

Kramer v Independence Plaza Assoc., L.L.C.

2007 NY Slip Op 30272(U)

March 15, 2007

Supreme Court, New York County

Docket Number: 0115541

Judge: Sherry Klein Heitler

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

PRESENT Shirley Klein Heister

PART 30

Index Number : 115541/2004

KRAMER, MICHAEL

INDEX NO. 115 541/04

vs

INDEPENDENCE PLAZA

MOTION DATE _____

Sequence Number : 002

MOTION SEQ. NO. (002)

DISMISS

MOTION CAL. NO. _____

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

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
Dated 3.15.07*

FILED
PAPERS NUMBERED _____
MAR 21 2007
NEW YORK COUNTY CLERK'S OFFICE

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

Dated: 3.15.07

[Signature]
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST

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

-----X
MICHAEL KRAMER and
LISA ROBIN,

Plaintiffs,

- against -

INDEPENDENCE PLAZA ASSOCIATES, L.L.C.,
INDEPENDENCE PLAZA ASSOCIATES, L.P.,
and STELLAR MANAGEMENT,

Defendants.
-----X

SHERRY KLEIN HEITLER, J.:

Defendants, Independence Plaza Associates, L.L.C., Independence Plaza Associates, L.P., and Stellar Management, L.L.C., move, pursuant to CPLR § 3211, to dismiss the instant action. The plaintiffs, Michael Kramer and Lisa Robin, oppose defendants' application and cross-move for an order striking the defendants' answer for failure to provide discovery. Defendants' motion is granted.

In 2003, ownership of the housing company sponsored under the Mitchell Lama Program was transferred and privatized. The new owners, the defendants, notified the tenants of their intention to prepay the underlying federal mortgage and to privatize the subject housing complex. Throughout 2003 and 2004 there was public debate over privatization. There were rallies and protests at City Hall, and numerous public meetings held and/or conducted by the Independence Plaza North Tenants' Association (hereinafter "IPNTA").

On March 12, 2004 the ownership and IPNTA settled a wide variety of issues arising from and in connection with privatization of the housing complex. The agreement provided, *inter alia*, that tenants designated as part of the Landlord Assistance Program ("LAP") could not be transferred.

Index No. 115541/04

DECISION AND ORDER

FILED
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COUNTY CLERK'S OFFICE

On May 1, 2003, prior to the settlement agreement, plaintiffs signed a lease under the terms of the previous ownership. On June 15, 2004 Lisa Robin, a plaintiff, gave birth to twins. On June 18, 2004, plaintiffs notified the property manager of their need to be internally transferred to a two-bedroom apartment. On June 28, 2004, ten days later, the subject housing complex was officially privatized and withdrawn from the Mitchell Lama Program upon satisfaction of the underlying federally insured mortgage pursuant to the terms of the March 12, 2004 settlement agreement. Plaintiffs were never transferred.

Plaintiffs' counsel wrote to defendant, Stellar Management, on August 11, 2004 requesting a transfer. The next day defendants' counsel informed plaintiffs, in a written response, that they could not be transferred pursuant to both the terms of the settlement agreement and a previously issued Housing Preservation Development (hereinafter "HPD") waiver. The waiver resulted from a December 19, 2003 decision by the New York City Department of Housing Preservation and Development. The department issued defendants a waiver of any and all HPD Rules and Regulations requiring the immediate rental of vacant units. The waiver was provided to ensure adequate available units for the relocation of Section 8 approved tenants, upon privatization of the housing complex. Thus, the waiver gave Section 8 designated tenants priority.

On September 1, 2004, plaintiffs signed a lease under LAP and became LAP tenants. Thereafter, plaintiffs signed a renewal lease on July 1, 2006. Plaintiffs commenced the instant action on or about December of 2004. Plaintiffs allege that their statutory and contract rights under the old, pre-privatized, lease survive the signing of the new lease and request specific performance with regard to a transfer. Defendants now move to dismiss the instant action, alleging plaintiffs waived any cause of action for a transfer and should be estopped from bringing the instant action.

By interim decision and order of October 18, 2005, this court held this motion in abeyance pending receipt of the documentation relating to plaintiffs' position on the waiting list and any tenants, whether under the Federal Section 8 program or otherwise, who allegedly had priority over plaintiffs. An examination of the documentation reveals that 19 Section 8 families had requested a transfer prior to plaintiffs' request and 10 LAP families had requested a transfer prior to plaintiffs' request. As there were 29 vacant two-bedroom apartments at the time of the plaintiffs' request, even if all the apartments were filled immediately, the plaintiffs would still not have been reached. In addition, because Section 8 families took priority, plaintiffs' place on the transfer list was number 55. The court notes, however, that even if the plaintiffs were higher on the transfer list, they waived their objection. It was waived by the acceptance and renewal of the privatized lease agreement with the defendants. Plaintiffs accepted the terms of the settlement agreement, including a forfeiture of any right to an internal transfer, by signing the new lease agreement on September 1, 2004 and signing a renewal lease on July, 2006. The terms of the old lease are no longer applicable to the newly privatized housing complex in which plaintiffs still reside.

For the foregoing reasons, plaintiffs' complaint must be dismissed. As such, plaintiffs' motion to strike defendants' answer for failure to provide discovery is moot.

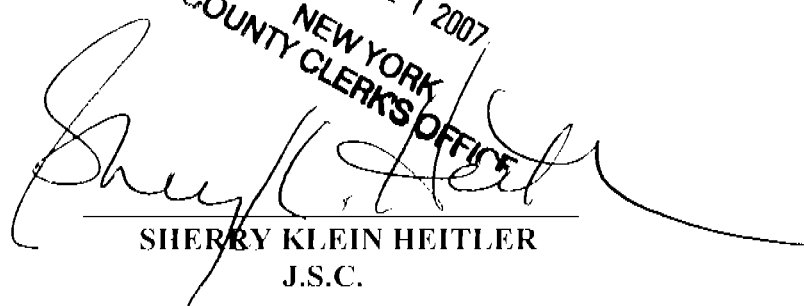
Accordingly, it is hereby

ORDERED that defendant's motion for summary judgment dismissing plaintiffs' complaint is granted. The Clerk is directed to enter judgment accordingly.

This shall constitute the decision and order of the court.

DATED: MARCH 15, 2007

FILED
MAR 21 2007
NEW YORK
COUNTY CLERKS OFFICE



SHERRY KLEIN HEITLER
J.S.C.