2023-03-20

Hamilton v. Carter

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF BRONX: HOUSING PART B
----------X
ENA SOPHIA HAMILTON,

L&T Index No. 301262/20

Petitioner,

-against-

DECISION/ORDER

JACQUELINE CARTER,
"JOHN" "DOE,"
"JANE" "DOE,"

Respondents.
----------X

Present: Hon. OMER SHAHID
Judge, Housing Court

Recitation, as required by C.P.L.R. § 2219(a), of the papers considered in the review of Petitioner's Summary Judgment Motion (Motion #4 on N.Y.S.C.E.F.) and Respondents' Cross-Motion to Serve and File Proposed Amended Answer for Respondent Jacqueline Carter and to Serve and File Answer for Respondent "Jane" "Doe" (Motion #5 on N.Y.S.C.E.F.):

Papers	**Numbered**
Notice of Motion (Motion #4 on N.Y.S.C.E.F.)…...	1
Notice of Cross-Motion (Motion #5 on N.Y.S.C.E.F.)…….……	2
Petitioner's Papers in Opposition to Motion #5 and Reply Papers in Support of Motion #4 (Entries 79-82 on N.Y.S.C.E.F.)…….……..	3
Reply Affirmation in Support of Motion #5 (Entries 83-86 on N.Y.S.C.E.F.)……	4

In its November 9, 2022 decision, the court denied Respondent Jacqueline Carter's motion to dismiss, deemed Respondent's proposed verified answer served and filed, but struck the second affirmative defense on the ground that the court made a determination on that point of law pursuant to the decision. By striking the second affirmative defense, the only remaining affirmative defense in the answer is the breach of the warranty of habitability. Respondent then filed an amended answer pursuant to C.P.L.R. § 3025(a) on N.Y.S.C.E.F. on November 29, 2022. See N.Y.S.C.E.F. Entry 48. Petitioner rejected the amended answer in a letter dated the following day. See N.Y.S.C.E.F. Entry 49. Petitioner then filed the instant summary judgment motion on N.Y.S.C.E.F. on November 30, 2022. Liyah Carter obtained Mobilization for Justice, Inc. as counsel and filed a written answer as "Jane" "Doe" on December 22, 2022. See N.Y.S.C.E.F. Entries 66-68. Petitioner also rejected this answer pursuant to a letter on the same

date. See N.Y.C.E.F. Entry 69. On the following day, Respondents filed the instant cross-motion.

Petitioner moves to strike Respondent Jacqueline Carter's first affirmative defense (breach of warranty of habitability) for lack of merit pursuant to C.P.L.R. § 3211(b). Petitioner argues that this affirmative defense is not a defense to the instant expiration of term holdover proceeding. Petitioner maintains that although this defense is available to an order for use and occupancy, Petitioner only seeks possession pursuant to its moving papers and that such a defense does not prevent Petitioner from recovery. Upon the striking of this defense, Petitioner seeks summary judgment in its favor in lieu of inquest as there are no triable issues of fact present. Petitioner also argues that Respondent has not sought leave of court to file an amended answer and that such an answer should be rejected accordingly. Petitioner states that even if the court were to consider the amended answer, the additional defenses raised are meritless and do not bar the court from granting summary judgment in Petitioner's favor.

Respondent Jacqueline Carter and Liyah Carter (as "Jane" "Doe") oppose the motion and cross-move to interpose their amended answer, annexed to the cross-motion, and answer respectively. Respondent Jacqueline Carter's amended answer raises additional affirmative defenses. The proposed amended answer seeks to add a second affirmative defense/second counterclaim (retaliatory eviction) which states that Petitioner violated R.P.L. § 223-b due to her commencing the instant proceeding within one year of D.H.P.D. issuing violations pursuant to Respondent's complaints to D.H.P.D. in 2019. Respondent also seeks to add a third counterclaim which seeks a placement of a "C" violation for harassment. Respondent argues that this answer raises affirmative defenses that present triable issues of fact to defeat Petitioner's summary judgment motion.

Furthermore, Respondent Liyah Carter (as "Jane" "Doe") seeks to have her answer (N.Y.S.C.E.F. Entry #67) deemed served and filed. Liyah Carter argues that she is entitled to file an answer pursuant to R.P.A.P.L. § 743 and that Petitioner's rejection of the answer has no legal effect. This answer raises the same affirmative defenses and counterclaims as the proposed amended answer for Jacqueline Carter but adds an additional objection of law which states that the court does not have jurisdiction over Liyah Carter as "Jane" "Doe" because Petitioner had actual knowledge of Respondent's full name in 2019.

Petitioner opposes the cross-motion and argues that Respondent Jacqueline Carter should not be allowed to interpose the amended answer because granting such a relief would prejudice Petitioner due to the delay caused by Respondent.

The court first addresses the answer filed by Liyah Carter as "Jane" "Doe" without leave of court. The court agrees with Liyah Carter that Petitioner's rejection of her answer filed as N.Y.S.C.E.F. Entry 67 has no effect. In a holdover proceeding, a respondent may answer "at the time when the petition is to be heard." R.P.A.P.L. § 743. The time to answer is extended upon adjournment of the proceeding unless a contrary arrangement has been made. See Gluck v. Wiroslaw, 113 Misc. 2d 499 (Civ. Ct., Kings Co. 1982). See also Crotona Parkway Apts. H.D.F.C. v. Depass, 68 Misc. 3d 1226(A) (Civ. Ct., Bronx Co. 2020). Here, Liyah Carter is appearing for the first time and resides at the subject premises. Petitioner's claim for possession affects her and the court did not previously direct Liyah Carter to file an answer. Hence, Liyah Carter does not need leave of court to interpose the answer. Accordingly, the court grants the branch of Respondents' motion which seeks an order deeming Respondent Liyah Carter's answer to be served and filed on behalf of "Jane" "Doe."

The court next addresses the branch of Respondents' cross-motion which seeks leave to interpose the amended answer annexed to the motion and deem it to be served and filed. A party may seek leave to amend an answer by leave of court at any time and "[l]eave shall be freely given upon such terms as may be just". C.P.L.R. § 3025(b). Leave to amend should be freely granted unless the party opposing the amendment establishes prejudice in the granting of such a relief. See Kimso Apts., L.L.C. v. Gandhi, 24 N.Y.3d 403 (2014).

Here, Petitioner has not demonstrated that she will be prejudiced by the amendment of Jacqueline Carter's answer. The only ground upon which Petitioner claims she will be prejudiced is that the granting of the relief would cause delay. However, in the granting of such a relief, the court will set the matter down for an immediate trial and allow the parties to litigate their claims and defenses before the trial court. Furthermore, Respondent Jacqueline Carter moved within two months to amend her original answer from when that answer was deemed to be served and filed. "Prejudice, of course, is not found in the mere exposure of the [party] to greater liability. Instead, there must be some indication that the [party] has been hindered in the preparation of [their] case or has been prevented from taking some measure in support of [their] position." Loomis v. Civetta Corinno Constr. Corp., 54 N.Y.2d 18, 23 (1981) (internal citation omitted). Petitioner has, thus, not demonstrated prejudice. Hence, the branch of Respondents' motion which seeks to interpose Jacqueline Carter's amended answer and have it deemed served and filed is granted.

The court now addresses Petitioner's motion to strike Respondents' affirmative defenses. A party may move to dismiss a defense if such a defense does not have merit or is not stated. See C.P.L.R. § 3211(b). The burden is upon Petitioner to demonstrate that the defenses are without merit as a matter of law. See 534 East 11th Street Housing Development Fund Corp. v. Hendrick, 90 A.D.3d 541 (1st Dep't 2011). The answers are to be liberally construed and Respondents are entitled to every reasonable inference. See id. Furthermore, "[a] defense should not be stricken where there are questions of fact requiring trial." Id. at 542 (internal citation omitted).

The second affirmative defense raised in the answers (including the amended answer) concerns retaliatory eviction. Petitioner argues that this affirmative defense lacks merit because the violations were placed by D.H.P.D. in February 2020, one month after the service of the 60-day Notice of Termination. Petitioner claims that since the violations were placed after the service of the predicate notice, Petitioner could not have retaliated against Respondent by commencing this proceeding. Furthermore, assuming arguendo that Petitioner did commence the proceeding within one year of Respondent's complaints to D.H.P.D., Petitioner argues that the presumption of retaliatory eviction can be overcome because she commenced the proceeding on the grounds that Respondent was repeatedly delinquent in rental payments and is a nuisance.

Respondent avers that she made complaints to D.H.P.D. in 2019, prior to the service of the predicate notice, concerning conditions and that D.H.P.D. placed violations in February 2020 because of these complaints.

The court does not strike the second affirmative defense because, if true, would bar Petitioner from recovery. This defense raises a question of fact of whether the February 2020 violations were placed due to Respondent's complaint to D.H.P.D. in 2019 and, thus, prior to the commencement of the instant proceeding. Furthermore, Petitioner's claim that she commenced this proceeding on the grounds that Respondent was both delinquent in rental payments and a nuisance also raises issues of fact to be tried.

Since Respondents' second affirmative defense raises triable issues of fact, the branch of Petitioner's motion which seeks summary judgment in its favor is denied. There are triable issues of fact concerning whether there are at least four units in the subject building to trigger a defense of retaliatory eviction pursuant to R.P.L. § 223-b. Furthermore, determining credibility on Petitioner's intent to commence this proceeding is better left for the trier of fact rather than making such a determination on a summary judgment motion. See Glick & Dolleck v. Tri-Pac Export Corp., 22 N.Y.2d 439 (1968).

Petitioner argues that the third counterclaim of harassment does not comply with the specificity requirement of C.P.L.R. § 3013. That provision of the law provides that "[s]tatements in a pleading shall be sufficiently particular to give the court and parties notice of the transactions, occurrences, or series of transactions or occurrences, intended to be proved and material elements of each cause of action or defense." C.P.L.R. § 3013. However, the court finds that the counterclaim puts Petitioner on notice of the ground upon which Respondent is seeking relief (i.e., harassment) and provides that the basis of such a relief is based upon the allegation of Petitioner's repeated denial of providing essential services such as hot water in contravention of the Housing Maintenance Code. The counterclaim also states the provisions of law Respondents base their claim upon. If Petitioner seeks more information concerning this claim, then it may do so through a demand for a bill of particulars. See Pinehurst Const. Corp. v. Schlesinger, 38 A.D.3d 474 (1st Dep't 2007).

As for the first affirmative defense (i.e., the breach of warranty of habitability), the court agrees with Petitioner that this is not a defense to Petitioner's claim for possession but it is a defense to Petitioner's claim or request for use and occupancy. See R.P.A.P.L. § 745(2)(a)(iv). However, the court does not strike this defense because Petitioner's motion for summary judgment is denied and may pursue such a claim at trial. Furthermore, Petitioner has not moved to withdraw the claim for use and occupancy raised in her Petition. See C.P.L.R. § 3217(b); see also Tucker v. Tucker, 55 N.Y.2d 378 (1982).

Based upon the foregoing, Petitioner's motion is denied in its entirety. Respondents' cross-motion is granted as follows. The amended answer for Respondent Jacqueline Carter annexed to the cross-motion as Exhibit "A" is hereby deemed served and filed. The answer of Liyah Carter as "Jane" "Doe," which is filed as Entry 67 on N.Y.S.C.E.F., is hereby deemed served and filed as well. The matter is hereby restored to the court's calendar and shall appear on April 3, 2023 at 10 A.M. in Part B (Room 360) for an in-person, pre-trial conference.

The foregoing constitutes the decision and order of the court.

Dated: March 20, 2023
Bronx, N.Y.

Omer Shahid, J.H.C.