

West 147 & 150 LLC v Santana

2007 NY Slip Op 33923(U)

December 3, 2007

Supreme Court, New York County

Docket Number: 0105803/2007

Judge: Walter Tolub

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 15

-----x
WEST 147 and 150 LLC

Index: 105803/07
Mtn. Seq. 001

Plaintiff

-against-

CARLOS SANTANA, JESSICA SANTANA and
WILSON SANTANA

Defendants
-----x

WALTER TOLUB, J.:

By this motion Plaintiff seeks an order granting summary judgment and striking the Defendants affirmative defenses and counterclaims. Defendants seek summary judgment on its first through fifth counterclaims¹, an order compelling discovery in this matter and leave to amend the verified answer to include a counterclaim for injunctive relief and declaratory relief requiring the landlord to undertake such steps as are necessary to legalize the basement apartment.

Facts

The Plaintiff is the owner of a rent stabilized building located and known as 507 West 147th Street, New York, NY (the

¹First: That Plaintiff has breached the subject Lease and failed to provide access to the apartment; Second: Harassment; Third: That the Plaintiff has illegally closed off and failed to provide a secondary means of egress from the apartment; Fourth: That the Lease is a rent stabilized Lease; and Fifth: Attorneys' fees.

"Building"). Plaintiff purchased the Building and became the owner in July, 2006.

Defendant Carlos Santana lived in the Building in an apartment on the seventh floor. Defendant was then hired by the Building's prior owner, 147-150 LLC, as a superintendent. On January 1, 2006, the Defendant entered into a three year "Rent Stabilized Lease" with the right to renew with the Building's prior owner. The Lease provided that so long as Mr. Santana was employed by the Building, he would live in the basement apartment rent free and that in the event that he was no longer employed by the Building, that he would pay \$750.00 a month. Defendants Jessica Santana, Carlos Santana's wife, and Wilson Santana, Carlos Santana's nephew, moved into possession of the basement apartment together with Carlos Santana.

On January 22, 2007, Plaintiff, the new owner of the Building, terminated Carlos Santana's employment as superintendent and demanded that the basement space be vacated and surrendered to the Plaintiff within thirty days of the notice. Then, on March 20, 2007, Plaintiff served Defendant with a Notice of Termination to end Defendants' occupancy of the basement space, to be effective April 17, 2007.

Plaintiff argues that the space used by the Defendants as a residential apartment is illegal and submits the affidavit of an architect in support of such contention. Plaintiff claims that

the basement space is situated in an area beyond the boiler room, electric meter and area storage spaces and that the apartment has been jerry-rigged with sheetrock as an ad hoc apartment by the previous owner and is therefore not lawful for residential occupancy. Therefore, Plaintiff argues that since the apartment is illegal that the lease relied upon by the Defendants is void as a matter of law and that summary judgment should be granted.

Defendants argue that there is a valid lease in place which must be adhered to. Additionally, Defendants argue that the conditions in the Building complained of are under the Landlord's control and that the Landlord is required to abate the problems rather than to ignore the Lease and eject Defendants. Defendants also argue that any illegality should be corrected by the Plaintiff.

Discussion

As with any motion for summary judgment, success is wholly dependent on whether the proponent of either of the respective motions has made a "prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact" (Wolff v New York City Trans. Auth., 21 AD3d 956 [2d Dept 2005], quoting Winegrad v New York University Med. Ctr., 64 NY2d 851, 853 [1985] [internal quotes omitted]). A party is entitled to summary judgment if the

sum total of the undisputed facts establish the elements of a claim or a defense as a matter of law. This means that none of the material elements of the claim or defense are in dispute (Barr, Atlman, Lipshie, Gerstman, *New York Civil Practice Before Trial*, [James Publishing 2006] §37:180).

On Plaintiff's motion for summary judgment, Defendant may demonstrate the lack of several prima facie elements of Plaintiff's case, however, to prevail, Defendant only needs to demonstrate the absence of a single element (Barr, Atlman, Lipshie, Gerstman, *New York Civil Practice Before Trial*, [James Publishing 2006] §37:182). Once Defendant presents evidence showing the absence of facts necessary to establish a prima facie case, the burden shifts to the plaintiff (Barr, Atlman, Lipshie, Gerstman, *New York Civil Practice Before Trial*, [James Publishing] §37:190).

It is clear that at the time the Defendants entered into the Lease it was the intention of all parties that the basement apartment be used for residential purposes. In fact, although a permit for residential occupancy was not obtained for the unit, the previous Building owner registered the basement apartment as a residential space.

Under the law of New York, when the terms of a written contract are clear and unambiguous, the intent of the parties must be found within the four corners of the document giving a

practical interpretation to the language employed by the parties' reasonable expectations. (Salamow v. Delcol, 174 AD2d 725 appeal granted 576 NYS2d 219 affirmed 79 NY2d 1016 [1991]). Here the previous owner and the Defendants entered into a clear and unambiguous lease which even provides for a remedy in the event that Mr. Santana was terminated from his employment with the Building.

Plaintiff argues that the apartment itself is illegal and that therefore the Lease is invalid. The Plaintiff seeks to eject Defendants from the basement apartment based on the affidavit of Plaintiff's architect that the apartment is illegal. The affidavit states that the apartment lacks ventilation, that there is no secondary means of egress and that the hallway leading up to the apartment is unsafe².

The Lease provides in Article 2 that the "Owner warrants that the apartment and building are fit for habitation and there are no conditions dangerous to health, life or safety." Thus there is a contradiction between the Landlord's representation that the apartment is habitable and safe and the statements made by the Plaintiff's architect that the apartment is illegal because it is unsafe. There is an issue of fact as to whether

²Defendants claim that the hallway leading to the apartment is strewn with Plaintiff's debris and equipment and that the secondary means of egress was boarded up by the Plaintiff himself.

the apartment is illegal and, if it is, whether the apartment can be legalized.

Additionally, pursuant to the Defendants' architect, in the absence of a Certificate of Occupancy, the New York City Department of Buildings would first rely on any records relating to the previous use of the basement and whether the apartment has been noted in the records. If it has been recorded then legality is presumed. However, if not noted, then the apartment would have to be legalized with filed drawings, assuming that the installation is code compliant. It follows that there cannot be a conclusory determination as to the legality of the apartment. There is a step-by-step process that needs to be followed in order to determine the procurement of a Certificate of Occupancy.

Furthermore, since there is a Lease in effect containing representations made by the Landlord that the basement apartment is safe and habitable, if that is not the case, then the Plaintiff must remedy and abate the illegal and violative conditions so that the apartment is in compliance with the applicable laws, rules and regulations.

Lastly, Defendants' motion to amend the answer to include a counterclaim for injunctive and declaratory relief requiring the Plaintiff to undertake the steps necessary to make the apartment safe is granted for the reasons stated above and because pursuant

to CPLR 3025 leave to amend is freely granted absent prejudice or delay. In this case there are neither.

Accordingly it is

ORDERED that Plaintiff's motion for summary judgment is denied; and it is further

ORDERED that Defendants' motion for summary judgment on its first through fifth counterclaims is denied; and it is further

ORDERED that Defendants' motion to compel discovery is granted; and it is further

ORDERED that Defendants' motion for leave to amend the Answer is granted.

Counsel for the parties are directed to appear for a preliminary conference on January 25, 2007 at 11:00 am in room 335 at 60 Centre Street.

FILED
DEC 05 2007
NEW YORK
COUNTY CLERK'S OFFICE

This memorandum opinion constitutes the decision of the Court.

DATED: 12/3/07

ENTER:

WALTER B. TOLUB J.S.C.