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| West Side Family Realty, LLC v Goldman |
| 2016 NY Slip Op 32067(U) |
| September 15, 2016 |
| Civil Court of the City of New York, New York County |
| Docket Number: 65907/2016 |
| Judge: Sabrina B. Kraus |
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CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK: HOUSING PART F

WEST SIDE FAMILY REALTY, LLC, X

Petitioner-Landlord

HON. SABRINA B. KRAUS

-against-

DECISION & ORDER

Index No.: L&T 65907/2016

NINA GOLDMAN
163 West 71st Street - Apt. 4F
New York, NY 10023

Respondent- Tenant

“John Doe” & “Jane Doe”
Respondents-Undertenants

X

BACKGROUND

This summary holdover proceeding was commenced by **WEST SIDE FAMILY REALTY, LLC** (Petitioner) against **NINA GOLDMAN** (Tenant), the rent-stabilized tenant of record, seeking to recover possession of 163 West 71st Street - Apt. 4F, New York, NY 10023 (Subject Premises) based on the allegation that Respondent has breached her lease obligations by harboring a cat in the Subject Premises without Petitioner’s permission.

PROCEDURAL HISTORY

Petitioner issued a Notice to Cure dated April 29, 2016, asserting that a cleaning lady for the building “noticed” a cat from the Subject Premises on April 25, 2016, and that this violated a provision of Respondent’s January 1, 2014 lease. Petitioner issued a Notice fo Termination

dated May 20, 2016. The Notice of Petition issued June 6, 2016, and the proceeding was initially returnable June 14, 2016.

Respondent appeared by counsel and filed an answer dated June 13, 2016, asserting that Respondent had maintained her cat openly and notoriously for over three months prior to the commencement of the proceeding, that Petitioner's predecessor in interest was aware that Respondent had a cat, that Petitioner's agents/employees were on notice of this fact over 90 days prior to the commencement of the proceeding, and asserting a counterclaim for attorneys' fees.

THE PENDING MOTIONS

On July 26, 2016, Respondent moved for summary judgment and related relief. On September 15, 2016, Petitioner cross-moved for summary judgment. On September 15, 2016, the court heard limited argument and reserved decision.

Respondent moved into the Subject Premises in June 1995, pursuant to an initial lease (Exhibit F) that ran for a term from June 1, 1995 through May 31, 1997. The lease provided that Pets, including cats, were not allowed in the building. The prior owner was an attorney named Amelio Marino. Respondent asserts Mr. Marino was aware that Respondent had a cat from the inception of her tenancy. Mr. Marion and his co-owner, sold the building to Petitioner on or about April 3, 2014 (Ex G).

Mr. Marino wrote a letter to Petitioner's counsel dated May 5, 2016, asserting that Respondent had had a cat for over 20 years in the Subject Premises and that he was aware of this fact (Exhibit H).

Respondent adopted Jacob, the cat that is the subject of this proceeding on or about January 13, 2013. A copy of the adoption agreement is annexed as exhibit "I" to the moving

papers. From that date forward, Respondent took the cat for procedures to the vet on numerous occasions. From the record annexed to the moving papers it appears that Respondent took Jacob to have his nails clipped approximately once a month., and at least three other times for medical care.

In September 2014, Respondent requested a repair to her bathroom sink. Respondent keeps Jacob's litter box in the bathroom of the Subject Premises. Respondent asserts that Ming, Petitioner's handyman completed this job at or about said time, and could not have made the repair without observing the litter box. Respondent also sent a text message to Pat, the Superintendent on August 30, 2015 advising that she needed the extra key to the Subject Premises so her friend could feed her cat while she was away. Pat responded to said text message by agreeing to drop of the key (Ex L).

Petitioner acknowledges that Pat is employed by Petitioner, but asserts Pat is not the Super but an independent contractor. Petitioner acknowledges that Ming is also employed by Petitioner. No affidavit in opposition is submitted either from Ming or Pat denying they had knowledge of the cat, or the authenticity of the text message. Petitioner does not explain the failure to supply said affidavits. Petitioner merely suggests, Mr. Marino has reason to fabricate his knowledge about the cat. Petitioner does annex letters from Ruth Loftin and two other occupants stating they had not seen a cat prior to the commencement of this proceeding.

In reply, Respondent submits a more detailed affidavit from Mr. Marino regarding his knowledge of Respondent's cats. Both parties argue that they are entitled to summary judgment and that there are no material issues of fact requiring a trial.

DISCUSSION

To obtain summary judgment the movant must establish the claim sufficiently to warrant the court entering judgment as a matter of law, by tendering evidence in admissible form. To defeat such a motion there must be a showing of a material disputed question of fact, also by submission of evidence in admissible for, or by making a showing of why such evidence has not been tendered (*Zuckerman v City of New York* 49 NY2d 557).

§ 27-2009.1. of the New York City Administrative Code is entitled Rights and responsibilities of owners and tenants in relation to pets, and provides in part:

a. Legislative declaration. The council hereby finds that the enforcement of covenants contained in multiple dwelling leases which prohibit the harboring of household pets has led to widespread abuses by building owners or their agents, who knowing that a tenant has a pet for an extended period of time, seek to evict the tenant and/or his or her pet often for reasons unrelated to the creation of a nuisance. Because household pets are kept for reasons of safety and companionship and under the existence of a continuing housing emergency it is necessary to protect pet owners from retaliatory eviction and to safeguard the health, safety and welfare of tenants who harbor pets under the circumstances provided herein, it is hereby found that the enactment of the provisions of this section is necessary to prevent potential hardship and dislocation of tenants within this city.

b. Where a tenant in a multiple dwelling openly and notoriously for a period of three months or more following taking possession of a unit, harbors or has harbored a household pet or pets, the harboring of which is not prohibited by the multiple dwelling law, the housing maintenance or the health codes of the city of New York or any other applicable law, and the owner or his or her agent has knowledge of this fact, and such owner fails within this three month period to commence a summary proceeding or action to enforce a lease provision prohibiting the keeping of such household pets, such lease provision shall be deemed waived.

The affidavits of Respondent and Mr. Marino are admissible *prima facie* evidence supporting Respondent's claim for summary judgment. Petitioner's affidavit by Mr. Lee

claiming that Pat and Ming had not seen the cat or cat litter is inadmissible hearsay. Moreover, other than claiming Mr. Marino, an attorney and officer of the court, has a reason to lie, they offer no evidence suggesting Marino was not aware of the cat.

Petitioner has failed to present affidavits from Ming and Pat disputing that they had knowledge of Jacob and has offered no explanation for this failure. Petitioner's argument that Pat is an independent contractor who makes repairs, rather than the Super is unavailing, a contractor retained by the landlord to make repairs serves as an agent for the [purpose of imputing knowledge to the landlord under the pet law (*184 West 10th Corp v. Marvits* 59 AD3d 287, 288).

The no-pet waiver rule was intended to require that landlords enforce a no-pet clause promptly or be deemed to have waived that breach of the lease (*Megalopolis Property Association v. Buvron*, [110 A.D.2d 232, 235–236, 494 N.Y.S.2d 14.](#)). Here it is undisputed that the prior owner was aware that Respondent had two cats as of January 2013, and took no action to commence a holdover within 90 days. Moreover, it is undisputed by admissible evidence that two of Petitioner's agents were aware of the cat.

Based on the foregoing, Respondent is entitled to summary judgment dismissing this proceeding.

As a result, Respondent is the prevailing party in this proceeding and is entitled to an award of attorneys' fees., pursuant to paragraph 27 of the initial lease. Additionally, Petitioner failed to submit any opposition as to the amount of fees requested. Based on the foregoing, Respondent is awarded \$4,533.33 in attorneys' fees and a money judgment for same shall be entered against Petitioner.

This constitutes the decision and order of the court.

Dated: New York, New York
September 15, 2016

Sabrina B. Kraus, JHC

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