2024-06-24

Mia v. Lyons

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

----------X L&T Index # 313214/21

AMINUL MIA,
Petitioner,

-against-

DECISION & ORDER

FAITH URSULA LYONS,
Respondent (Tenant of Record),
HUSSUF GINEM, "JOHN DOE", "JANE DOE",
Respondents (Occupants).
Premises:
2498 Arthur Avenue, Apt 2nd Fl, Bronx NY 10458

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Hon. Diane E. Lutwak, HCJ:

Recitation, as required by CPLR Rule 2219(a), of the papers considered in the review of Respondent-Tenant's Motion to Renew Motion for Summary Judgment (motion seq #3):

Papers	NYSCEF Doc. #
Notice of Motion	46
Attorney's Affirmation in Support	47
Exhibits A-F in Support	48-53
Attorney's Affirmation and Petitioner's Affidavit in Opposition	55

PROCEDURAL HISTORY & BACKGROUND

This is a holdover eviction proceeding based on a 90-day notice terminating the tenancy of an allegedly unregulated tenant living in a building containing less than six apartments. In her verified answer, Respondent Faith Ursula Lyons (Respondent) raises as a defense, *inter alia*, that her apartment is *de facto* Rent Stabilized as the building was erected prior to 1974 and has contained six or more separate residential dwelling units. Respondent moved for summary judgment on this defense and, by Decision and Order dated November 14, 2022, familiarity with which is presumed, that motion was denied based on the court's finding that there were issues of fact for trial. Specifically, while it was undisputed that the building is a legal two-family building, and that the first and second floors had been rented out in the past to two separate families each, and while Respondent provided documents from the New York City Department of Buildings (DOB) showing violations placed for work without a permit and the creation of additional units contrary to the Certificate of Occupancy (C of O), Petitioner denied that the basement had ever been rented out to two or more separate families or that the building had ever contained six or more separate units.

Respondent now moves to renew her summary judgment motion under CPLR R 2221(e) based on documents produced by the New York City Department of Buildings (DOB) in response to a second subpoena Respondent served on that agency after the case was transferred to a Trial Part that DOB did not previously produce in response to an earlier subpoena. Specifically, Respondent's motion to renew is supported by the following two DOB documents:

- "ECB (Environmental Control Board) Violation Summary" (NYSCEF Doc. # 49), dated April 27, 2002, for Violation # 34317315L: "RESIDENCE ALTERED FOR OCCUPANCY FOR MORE THAN THE LEGALLY APPROVED NUMBER OF FAMILIES BUILDING DEP RECORDS STATE PREMISES IS A 2 FAMILY. NOW CONVERTED TO 7 FAMILIES 2 APTS IN CELLAR 2 APTS AT 1ST FLOOR 3 APTS A." The Summary includes the following information:
    - "Violation Severity" of "Hazardous"
    - "Status" of "No Compliance Recorded"
    - "Scheduled Hearing Date" of June 21, 2002 at 10:30 a.m.
    - "Hearing Status" of "Default"
    - "Penalty Imposed" of $2500

- "Certificate of Correction Affidavit" (NYSCEF Doc. # 50), sworn to by Petitioner on October 5, 2008, asserting his compliance with the Commissioner's order to correct each condition cited in Violation # 34317315L; that he completed the work described in an attached affidavit on February 27, 2008; and that: "I admit the existence of the violation(s) charged. I have personal knowledge that the violating condition(s) have been corrected as per this affidavit and statement(s) attached."

Respondent's attorney argues that based on this evidence, and applicable case law, the court should grant summary judgment to Respondent and dismiss the proceeding.

In his affidavit in opposition Petitioner asserts that he purchased the building in 2007; the cellar space at that time was "dilapidated", did not contain two apartments and was not habitable; and before obtaining construction permits he learned of DOB violation # 34317315L (NYSCEF Doc. # 49) and that it had to be certified as corrected before he could secure permits. Petitioner acknowledges his certification of the correction of that violation (NYSCEF Doc. # 50) but asserts that in doing so, "I only admitted to the existence of the violation, not that it was true, because I saw no evidence substantiating the truth of the violation." Petitioner's attorney argues that there are issues of fact for trial and summary judgment should be denied.

DISCUSSION

Under CPLR R 2221(e), a party may seek leave to renew a prior motion based upon either a change in the law or "new facts not offered on the prior motion that would change the prior determination [and] … a reasonable justification for the failure to present such facts on the prior motion." *See, e.g,* W*illiam P Pahl Equip Corp v Kassis* (182 AD2d 22, 27, 588 NYS2d 8, 11 [1st Dep't 1992]). Here, based on the DOB documents pertaining to Violation # 34317315L

(NYSCEF Doc. ## 49 and 50), which DOB did not produce in response to Respondent's original subpoena prior to Respondent's original summary judgment motion and produced only in response to a subsequent, pre-trial subpoena, it is appropriate to grant Respondent's request for leave to renew that motion.

Turning back to the merits of Respondent's claim of *de facto* Rent Stabilization coverage of her apartment in light of the new evidence, under Rent Stabilization Law §§ 26-504(a) and 26-506(1), Rent Stabilization applies to Class A multiple dwellings built before 1974 which contain six or more units. *Balay v Manhattan 140 LLC* (204 AD3d 491, 493, 167 NYS3d 62, 65 [1st Dep't 2022]). When determining whether a building has six or more units and therefore is subject to Rent Stabilization, the issue "turns on the function of the units as housing accommodations (*i.e.,* their continuous and exclusive use and occupancy as residences for a period of time), not the 'legality' of their usage in the absence of a certificate of occupancy." *Balay v Manhattan 140 LLC, supra,* and "any attempt by landlord to reduce the number of residential units subsequent to the base date does not effect an exemption from rent stabilization", *Rosenberg v Gettes* (187 Misc2d 790, 791, 723 NYS2d 598, 599-600 [App Term 1st Dep't 2000]). "Some degree of actual occupancy or evidence of 'intended' occupancy in the years after rent stabilization could have attached (generally, either 1969 or 1974) is required to establish that units counted toward the six-unit threshold for regulation". *325 Mgmt Corp v Statuto* (220 AD3d 524, 525, 198 NYS3d 35, 37 [1st Dep't 2023])(*citing Matter of Gracecor Realty Co, Inc v Hargrove* (90 NY2d 350, 355, 683 NE2d 326, 660 NYS2d 704 [1997]) and affirming lower court's order granting summary judgment to petitioner-landlord where "tenant failed to raise an issue of fact as to whether the building at issue contained six or more 'housing accommodations' … and therefore was subject to rent stabilization").

Summary judgment pursuant to CPLR R 3212 is a drastic remedy which should not be granted where there is any doubt as to the existence of material and triable issues of fact. *Sillman v Twentieth Century-Fox Film Corp* (3 NY2d 395, 404, 144 NE2d 387, 165 NYS2d 498, 505 [1957]). The court should not pass on issues involving credibility, as the function of summary judgment is "issue finding, not issue determination". *Rodriguez v Parkchester South Condominium, Inc* (178 AD2d 231, 577 NYS2d 52, 53 [1st Dep't 1991]). The proponent of a summary judgment motion must make a *prima facie* showing of entitlement to judgment as a matter of law, tendering sufficient evidence in admissible form to demonstrate the absence of any material issues of fact. *Winegrad v New York Univ Med Center* (64 NY2d 851, 853, 476 NE2d 642, 487 NYS2d 316, 317 [1985]); *Zuckerman v New York* (49 NY2d 557, 404 NE2d 718, 427 NYS2d 595 [1980].

Once this showing has been made, the burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action. *Alvarez v Prospect Hospital* (68 NY2d 320, 324, 501 NE2d 572, 508 NYS2d 923, 925-926 [1986]); *Zuckerman v New York* (49 NY2d at 562, 427 NYS2d at 598). A conclusory affidavit in opposition will be found

insufficient to defeat summary judgment if it "fails to present facts sufficient to show any bona fide issue requiring a trial". *P D J Corp v Bansh Props, Inc* (29 AD2d 927, 928, 289 NYS2d 32, 32 [1st Dep't 1968], *aff'd*, 23 NY2d 971, 246 NE2d 749, 298 NYS2d 988 [1969]).

Here, Respondent met her initial burden on summary judgment as the supporting documents establish that DOB issued a violation for illegal alteration of the building on April 27, 2002, and imposed a fine after a hearing on June 21, 2002, based on a finding that the subject two-family building had been converted to a seven-unit building. Further, Petitioner admitted in an affidavit sworn to October 5, 2008 that the violation existed and that he personally had corrected the violating conditions. Petitioner has failed to meet its burden to oppose the motion with more than simply a conclusory affidavit. While Petitioner asserts that the basement was "dilapidated" when he purchased it in 2007, and that it did not contain two apartments, Petitioner has come forward with no evidence to show that DOB placed the violation in error in 2002, and that the building did not contain seven housing units at that time.

CONCLUSION

Accordingly, it is hereby ORDERED that Respondent's motion to renew is granted and, upon such renewal, summary judgment pursuant to CPLR R 3212 is awarded to Respondent and this proceeding is dismissed with prejudice. This constitutes the Court's Decision and Order, which is being uploaded on NYSCEF and mailed to the unrepresented Respondents-Occupants.

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Hon. Diane Lutwak, HCJ

Dated: Bronx, New York
June 24, 2024