

Mendel v Henry Phipps Plaza West, Inc.

2005 NY Slip Op 30331(U)

August 24, 2005

Supreme Court, New York County

Docket Number: 107021/03

Judge: Sherry Klein Heitler

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: Sherry Klein HEITLER
Justice

PART 30

MENDOL, SYLVIA, ETAL.

INDEX NO.

107021/03

MOTION DATE

MOTION SEQ. NO.

10

MOTION CAL. NO.

HENRY PHIPPS PLAZA WEST, INC.

- v -

The following papers, numbered 1 to _____ were read on this motion to/for _____

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, It is ordered that this motion is

decided

as per the memo. decision
of 8-24-05

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Dated: 8-24-05

Sherry Klein Heitler
SHERRY KLEIN HEITLER
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 30**

-----X
SYLVIA MENDEL,

Plaintiff,

-against-

HENRY PHIPPS PLAZA WEST, INC. et al.,

Defendants.

-----X
SHERRY KLEIN HEITLER, J.:

Index No. 107021/03

DECISION AND ORDER

Defendant Bellevue South Associates (Bellevue or Landlord) moves for an order enforcing a Stipulation and Agreement of Settlement (Settlement Agreement) dated January 31, 2004 and so-ordered on February 19, 2004. Defendants David Alexander and Danielle Alexander (who are father and daughter), and Steven Bain and Olga Wildfeuer-Bain (who are husband and wife), cross-move for an order declaring the Settlement Agreement to be void on the ground of misrepresentation, fraud and duress. They further claim that they are entitled to continue as Mitchell-Lama tenants until May 11, 2011. In the alternative, the defendants seek a plenary hearing on these issues.

Bellevue seeks an award of possession and the issuance of warrants of eviction, with respect to Apartment 20A at 500 Second Avenue, occupied by the Alexanders, and with respect to Apartment 23B at 520 Second Avenue, occupied by the Bains. Moreover, Bellevue seeks use and occupancy against these tenants covering time periods from September 1, 2004 to date. The Alexanders and Bains continue to occupy their apartments, despite the terms of the Settlement Agreement, which require that they pay market rents or vacate the apartments.

The instant motion arises out of a long-standing dispute between the parties regarding Bellevue's right to withdraw Phipps Houses from the Mitchell-Lama program, and charge free-

market rents for apartments. On May 25, 2004 (as clarified by the decision of January 6, 2005), this court held that Bellevue had the right to withdraw Phipps Plaza from the Mitchell-Lama program, and that the tenants did not have standing to enforce a land development agreement (LDA) which, according to the tenants, gave them the right to continue as Mitchell-Lama tenants. That decision was affirmed by the Appellate Division, First Department (Mendel v Phipps Plaza West, Inc., 16 AD3d 112 [1st Dept 2005]).

Prior to the above decision, a large group of tenants (Settling Tenants), then represented by the law firm of Wolf Haldenstein, Esqs., entered into a Stipulation of Settlement (Settlement Agreement). Each Settling Tenant chose between a series of settlement options.

The Alexanders and Bains deny that Sylvia Mendel (the first named plaintiff in this action) or Wolf Haldenstein were authorized to represent their interests. However, they did execute new leases extending the termination date until August 31, 2004. The Bains executed the Settlement Agreement and Lease Agreement on February 28, 2004 (Steven Bain and Olga Wild Feuer-Bain's affidavit of May 6, 2005 refers to a lease extension dated March 30, 2004. However, the exhibit attached as Exhibit A to defendant's Order to Show Cause includes agreements signed on February 28, 2004). The Alexanders entered into the Settlement Agreement and Lease Agreement on March 30, 2004. Moreover, they signed a document entitled Consent to Jurisdiction and Eviction, under which they selected a settlement option calling for an extension of their leases to August 31, 2004, in exchange for which they agreed that after that time, they would either enter into free-market lease or consent to their eviction from their apartments. The document expressly provided that they accepted the terms and conditions of the Settlement Agreement, and that, after August 31, 2004, in the event they neither entered into agreements for free-market rents nor vacated their apartments, the

landlord could commence an eviction proceeding in this court in order to obtain an order of possession.

Under the terms of the Settlement Agreement, the Settling Tenants exchanged releases with the defendants. Moreover, they each consented to the discontinuance of his or her litigation claims with prejudice, and to the vacating of this court's temporary restraining order (which was still in effect with respect to non-settling tenants). Section 2 (d) of the Settlement Agreement provides as follows:

Each Settling Tenant hereby acknowledges that...the decision of the court (as well as any decisions by any court on appeal) in the Pending Litigation, including any temporary restraining order or other injunctive relief previously or hereafter issued in the Pending Litigation, shall have absolutely no effect on such Settling Tenant, irrespective of the outcome of any such decision.

After the deadline date of February 28, 2004 for tenants to join or withdraw from the Settlement Agreement had passed, the law firm of Wolf Haldenstein moved for leave to withdraw as plaintiffs' attorneys. This court held a conference at the request of Thomas Monahan, Esq., who represents tenants opposed to the Settlement Agreement. At the conference, this court extended until April 2, 2004 the date by which tenants could elect to join the settlement or opt out of the settlement. It was clear that each tenant had to make a choice - to accept the benefits of the settlement, or to decline to settle and continue with the litigation. A tenant could not accept the benefits of the settlement and then seek to disavow the settlement when the time came for tenants to fulfill their obligations.

Questions arose regarding the documentation required to effectuate a tenant's election to withdraw from the settlement. This court held a conference on April 6, 2004; at that time, the

deadline for tenants to withdraw from the settlement was once again extended until April 16, 2004. Moreover, the parties agreed upon a form that tenants would have to execute in order to withdraw from the settlement.

In the period that ended April 16, 2004, the tenants of 65 units withdrew from the settlement by signing the necessary papers. Thereafter, the tenants of 530 apartment units remained parties to the Settlement Agreement.

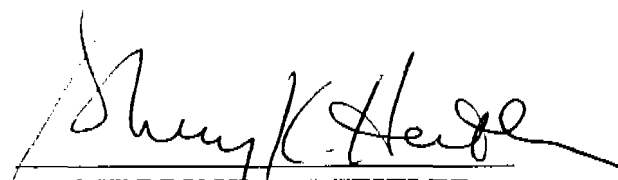
The Alexanders and Bains contend that they signed the Consent to Jurisdiction and Eviction without benefit of counsel, and that Bellevue's agent, Afreeka Phillips, coerced them into signing the document. It is alleged that Phillips told them that if they did not sign the document, they were going to be faced with the choice of losing their apartment or paying free market rent. In response, Ms. Phillips submits an affidavit in which she says that she discussed the various options with the Alexanders, but never pressured any tenants into signing the Consent to Jurisdiction and Eviction.

Strong public policy favors the enforcement of settlement agreements (Booth v 3669 Delaware, Inc., 92 NY2d 934 [1998]). None of the Alexanders' or Bains' claims of fraud, misrepresentation or duress have any merit. First, the Alexanders and Bains fail to specify any false statements of fact which were made to them by the landlord's agents. Moreover, even assuming, without deciding, that Bellevue (or its agents) obtained the Alexanders' and Bains' signatures by means of economic duress, those tenants did not repudiate the agreement until well after the expiration of extended leases, which leases they obtained as part of the settlement. Where a party has accepted the benefits of an agreement, and then seeks to repudiate the agreement on the ground of coercion, he or she must do so in a timely fashion, or the objection is waived (Cappelli Enterprises, Inc. v F & J Continental Food Corp., 16 AD3d 609 [2d Dept 2005]).

The defendants are bound by the agreement that they do not dispute that they signed. Further, within the document entitled "Tenant Acceptance of Settlement Agreement", the signor acknowledges that he or she agrees to the terms of the Settlement Agreement knowingly, voluntarily and of the tenant's own free will and after receiving legal counsel. Additionally, this court held numerous conferences to insure that every tenant would have ample time to accept or withdraw from the settlement. Moreover, the court extended the time to enter into the settlement from February 28, 2004 to April 2, 2004 and gave the tenants an option to withdraw from the Settlement Agreement until April 16, 2004. The defendants chose not to withdraw. They waited until the expiration of the reinstated Mitchell-Lama lease (and an application by the landlord to enforce the Settlement Agreement) before seeking to vacate said Settlement Agreement. In considering the totality of the circumstances in this case, the court finds that the Alexanders and the Bains cannot reasonably claim that they did not know what they were signing, or that they were coerced into signing the documents.

Accordingly, the motion is granted, and the cross-motions are denied. Settle order.

DATED: AUGUST 24, 2005


SHERRY KLEIN HEITLER
J.S.C.