022 N.Y. Slip Op. 51208 (U) (Civ Ct, Bronx County 2022) which comprehensively cites the most recent relevant caselaw on this subject:

> "Every petition in a summary proceeding must describe the premises from which removal is sought. (RPAPL § 741[3].) The description of the premises must be accurate enough to allow the marshal, when executing the warrant of eviction, to locate the premises *without additional information.* (*See Empire State Building Company, LLC v Progressive Catering Services, Inc.*, 2 Misc 3d 545, 547, 769 NYS2d 691 [Civ Ct, New York County 2003] (emphasis added); *Bilkis v Trantham*, 66 Misc 3d 1201[A], *3, 2019 NY Slip Op 52087 [U] [Civ Ct, Queens County 2019]; *US Airways, Inc. v Everything Yogurt Brands, Inc.*, 18 Misc 3d 136 [A], *1, 2008 NY Slip Op 50279 [U] [App Term, 2nd & 11th Jud Dists 2008].) . . . Descriptions that are vague and likely to cause confusion may require dismissal. (*See Sixth St. Community Ctr, Inc. v Episcopal Social Services*, 2008 NY Slip Op 51151 [U], 19 Misc 3d 1143 [A] [Civ Ct, New York County 2008]; *Vornado Two Penn Prop., LLC v XLPC, Corp.*, 18 Misc 3d 1119 [A], 2008 NY Slip Op 5013 [U] [Civ Ct, New York County 2008].) This is because a city Marshal, unfamiliar with the premises, must be assured they are executing a warrant of eviction at the right space. (*See 272 Sherman, LLC v Vasquez*, 4 Misc 3d 370, 372, 777 NYS2d 853 [Civ Ct, New York County 2004].)" (*Reid*, 77 Misc 3d 1213 (A), 2022 N.Y. Slip Op. 51208 (U), *1-2.)

Petitioner has failed to raise material questions of fact regarding the misdescription of the regulatory status pleaded in the petition (that the dwelling is a cooperative unit), nor has petitioner raised material questions of fact regarding the misdescription of the number of dwellings in the basement. In fact, the DOB vacate order and violation summons, together with petitioner's video exhibit, are further evidence of the fatal misdescription of the premises, i.e.,

"This is the basement. Not an SRO, not an apartment, but just the basement." (NYSCEF Doc No. 36, petitioner's attorney's reply affirmation ¶ 8.)[5]

CONCLUSION

There is no material question of fact that dwelling is not a cooperative unit as pleaded, or that there is only one dwelling unit in the basement such that a marshal, without seeking additional information, would know against which unit to execute the warrant.

Accordingly, for the foregoing reasons, it is

ORDERED that respondent's motion for summary judgment is GRANTED and the petition is dismissed without prejudice for failure to state a cause of action; and it is further

ORDERED that petitioner's motion for summary judgment is DENIED as academic.

Thus, respondent's other arguments need not be considered.

This constitutes the decision and order of this court.

Dated: September 12, 2023
New York, NY

So Ordered:
Hon. Karen May Bacdayan

HON. KAREN MAY BACDAYAN
Judge, Housing Part

[5] While not a ground for dismissal as this issue was not raised by respondent, petitioner knew of the violation which led to the DOB vacate order in July 2022, but did not plead same in the petition which was filed on January 5, 2023, as a grounds for eviction. Petitioner relies heavily on the vacate order in its moving papers and opposition papers. The predicate notice and pleadings therefore fail to provide respondent with enough information to formulate a complete defense to petitioner's argument that respondent "is required to vacate as a matter of law." NYSCEF Doc No. 22, Rivers affidavit ¶ 18; see also n 2, *supra*.