

ABN Amro Mtge. Group, Inc. v Valdivieso

2007 NY Slip Op 31445(U)

May 31, 2007

Supreme Court, New York County

Docket Number: 0100887/2004

Judge: Debra A. James

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

PRESENT: DEBRA A. JAMES
Justice

PART 59

ABN AMRO MORTGAGE GROUP, INC.,
Plaintiff,

Index No.: 100887/04

Motion Date: 02/20/07

- v -

Motion Seq. No.: 04

WENDY VALDIVIESO, THE RAPSIL CORPORATION,
L. LIRIANO, C. LIRIANO, J. URENO,
M. URENO, B. CRUZ, L. LIRIANO, and
R. LIRIANO,

Motion Cal. No.: 2

Defendants.

The following papers, numbered 1 to 6 were read on this motion for a writ of possession.

Notice of Motion/Order to Show Cause -Affidavits -Exhibits _____
Answering Affidavits - Exhibits _____
Replying Affidavits - Exhibits _____

PAPERS NUMBERED

1, 2

3, 4

5, 6

FILED

JUN 05 2007

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Cross-Motion: Yes No

Upon the foregoing papers,

Plaintiff moves for a writ of possession pursuant to RPAPL 221. Plaintiff's application is based upon a Judgment of Foreclosure and Sale signed by this court on November 22, 2005 and entered on July 6, 2006. Pursuant to a Referee's Deed dated August 30, 2006, plaintiff served a Notice to Quit Premises upon the occupants of the subject property at 564 West 182 Street, New York County, on or about September 18, 2007.

Defendant Maria Urena (the "tenant") initially appeared pro

Check One: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

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

se to oppose the motion and subsequently was represented by the Northern Manhattan Improvement Corporation. Tenant argues that she pays rent to co-defendant Rapsil Corporation and that she is not subject to eviction under the Judgement of Foreclosure and Sale because she is a rent-stabilized tenant. Plaintiff argues that there is no evidence of the tenant's rent-regulated status.

The plaintiff correctly argues that it is proper for the purchaser at a foreclosure sale "to seek possession by application to Supreme Court in this action." Lincoln Sav. Bank v Warren, 156 AD2d 510, 511 (2d Dept 1989). Furthermore, it has long been the case that "the granting of a motion to give a party possession is discretionary." Niman v Niman, 269 AD 675, 676 (2d Dept 1945). That discretion is based upon principles of equity. See Cevasco v Alexander Gazzola Realty Co., 197 NYS 94, 95 (Sup Ct, NY County, September 19, 1922) ("in the exercise of that discretion sitting in equity the court should be satisfied that the applicant seeking equity has done equity"). Finally, "[a]s the law stands presently, a judgment of foreclosure does not abate a tenant's protection or rights given his position by the rent laws." Pisani v Cominger, 36 AD2d 593 (1st Dept 1971).

In pursuit of a resolution of this application, the Division of Housing and Community Renewal (DHCR) was subpoenaed for records concerning the subject premises. In response, DHCR stated that there was no record of a registration on file for the

the building from 1984 through 2006, and that there are no pending tenant complaints and/or owner applications. However, the records show that the tenant in 2001 filed two complaints on July 2, 2001, and August 2, 2001 for decreased services. The second complaint was dismissed as duplicative of the first complaint. Based upon the DHCR record, a fire apparently occurred upon the premises on May 15, 2001. The tenant thereafter sought a rent reduction based upon the decrease in services. The owner did not respond to the complaint. DHCR conducted an inspection of the premises on December 19, 2001.

By Order Reducing Rent for Rent Stabilized Tenant(s) dated December 31, 2001, the Rent Administrator granted the Tenant's application and stated that "the legal regulated rent is reduced to the level in effect prior to the most recent guidelines."

The court here need not decide whether the tenant in fact is protected under the rent statutes. Instead, the issue is whether the plaintiff in asking this court for discretionary equitable relief has shown a clear entitlement to the extraordinary remedy of eviction. The court holds that the plaintiff has not. The tenant has come forward with a decision of the Rent Administrator that impliedly recognizes tenant's rent-stabilized status. The fact that the tenancy was not registered does not affect the equitable calculus because the plaintiff takes the property in foreclosure subject to any deficiencies of the prior owner in

failing to register the premises. Thus, to the extent that it is determined that the tenant is entitled to rent protection, the lack of registration is chargeable to the owner, not the tenant. See Bauer v New York State Div. of Housing and Community Renewal, 225 AD2d 410 (1st Dept 1996) ("As petitioners failed to register the regulated apartment initially in 1984 or prior to the Rent Administrator's order and failed to serve a copy of the registration on the tenant [Administrative Code of City of NY § 26-517; 9 NYCRR 2528.1] or provide a rent history for the apartment dating back to the base date, the Commissioner properly barred collection of increases in excess of the lawful rent and allowed the agency to use its settled procedures to establish the rent").

Therefore, because plaintiff has failed to meet its burden of demonstrating that rent protection statutes are inapplicable to the tenant, the court sitting in equity in its discretion declines to grant plaintiff's application.

Accordingly, it is

ORDERED that the motion is DENIED.

This is the decision and order of the court.

Dated: May 31, 2007

ENTER:

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DEBRA A. JAMES J.S.C.
 J.S.C.