2024-01-19

2 NO. 6th PL. Property Owner LLC v. Golriz

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF KINGS: HOUSING PART C

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2 NO. 6TH PL. PROPERTY OWNER LLC,

L&T Index No. 55330/20

Petitioner,

-against-

DECISION AND ORDER

(Motion Seq. #1 and #2)

AMIT GOLRIZ,
J. DOE,

Respondents.

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Recitation, as required by CPLR 2219(a):

Notice of Motion and Affidavits Annexed	1, 2
Order to Show Cause and Affidavits Annexed	0
Answering Affidavits	3,4
Replying Affidavits	5
Exhibits	6
Stipulations	7
Other	0

POLEY, J.

In February of 2020, Petitioner commenced the underlying nonpayment proceeding against Respondents seeking rental arrears in the amount of $8,850.00 at $2,950.00 per month for December 2019, January 2020, and February 2020. The subject premises are located at 2 North 6th Place, Apt. 1E, Brooklyn New York 11249. Respondent Amit Golriz answered *pro-se* and the proceeding was first calendared on March 4, 2020. On that day the proceeding was adjourned to April 20, 2020 for Respondent to seek counsel. The COVID-19 Pandemic caused a system wide set of delays, and the physical file has a notation that the case was stayed based on hardship. On April 14, 2022, the proceeding was further stayed as Respondent had an active Emergency Rental Assistance Protection ("ERAP") application pending.

At this juncture, there are two motions before the court. As the ERAP stay has expired, Petitioner moves to restore the nonpayment proceeding, to amend the petition to date and for entry of a final judgment and issuance of a warrant of eviction for failure to pay all the outstanding arrears. Respondent, now represented by counsel, cross-moves to dismiss the proceeding, arguing that Petitioner may no longer seek possession under an expired lease because a new tenancy was created. In the alternative, Respondent is asking the court to deny Petitioner's motion to amend the petition to date and for leave to interpose an amended answer. Petitioner opposes all branches of Respondent's cross-motion. Both motions are submitted for disposition.

It is undisputed that the instant proceeding was commenced by Notice of Petition and Petition, dated February 17, 2020. The Petition alleged defaults in payment of rent due under the rent stabilized lease that was current when the proceeding was commenced, and that lease expired on January 31, 2021. It is further undisputed that Respondent applied for ERAP and on July 18, 2022, the ERAP application was approved, and Petitioner received $41,300.00 for the period of April 2021 through and including May of 2022 at a monthly rent of $2,950.00 per month.

During the pendency of this nonpayment proceeding and while it was administratively stayed, Respondent's rent stabilized lease expired and was not renewed by Respondent. Petitioner served Respondent with a 10-day notice to cure, dated March 23, 2021, and a 30-day termination notice, dated April 27, 2021. Thereafter, Petitioner commenced a failure to renew holdover proceeding under LT Index Number # 306648/21 ("holdover proceeding"). The court notes that the Holdover Petition was filed in July of 2021, but due to the ongoing COVID-19 pandemic and Respondent's Hardship Declaration, dated December 16, 2021, the holdover

proceeding was first scheduled to appear in court on April 1, 2022. On that day, the holdover proceeding was further stayed due to Respondent's ongoing ERAP application and was adjourned to August 23, 2022.

The record shows two stipulations were entered into in the context of the holdover proceeding. First, on August 23, 2022, the Honorable Kimberly Slade So-Ordered a stipulation where Respondent, *pro-se*, agreed to sign leases within 14 days and the holdover proceeding was marked off-calendar. Second, on January 25, 2023, the Honorable Kenneth Barony So-Ordered a two-attorney stipulation where it was acknowledged that Respondent executed a renewal lease agreement for the subject premises and the proceeding was discontinued. Thereafter, Petitioner moved to restore the within nonpayment proceeding by notice of motion dated March 29, 2023.

The factual recitation of what transpired between the parties over the past four years is important, as it is the crux of Respondent's argument seeking to dismiss this nonpayment proceeding. Respondent heavily relies on a holding in the case *Matter of Stepping Stones Assoc. v. Seymour*, 48 AD3d 581 [2nd Dept 2008]. In *Seymour*, Petitioner commenced a nonpayment proceeding against Respondent under a lease agreement in effect at the time the proceeding was commenced. During the pendency of that proceeding, based on Respondent's failure to make a rental deposit, the court entered a default judgment and a warrant of eviction issued. After issuance of the warrant, the Petitioner in *Seymour* offered a renewal lease which Respondent accepted. On appeal, Respondent argued that by offer and acceptance of the renewal lease a new tenancy arose between the parties and Petitioner was barred from seeking a possessory judgment under the expired lease. On appeal, Petitioner argued that the Emergency Tenant Protection Act of 1974 ("ETPA"), which regulated lease renewal offers at that time, compelled Petitioner to tender a renewal lease to the tenant. The Appellate Term and the Appellate Division both agreed

with Respondent, and in rejecting Petitioner's argument, the court in *Seymour* held the following:

> "Contrary to the landlord's argument, the facts here do not support the contention that the tender of the renewal lease was compelled by the requirements of the ETPA. Except in circumstances not presented here, the ETPA requires that a landlord offer a renewal lease to a tenant (*9 NYCRR 2503.5 [a]*). Here, however, the issuance of the warrant of eviction pursuant to the initial judgment in favor of the landlord terminated the landlord-tenant relationship (*see RPAPL 749 [3]*; *Matter of Kingsview Homes v Pette,* 9 AD2d 782, 783, 193 NYS2d 434 [1959]) and, with it, the landlord's obligation to offer a renewal lease (*see 320 W. 87th St. Co. v Segol,* NYLJ, Feb 20, 1991, at 27, col 4). Thus, since the landlord was under no compulsion here to offer a renewal lease, we need not decide whether the making of such an offer under compulsion of the ETPA has the effect of defeating the landlord's claim to possession by reason of the tenant's breach of the prior lease (*see 9 NYCRR 2522.5 [b]*; compare *Everett D. Jennings Apts. L.P. v Hinds,* 12 Misc 3d 139 [A], 824 NYS2d 762, 2006 NY Slip Op 51335 [U] [2006], and *A. A. Spirer & Co. v Adams,* NYLJ, June 3, 1991, at 27, col 4 [App Term, 1st Dept 1991], with *Kibel v Appel,* 147 Misc 2d 141, 555 NYS2d 559 [1990])." (*See, Matter of Stepping Stones Assoc. v. Seymour,* 48 AD3d 581, 584-585 [2nd Dept 2008]).

Turning to the proceeding that is now before this court, Respondent argues that after the underlying lease expired, just as in *Seymour,* Petitioner created a new tenancy by offering a renewal lease while the holdover proceeding was still pending. Therefore, as in *Seymour*, Petitioner can no longer seek possession of the premises based on Respondent's default under the previous lease. Respondent's argument rests on the premise that, as in *Seymour*, Petitioner was not under any compulsion to offer Respondent a renewal lease after the 30-day Notice of Termination expired, and by offering the renewal lease during the pendency of the holdover proceeding Petitioner voluntarily created a new tenancy. In other words, by deciding to settle the holdover proceeding in the middle of litigation, Petitioner, in Respondent's words, "chose" to offer Respondent a renewal lease thereby creating a new tenancy.

Petitioner opposes Respondent's argument by pointing to a very significant difference between the factual posture of the case at hand and *Seymour*. In *Seymour*, the renewal lease was

offered after the tenancy was deemed to be legally terminated, i.e., by issuance of the warrant of eviction pursuant to RPAPL § 749(3), which was the law prior to enactment of the Housing Stability and Tenant Protection Act of 2019 ("HSTPA").[1] Petitioner argues that because the HSTPA eliminated the prior language in RPAPL § 749(3), currently, the landlord tenant relationship severs only after the warrant of eviction executes, and therefore, the renewal offer in *Seymour*, and that court's determination that a new tenancy was created, is distinguishable from the renewal offer in our current proceeding. In other words, the law at the time of *Seymour* provided that the landlord tenant relationship ended when the warrant issued, which is not the case now, and that difference is salient to our analysis concerning the renewal lease.

There is no dispute that Respondent is a rent stabilized tenant and Petitioner was obligated by statute to offer Respondent a renewal lease prior to its expiration. What Respondent argues, in essence, is that once Respondent failed to sign his renewal as offered, the Notice of Termination canceled/terminated the landlord's obligation to offer the renewal lease and by subsequently resolving the holdover proceeding with Respondent in the middle of litigation, Petitioner voluntarily offered Respondent a new lease agreement terminating the prior tenancy and creating a new one. In support of this argument, Respondent cites the portion of *Seymour* which reads:

> "The Appellate Term also correctly reversed the judgment of the City Court. The landlord sought to recover possession of the premises based upon the tenant's default in the payment of rent under the lease in effect at the time the proceeding was commenced. When, subsequent to that default, the landlord tendered, and the tenant accepted, the renewal lease, a new tenancy arose (*see River Rd. Assoc. v Orenstein,* NYLJ, Dec. 24, 1991, at 25, col 5 [Yonkers City Ct]; *Blecher v Pachay,* NYLJ, May 14, 1991, at 25, col 1 [App Term, 2d & 11th Dists]; *320 W. 87th St. Co. v Segol,* NYLJ, Feb. 20, 1991, at 27, col 4 [Hous Part, Civ Ct, NY County]). Since the tenant's right to possession was thereafter predicated upon the

[1] The 2019 amendment by ch 36, §19 (Part M), rewrote the first sentence of RPAPL § 749(3), which formerly read: "The issuing of the warrant for the removal of a tenant cancels the agreement under which the person removed held the premises, and annuls the relation of landlord and tenant, but nothing contained herein shall deprive the court of the power to vacate such warrant for good cause shown prior to the execution thereof..."

> renewal lease, the landlord could no longer seek possession of the premises on the basis of the tenant's default under the previous lease (*see Everett D. Jennings Apts. L.P. v Hinds,* 12 Misc 3d 139 [A], 824 NYS2d 762, 2006 NY Slip Op 51335 [U] [2006])." (*See, Matter of Stepping Stones Assoc. v. Seymour,* 48 AD3d 581, 583-584 [2nd Dept 2008]).

Respondent argues that the above paragraph sets a general rule that a "nonpayment proceeding should be dismissed where the parties entered into a rent-stabilized renewal lease *after* the lease underlying the proceeding expired." (*See*, Res. Aff in Reply, Par 6 page 2). Respondent acknowledges that the aforementioned change in RPAPL § 749(3) makes *Seymour* distinguishable from our current fact pattern in some ways, but contends that the holding in *Seymour* should not be so confined, and stands for the proposition that where the facts demonstrate that a landlord is not compelled to offer a renewal lease, yet makes the renewal offer, then a new tenancy is created and a nonpayment proceeding could not be maintained for defaults under a prior, expired lease. The general premise, according to Respondent, is that when Petitioner offered the renewal lease in the holdover proceeding a new tenancy was created rendering any prior proceeding seeking a judgment of possession moot.

After careful review of the case law and the statutory authority this court disagrees with Respondent's argument. *Seymour* was decided four years before the court in *Samson Mgt., LLC v. Hubert*, 92 A.D. 3d 932 [2nd Dept 2012] invalidated provisions of RSC § 2523.5 (c) (2) which permitted a landlord to "deem" a rent stabilized lease renewed. At the time *Seymour* was decided, RSC § 2523.5 (c) (2) provided: "Where the tenant fails to timely renew an expiring lease or rental agreement offered pursuant to this section, and remains in occupancy after expiration of the lease, such lease or rental agreement may be deemed to have been renewed upon the same terms and conditions, at the legal regulated rent … had the offer of a renewal lease been timely accepted." While this court will not venture to speculate on whether in *Seymour,* the appellate courts considered the now voided RSC § 2523.5 (c) (2) in deciding

whether offering a lease after termination for a curable default was a voluntary action, it behooves this court to note that all cases relied on in *Seymour* were cases where the landlord tenant relationship was either terminated by issuance of the warrant of eviction, or service of a termination notice was for an incurable violation, i.e. nuisance.

In this vein, the ruling in *Seymour* is inapplicable here. Petitioner offered Respondent a renewal lease which Respondent failed to execute, creating an obligation for Petitioner to serve Respondent with a Notice to Cure and a Notice of Termination because Petitioner could no longer "deem" the rent stabilized lease renewed. After expiration of the Notices, Petitioner was again obligated to serve Respondent with a Holdover Petition to recover possession of the premises as Petitioner is no longer permitted to "deem" the lease renewed and could not if needed commence a new nonpayment proceeding to recover rental arrears because there was no lease in effect at that time. (*See, Fairfield Beach 9th LLC v. Shepard-Neely*, 77 Misc 3d 136[A] [App. Term 2nd Dept. 2022]).

Although Respondent wants this court to find that Petitioner's obligation ends after the Notice of Termination lapses and/or the holdover proceeding is commenced, and any act by Petitioner to renew Respondent's lease from that point forward is an intentional or voluntarily act to create a new distinct tenancy, the court disagrees. Currently, in proceedings predicated on a lease violation, RPAPL § 753(4) mandates that the court shall permit Respondent to cure the breach after trial by staying issuance of the warrant for 30 days to allow a cure. Therefore, by offering Respondent a renewal lease during the holdover proceeding, Petitioner did not "voluntarily" offer a "new lease" agreement to Respondent, but rather settled the pending litigation with a result which would be mandated by the court had Petitioner prevailed at trial, i.e. executing a renewal lease within 30 days.

Respondent's argument that there is "simply no law, regulation or rule that requires a landlord to offer a renewal lease after servicing a notice of termination *and* commencing a summary eviction proceeding on the basis of that termination notice" (Res. Reply Aff par 7), and that by doing so during litigation Petitioner should be penalized, is unavailing to this court and ignores that fact that the holdover proceeding was based upon a curable default. The arguments set forth by Respondent if taken to their logical conclusion suggest that in a rent stabilized context, lease renewals should not be signed as a norm to avoid continuity of rent obligations. That is, if a renewal lease is not signed it triggers a holdover proceeding and by Respondent's logic any agreement short of a court order after trial ordering a party to sign a renewal lease creates a new tenancy canceling a prior obligation to pay rent. The result suggested by Respondent needlessly disincentivizes settlements, would overburden court calendars with multiple court dates and would result in litigants spending unnecessary time in court to receive the same or similar result after trial.

For all stated reasons, the branch of Respondent's cross-motion seeking summary judgment dismissing this proceeding based on the allegation that Petitioner and Respondent have created a new tenancy is denied.

Having found that the landlord tenant relationship was not terminated, and this nonpayment proceeding can proceed, the court now turns to the balance of the motions. Petitioner is seeking to amend the Petition to include post-petition arrears and for an order entering a judgment of possession and a money judgment for outstanding arrears to date, and Respondent is seeking to amend the answer to include affirmative defenses and a counterclaim.

Respondent opposes amending the Petition to date alleging that delay in restoring this

proceeding after ERAP funds were paid caused Respondent undue prejudice.[2] Additionally, Respondent opposes amendment based on the allegation that Petitioner is seeking rent arrears while there was no lease agreement in effect, or in the alternative that the effective date of the renewal lease agreement should be calculated from the time it was signed. Petitioner opposes all of Respondents arguments including the branch of Respondent's motion seeking to amend its answer alleging prejudice in the delay and that the defenses lack merit.

Permission to amend pleadings should be "freely given." *(Edenwald Contracting Co., Inc. v. City of New York*, 60 N.Y.2d 957, 959 [1983], *quoting* CPLR 3025(b)). CPLR Rule 3025(b) provides that, "A party may amend his or her pleading, or supplement it by setting forth additional or subsequent transactions or occurrences, at any time by leave of court or by stipulation of all parties. Leave shall be freely given upon such terms as may be just including the granting of costs and continuances." The Court of Appeals has consistently held that leave to amend pleadings "shall be freely given" absent prejudice or surprise resulting directly from the delay. (*McCaskey, Davies & Assoc. v. New York City Health & Hosps.Corp.*, 59 N.Y.2d 755, 757 [1983], *quoting* CPLR 3025(b); *see also, Fahey v. Conuty of Ontario*, 44 N.Y.2d 934 (1978); *see also*, *Lanpont v. Savvas Cab Corp., Inc*. 244 A.D.2d 208 [1st Dept. 1997] [In the absence of surprise or prejudice, it is abuse of discretion, as a matter of law, for trial court to deny leave to amend answer during or even after trial]). Therefore, the overwhelming body of case law provides that trial courts have broad discretion to grant leave to amend. *(Murray v. City of New York*, 43 N.Y.2d 400 [1977]).

Applying the foregoing framework of analysis, Petitioner's motion seeking to amend the petition to date is granted as Respondent has failed to demonstrate undue prejudice or surprise.

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[2] ERAP funds were accepted by Petitioner sometime in July of 2022 and Petitioner moved to restore this non-payment proceeding in March of 2023.

For Respondent to argue prejudice in the context of this proceeding is not only ludicrous but borderline unconscionable. Respondent cannot use the administrative delay as a sword and a shield. Respondent availed himself of every procedural delay that was available to him in the wake of the COVID-19 pandemic. Respondent filed hardship declarations and received an ERAP stay which legislatively stayed this proceeding for over two years. He failed to execute a renewal lease which culminated in a holdover proceeding and received a benefit of a stay in that proceeding for over a year. With all these delays outside of Petitioner's control, Respondent now asks this court to punish Petitioner, alleging that Petitioner delayed in restoring this proceeding after Respondent received ERAP funds. The court notes that Petitioner moved to restore this proceeding only a few short months after the holdover proceeding was discontinued.

Respondent's argument that the petition should not be amended to date because Petitioner failed to timely offer a lease renewal and that the lease executed on September 9, 2022, for a period commencing on February 1, 2021, through and including January 31, 2023, should not be deemed to have commenced on February 1, 2021, is also unavailing. To the extent that Respondent sought to have the renewal lease period commence from a date other than the renewal date listed in the lease, the parties by a two-attorney stipulation dated January 25, 2023, which was executed 5 days before the lease was due to expire, could have contemplated those terms or moved for appropriate relief in that action.[3]

The branch of Respondent's motion seeking to amend the answer to include Safe Harbor Defense and a counterclaim sounding in breach of warranty of habitability is granted as Petitioner is not prejudiced in the amendment of the answer. In general, prejudice is not shown unless the party "has been hindered in the preparation of his or her case or has been prevented

[3] See, Stipulation of settlement, dated January 25, 2023, in the Holdover Proceeding entitled 2 North 6th Place Property Owners LLC v. Amit Golriz, under LT Index number 306648/21.

from taking some measure in support of his position." (*Loomis v. Civetta Corinno Const. Corp.*, 54 NY2d 18, 24 [1981]). Thus, it is well settled that a mere delay to a trial is not enough to find prejudice. In this history of litigation between the parties, the potential answer and defenses should have been known to Petitioner and it can hardly be said that Petitioner should be surprised by them. (*See, Godell v. Greyhound Rent a Car*, 24 AD2d 568 [2nd Dep't 1965]).

Furthermore, the proposed defenses are neither palpably insufficient nor patently devoid of merit on their face. (*Confidential Lending, LLC v. Nurse*, 120 AD3d 739, 741 [2nd Dep't 2014]). This Department adheres to the liberal policy that an evidentiary showing of merit is not required under CPLR 3025(b), that the Court should only determine whether the proposed amendment is "palpably insufficient" to state a cause of action or defense, or is patently devoid of merit, and that if the opposing party wishes to test the merits of the proposed added cause of action or defense, that party may later move for summary judgment upon a proper showing. (*Lucido v. Mancuso*, 49 AD3d 220, 229 [2nd Dep't 2008]). Applying this liberal policy, Respondent is granted leave to interpose the defenses and counterclaim raised in their Amended Answer, which are not palpably insufficient or devoid of merit.

Accordingly, Petitioner's motion to restore this proceeding to the court's calendar is granted. The branch of the motion seeking to amend petition to date is also granted and the petition is amended to include all rent arrears due through December 2023. The branch of the motion seeking a final judgment of possession and a money judgment is denied as the proceeding has not been adjudicated. The branch of Respondent's motion seeking to dismiss this nonpayment proceeding is denied and the branch of the motion seeking to amend the answer is granted in its entirety. This proceeding is restored to the Part C calendar on January 31, 2024, at 9:30 am for all purposes including transfer to Part X for trial.

This constitutes the Decision/Order of the Court, which shall be uploaded to NYSCEF.

Dated: January 19, 2024
Brooklyn, New York

Hon. Julie Poley, JHC

Honorable Julie Poley