2024-04-29

CARNEGIE PARK PRESERVATION LP v. CINTRON

NEW YORK CITY CIVIL COURT
COUNTY OF NEW YORK: PART C

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CARNEGIE PARK PRESERVATION LP,
Petitioner - Landlords,

DECISION AND ORDER

v.

L&T 305163/22

LAUREN CINTRON
Respondent – Tenant,

TERECELA MENDIETA
"J. DOE" aka "JOHN DOE,"
"J. DOE" aka "JANE DOE,"
Respondents-Undertenant.

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Recitation, as required by CPLR §2219(A), of the papers considered in the review of Respondent's motion to dismiss and to seal Respondent's affidavit and exhibits:

Papers	Numbered
Respondents' Notice of Motion Seq. (1) (Numbered 7 on NYSCEF)……..……..	1
Petitioner's Opposition Seq. (Numbered 9 on NYSCEF).....	2
Respondents' Reply (Numbered 10 on NYSCEF) ……..……..…….....	3

TRAVIS J. ARRINDELL, J.

After review of the papers, Respondents' motion to dismiss pursuant to CPLR § 3211 (a) (7) is granted. Furthermore, Respondent's motion to seal their affidavit and Exhibits C-E pursuant to New York Civil Rights Law ("CRL") § 50-b is also granted.

Standard of Review

When deciding a motion to dismiss pursuant to CPLR § 3211 (a)(7) for failing to state a cause of action, the court must liberally construe the pleadings, accept all facts alleged in the pleading as true and determine only whether the facts fit within any cognizable legal theory.[1] A motion to dismiss pursuant to CPLR § 3211 (a)(7) must be denied if from the pleadings' four corners "factual allegations are discerned which taken together manifest any cause of action cognizable at law."[2] "Whether a plaintiff can ultimately establish its allegation is not part of the calculus in determining a motion to dismiss."[3]

Legal Discussion

24 CFR § 5.2005(a) of the Violence Against Women Act ("VAWA") states that

[1] See Leon v. Martinez, 84 NY2d 83 [Ct App 1994].
[2] See 511 West 232nd Owners Corp v. Jennifer Realty Co, 98 NY2d 144, 152 (2002).
[3] See EBC I. Inc. v. Goldman Sachs & Co., 5 NY3d 11 (2005).

> A covered housing provider must provide to each of its applicants and to each of its tenants the notice of occupancy rights and the certification form as described in this section:…the notice required by (a)(1)(i) of this section and certification form required by paragraph (a)(1)(ii) of this section **must be provided** to an applicant or tenant no later than at each of the following times: (i) At the time the applicant is denied assistance or admission under a covered housing program; (ii) At the time the individual is provided assistance or admission under the covered housing program; (iii) **with any notification of eviction or notification of termination of assistance**….[4]

"In construing statutes, it is a well-established rule that resort must be had to the natural signification of the words employed, and if they have a definite meaning, which involves no absurdity or contradiction, there is no room for construction and courts have no right to add to or take away from that meaning"[5] Additionally, When a statute is part of a broader legislative scheme, we construe its language "in context and in a manner that harmonizes the related provisions and renders them compatible."[6]

It is undisputed by the parties that Petitioner is a "covered housing provider" as required by VAWA. Petitioner in their Petition and their Amended 30 Day Notice to Terminate, alleges that Respondent's premises is governed by the "The Department of Housing & Urban Development's ["HUD"] … Section 8 Program for projects with [HUD] insured & [HUD] held mortgages. The program is governed by the Housing Act of 1937…."[7] It is also undisputed by the parties that Petitioner served an Amended 30 Day Notice to Terminate, requiring Respondent to vacate their premises by March 31, 2022. Finally, it is undisputed by the parties that Petitioner failed to provide the required notice under 24 CFR § 5.2005(a) with the notice to terminate. Respondent argues that Petitioner's failure to provide the required VAWA notices with their termination notice, subject this proceeding to dismissal. In response Petitioner fails to provide any factual or legal defense to this argument.

A plain reading of 24 CFR § 5.2005(a)'s notice provision requires that with any notice of eviction the covered housing provider "must" with any notification of eviction provide the tenant a copy of the VAWA's notice of occupancy rights and a VAWA certification form. Here Petitioner, failed to provide the required VAWA notices along with their notice of termination. This failing subject this case to dismissal. The Court notes that this case maybe a matter of first impression in New York. However, several courts in other jurisdiction, which have persuasive authority, have decided similarly. Multiple courts have held that the landlord's failure to provide a copy of the notice along with the termination letter requires dismissal of an ensuing eviction, e.g., Lambert v. Gharouni, No. 23-CV-02410, 2023 Vt. Super. LEXIS 162 (Toor, J.); Tolstoi v. Worth, No. 23-CV-01292, 2023 Vt. Super. LEXIS 160 (Shafritz, J.); DHI Cherry Glen Assocs.,

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[4] Emphasis added.
[5] See Majewski v. Broadalbin-Perth Cent. Sch. Dist., 91 N.Y.2d 577, 583.
[6] See Matter of Regina Metro. Co., LLC v New York State Div. of Hous. & Community Renewal, 35 N.Y.3d 332, 352 (citing Matter of M.B., 6 NY3d 437, 447, 846 NE2d 794, 813 NYS2d 349 [2006] [internal punctuation and citation omitted]).
[7] See 24 CFR § 5.2005.

L.P. v. Gutierrez, 46 Cal. App. 5th Supp. 1, 259 Cal. Rptr. 3d 410, 416 (Cal. Ct. App. 2019); Housing Auth. of City of Hartford v. Shahine, 2022 Conn. Super. LEXIS 1748, 2022 WL 2663954 (Conn. Super. Ct. Apr. 26, 2022). Specifically, in DHI Cherry Glen Associates, L.P. v. Gutierrez, 46 Cal. App. 5th Supp. 1, the Appellate Division, Superior Court of California found that "the plain and commonsense meaning of the statutory language contained in 24 C.F.R. § 5.2005 (2019) requires … [VAWA] notices to be served with any notice of termination." Despite this Court's inability to find any publish decision within NY on this exact issue, the Appellate Division, Second Department in Matter of Johnson v Palumbo, 154 A.D.3d 231, held that a "public housing agency … cannot deny relief for protection under the VAWA unless it has provided the individual with a written request for such documentation and the individual has failed to provide documentation within the specified time." Though Palumbo, 154 A.D.3d 23, did not address whether the lack of serving the VAWA notices is a condition precedent to maintain an eviction action, their holding does emphasize that a tenant cannot be denied relief under VAWA until first such notice is provided. If a tenant can be evicted prior to being informed of their rights of VAWA, then the protection afforded by VAWA would be meaningless. Accordingly, Respondent's motion to dismiss is granted because Petitioner's failed to serve the required VAWA notices with their notice of termination as required by 24 CFR § 5.2005(a).

Additionally, regarding Respondent's motion seeking to seal their affidavit and Exhibits C-E, Respondent's unopposed motion to seal is granted. Respondent has demonstrated good cause that the documents sought to be sealed are such which fall under the protection of CRL § 50-b. Respondent may refile their Notice of Motion, to NYSCEF, filing Respondent's affidavit and each exhibit as separately filed documents by May 15, 2024. Upon Respondent's timely filing the Court shall seal the aforementioned documents.

Finally, with regards to Respondent's further arguments to dismiss and Petitioner's opposition, this court makes no finding on the merit.

Conclusion

Based on the foregoing, both Respondent's motion to dismiss and motion to seal their affidavit and Exhibit C-E are hereby granted.

This constitutes the decision and order of the Court.

Dated: April 29, 2024,
New York, New York

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TRAVIS J. ARRINDELL
JHC