2024-10-11

Diego Beekman Mutual Housing Association H.D.F.C. v. McClain

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

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DIEGO BEEKMAN MUTUAL HOUSING ASSICATION H.D.F.C.,

Petitioner-Landlord,

-against-

TOMASINA MCCLAIN,

Respondent-Tenant,

and

DEVIN ABREU, "JOHN DOE I", "JOHN DOE II", "JANE DOE",

Respondents-Undertenants.

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Index No.: L&T-320278-23/BX

DECISION/ORDER

Motion Seq: 2

Present: Hon. Rina Gurung
Judge, Housing Court

Recitation, as required by CPLR §2219(a), of the papers considered in the review of petitioner's motion:

Papers	**Numbered**
Petitioner's Motion with Affidavit, Affirmation, and Exhibits	26-29, 32
Respondent's Opposition	30-31, 33-34
Petitioner's Reply Affirmation	None
Court File	*Passim*

Upon the foregoing cited papers, the Decision and Order on this motion is as follows:

This is petitioner, Diego Beekman Mutual Housing Association H.D.F.C.'s ("petitioner"), motion to reargue Hon. Arlene H. Hahn's ("J. Hahn") Decision/Order dated January 10, 2024. For the reasons stated *infra*, this court grants re-argument, but adheres to J. Hahn's determination, and this proceeding remains dismissed.

The underlying matter is a holdover proceeding wherein the petitioner sought possession of the subject premises from respondent-tenant Tomasina Mcclain ("respondent") and respondents-undertenants, Devin Abreu, "John Doe I", "John Doe II" and "Jane Doe". Per the petition, the subject

premises is rent-stabilized and in addition, petitioner and respondent are parties to a "Federal Department of Housing and Urban Development Section 8 lease under a program administered by the NYCHA" (see ¶6 of the petition, NYSCEF Document No. 1). After respondent retained counsel, respondent moved to dismiss the underlying proceeding. Respondent argued that the petitioner failed to comply with 24 C.F.R § 5.2005(a)(2)(iii) because the petitioner failed to provide the respondent with "Notice of Occupancy Rights under the Violence Against Women Act" form HUD-5380 and the corresponding VAWA certification, HUD-5382 at the time of service of the petitioner's Ten (10) Day Notice of Termination and Notice to Vacate. On January 10, 2024, J. Hahn issued a Decision/Order, granting respondent's motion to dismiss stating; "After argument, over petitioner's written opposition, for the reasons argued in the respondent's motion papers, argues and allocuted on the record, respondent's motion is granted. Proceeding dismissed without prejudice". Upon J. Hahn's retirement, this matter was transferred to this court and the motion was taken on submission.

Petitioner moves this court pursuant to CPLR §2221(d), which sates:

> "A motion for leave to reargue: 1.) shall be identified specifically as such; 2.) shall be based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion, but shall not include any matters of fact not offered on the prior motion; and 3.) shall be made within thirty days after service of a copy of the order determining the prior motion and written notice of its entry..."

A court has the inherent power, *sua sponte* or on motion of a party, to reconsider and vacate its prior decision before issuing an order thereon (see *Scritchfield v. Perry*, 245 A.D.2d 1054, 667 N.Y.S.2d 584 [App. Div. 4th Dept. 1997] citing, *American Re-Ins. Co. v. SGB Universal Bldrs. Supply*, 160 AD2d 586 [App. Div. 1st Dept 1990]; *Vinciguerra v Jameson*, 153 AD2d 452 [App. Div. 3rd Dept 1990; *Levinger v. General Motors Corp.*, 122 AD2d 419 [App. Div. 3rd Dept 1986]). While the determination to grant leave to reargue a motion lies within the sound discretion of the court, a motion for leave to reargue "is not designed to provide an unsuccessful party with successive opportunities to reargue issues previously decided, or to present arguments different from those originally presented" (internal citation omitted)

(See *Matter of Carter v. Carter*, 81 A.D.3d 819, 916 N.Y.S.2d 821 [2nd Dept. 2011]). This court grants re-argument to the extent that J. Hahn's Decision/Order did not opine the reasoning for dismissal. However, upon granting re-argument, this court adheres to the determination of J. Hahn's January 10, 2024, Decision/Order.

Respondent in its motion to dismiss averred that respondent is a beneficiary of the Section 8 Housing Choice Voucher Program as administered by the New York City Housing Authority ("NYCHA"). Respondent argued that the court file revealed that a "Notice of Occupancy Rights under the Violence Against Women Act" mandated by 24 C.F.R. § 5.2005(a)(1)(i) and corresponding VAWA certification form mandated by 24 C.F.R § 5.2005(a)(1)(ii) were not provided to respondent with the "Ten (10) Day Notice of Termination and Notice to Vacate" dated March 16, 2023, upon which this instant proceeding was premised. Respondent further argued that the petitioner is a "covered housing provider" as defined in the statute, 24 C.F.R. § 5.2005(a)(1), titled "VAWA protections" and that respondent is a "tenant" as defined in the same statute, 24 C.F.R. § 5.2005(a)(1), (2) with the respondent to the subject premises.

Petitioner seeks re-argument of J. Hahn's decision. Petitioner argues that J. Hahn relied upon and found pivotal respondent's argument that she had no obligation to give notice to the petitioner of her status as a person impacted by domestic violence. Petitioner further argues that J. Hahn ignored the petitioner's opposition, which, in sum, is that in order to receive protections under the VAWA, respondent has to establish they are a victim of domestic violence. In support, the petitioner relies on *Matter of Johnson v. Palumbo*, 154 A.D.3d 231 (2nd Dept. 2017). However, the petitioner misapplies the holding in the *Matter of Johnson.* Here, the court found, as a matter of law, that the tenant was entitled to VAWA housing protections, which prohibited the agency from terminating tenant's participation in the program on the ground that the tenant allegedly violated the program rules by failing to seek agency approval to add her

abuser as an occupant to the contract unit. *Matter of Johnson* does not state that "Notice of Occupancy Rights under the Violence Against Women Act" mandated by 24 C.F.R. § 5.2005(a)(1)(i) and corresponding VAWA certification form mandated by 24 C.F.R § 5.2005(a)(1)(ii) are only required where the tenant is a victim of domestic violence.

The fact that respondent is a participant of NYCHA Section 8 housing choice voucher subjects the petitioner to comply with 24 C.F.R. § 5.2005(a)(2)(iii). A covered provider's failure to serve VAWA notice makes the matter defective. Under the 24 C.F.R. § 5.2005(a)(1), the petitioner, a party to the Section 8 housing choice voucher HAP contract, is not exempt from the requirement to serve the VAWA notice. The statutory text is the clearest indicator of legislative intent "and courts should construe unambiguous language to give effect to its plain meaning". See *Matter of Mestecky v. City of New York*, 30 N.Y.3d 239, 88 N.E.3d 365, 66 N.Y.S.3d 207 (2017). Accordingly, the petitioner's failure to serve the VAWA notice rendered the underlying petition defective and the proceeding dismissible.

In conclusion, court grants petitioner's motion to reargue but adheres to J. Hahn's January 10, 2024, Decision/Order for the reasons stated *supra*. In light of the discussion *supra*, this holdover proceeding remains dismissed.

The foregoing constitutes the Decision and Order of this Court.

Dated: Brooklyn, New York
October 11, 2024

Hon. Rina Gurung
Judge, Housing Court