

58 W. 105th St. HDFC v Milton

2009 NY Slip Op 30842(U)

April 13, 2009

Supreme Court, New York County

Docket Number: 102724/07

Judge: Walter B. Tolub

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

PRESENT: WALTER S. TOLUB

PART 15

Justice

Index Number : 102724/2007
58W. 105TH ST. HSG DEVELOPMENT
VS.
MILTON, ALEC
SEQUENCE NUMBER : 002
REARGUMENT/RECONSIDERATION

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. _____
MOTION CAL. NO. _____

his 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

IN ACCORDANCE WITH ACCOMPANYING MEMORANDUM DECISION

FILED

APR 16 2009

COUNTY CLERK'S OFFICE
NEW YORK

Dated: 4/13/09

WALTER S. TOLUB S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST

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

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

-----x
58 West 105th Street HDFC

Plaintiff,

-against-

Alec Milton

Defendant.
-----x

Index No.102724/07
Mtn Seq.002

FILED
APR 16 2009
COUNTY CLERK'S OFFICE
NEW YORK

WALTER B. TOLUB, J.:

This is Plaintiff's motion to reargue a portion of this Court's decision dated October 6, 2008 which did not rule on the issue of rent, use and occupancy or maintenance. Defendant cross moves for an order dismissing the Second, Fifth and Seventh causes of action.

Facts

As stated in this Court's decision dated October 6, 2008, Plaintiff is a residential housing co-operative formed pursuant to the New York State Business Corporation Law Section 402 and Article XI of the New York State Private Housing Finance Law (PHFL). Defendant claims that he purchased an apartment in a building owned by plaintiff, and is a shareholder of plaintiff.

In 1992, plaintiff purchased a building located at 58 West 105th Street, New York, New York from the City of New York (the Building) to convert it into co-operative status. All incoming occupants of apartments in the Building, at the relevant times, had to be income eligible as defined by PHFL § 576.

In 1996, defendant was looking for an apartment in New York City. Defendant contacted an acquaintance from a former job, Donna Gibbons. Ms. Gibbons was employed by Manhattan Valley Management Company, Inc. (Manhattan Valley), the management company for plaintiff at the time. Plaintiff had entered into a management agreement with Manhattan Valley in March 1992 (the Management Agreement), which as discussed below, was subsequently terminated in 2005.

Ms. Gibbons advised defendant that an apartment was available in the Building. Defendant entered into a two-year lease for apartment 5A commencing June 1, 1996. The lease was signed by both Ms. Gibbons and defendant. Defendant claims that he was advised by Manhattan Valley that the plaintiff's Board of Directors required residency for a probationary period to establish that defendant was creditworthy, and if that proved true, the apartment would then be sold to the defendant. Defendant claims that, at the time he entered into occupancy of the building, he submitted an application and "check stub." Affidavit of Alec Milton, ¶ 8. These documents were not included in defendant's papers. Defendant also claims that he was advised that the then-sitting Board of Directors would have to approve his purchase. However, sometime after 1996, it appears that the Board of Directors stopped meeting, and a new Board was not elected until 2005. Defendant claims that during this time

period, Manhattan Valley acted as a de facto Board of Directors, selling and leasing apartments in the Building.

In June 1998, defendant entered into a Letter of Intent, outlining the defendant's intention to purchase rights, title, and interest in Apartment 5A for \$5,000.00, and plaintiff's intention to sell such interest. The Letter of Intent specifically states that it is "not intended to be, and shall not constitute in any way, a binding legal agreement, or impose any legal obligation or duty on either Buyer or Seller."

(Defendant's Prior Notice of Cross Motion, Exhibit D). The Letter of Intent was signed by defendant and Ms. Gibbons, as agent for plaintiff. The Letter contains plaintiff's seal.

On June 12, 1998, defendant signed a Proprietary Lease for Apartment 5A, which designated defendant as shareholder of 250 shares of plaintiff. The Proprietary Lease is again signed by defendant and Ms. Gibbons. It also contains the plaintiff's seal. (Defendant's Prior Notice of Cross Motion, Exhibit F). Also, a Certificate of Shares, dated June 12, 1998, was allegedly issued to defendant. The Certificate of Shares is signed by Ms. Gibbons as agent for plaintiff. It also contains plaintiff's seal. (Defendant's Prior Notice of Cross Motion, Exhibit E).

Defendant continued to enter into lease renewals for Apartment 5A for June 1998 to May 2000, June 2000 to May 2002, June 2002 to May 2004, and June 2004 to May 2006. (Plaintiff's

Prior Notice of Motion, Exhibit M).

In 2005, a new Board of Directors was elected. On October 5, 2005, the newly elected Board held a meeting at which defendant allegedly presented the Letter of Intent. He was allegedly advised by the new Board that the plaintiff would not enter into an agreement to sell Apartment 5A to him. On October 21, 2005, the new Board wrote a letter to Manhattan Valley terminating the Management Agreement, effective that date. Manhattan Valley responded that same day by letter, in which it informed the Board that, under the Management Agreement, Manhattan Valley was entitled to thirty days written notice of termination of the Agreement.

On November 2, 2005, the Board held another meeting, attended by shareholders and tenants. There were separate attendance sheets for shareholders and tenants. Defendant only signed the tenant sheet. At the meeting, the Board advised that Manhattan Valley had been terminated as building agent and lacked authority to act on behalf of the plaintiff. Defendant recalls a meeting where the attendees were advised that the Board might not honor representations previously made by Manhattan Valley. However, it is not clear if defendant is recalling the October 5th or the November 2nd meeting. Defendant also recalls that, around the time of the meeting, he spoke with Manhattan Valley and had them release copies of his shares and proprietary lease,

which they allegedly held. Defendant alleges that Manhattan Valley advised that the consideration agreed upon in the Letter of Intent, \$5,000.00, was required. Defendant allegedly requested a Contract of Sale, which was signed by Ms. Gibbons and defendant on November 1, 2005. The contract also contained plaintiff's seal. Defendant wrote a check to plaintiff, dated November 10, 2005, for the \$5,000.00. The check was deposited by Manhattan Valley into plaintiff's Chase banking account on November 14, 2005. The check was returned to defendant in December 2005 by the plaintiff, but defendant allegedly mailed the check back to plaintiff's new agent.

In the meantime, on November 3, 2005, plaintiff allegedly placed signs throughout the common areas of the Building notifying residents that "no one could move in and out" of the Building and that "Manhattan Valley Management Company has no authority to do any leasing or sale in any apartment" in the Building. (Plaintiff's Notice of Motion, Exhibit H).

Plaintiff brought the underlying action for (1) a declaratory judgment that defendant lacks an ownership interest and any other rights of occupancy and that any agreement executed by Manhattan Valley conveying such is void; (2) *unpaid rents*; (3) judgment of possession; (4) judgment of fair market value of Apartment 5A; (5) *an interim order directing defendant to pay plaintiff at least \$2000 a month as of March 1, 2007, and until*

actual possession is obtained; and (6) damages and legal fees and costs (Emphasis added on causes of action relevant in the motion presently before the Court).

By decision dated October 6, 2008, this Court denied plaintiff's summary judgment motion and granted plaintiff's motion to dismiss only as to the fifth affirmative defense, limited to waiver, and the sixth, eighth, ninth, tenth, and twelfth affirmative defenses. Additionally, this Court denied defendant's cross-motion for summary judgment.

By this motion, Plaintiff seeks to reargue a portion of the October 6, 2008 decision which did not rule on the issue of rent, use and occupancy or maintenance. Defendant cross moves for an order dismissing the second, fifth and seventh causes of action.

Discussion

On a motion to reargue, the movant must establish that the court overlooked or misapprehended facts or law, or "misapplied any controlling principle of law," in an earlier decision. (CPLR § 2221(d)(2); Foley v. Roche, 68 AD2d 558 [1st Dep 1979]; See also 300 W. Realty Co. v. City of New York, 99 AD2d 708, 709 [1 Dept 1984]). Reargument is not meant to provide the parties with an opportunity to reargue previously decided issues or to advance new arguments. (William P. Pahl Equipment Corp. v. Kassis, 182 AD2d 22, 27 [1 Dept. 1992], citing Pro Brokerage, Inc. v. Home Insurance Co., 99 AD2d 971 [1st dept 1984], Foley v. Roche, 68

AD2d 558 [1st Dept 1979]).

Here, plaintiff argues that the Court did not rule on the issue of rent, use and occupancy or maintenance in its October 6, 2008 decision. Upon reviewing the October decision, this Court agrees that these issues, constituting plaintiff's fifth and sixth causes of action, were not fully addressed and as such, plaintiff's motion to reargue is granted.

Defendant has resided at the premises without the payment of use and occupancy, rent or maintenance since October, 2005. In the interim, plaintiff has paid the operational costs of the building and the defendant has enjoyed the essential services provided. The defendant cannot enjoy these services, even if it is determined that he is the owner of the premises, without paying use and occupancy. The obligation to pay use and occupancy is imposed by the law for the purpose of bringing about justice regardless of the parties intentions with regard to the property (Rand Products Co. v. Mintz, 72 Misc2d 621 [NY Sup. 1973]).

Since this action has not been fully concluded, plaintiff is entitled to a judgment for all use and occupancy past due and through the conclusion of this action, with interest. At a minimum, Plaintiff's use and occupancy consists of the rent agreed to in the most recent lease dated February 1, 2004. Therefore, defendant shall pay \$614.25 per month for each month

defendant did not make a rent payment, with the term commencing in October, 2005. Additionally, defendant shall continue to make monthly payments in the amount of \$614.25 through the completion of this action. Once the surrounding issues in this matter are decided, the Court will make adjustments to the amounts paid or amounts owed as required.

Defendant's cross-motion for summary judgment, consisting of the same arguments made in its prior motion, is denied in its entirety.

Accordingly, it is

ORDERED that plaintiff's motion is granted to the extent that defendant is directed to pay plaintiff \$614.25 per month with the term commencing October, 2005 with interest; and it is further

ORDERED that defendant shall pay plaintiff \$614.25 per month through the completion of this action; and it is further


ORDERED that defendant's cross-motion is denied in its entirety; and it is further

ORDERED that the Clerk of the Court is directed to enter judgment accordingly.

Counsel for the parties are directed to appear for a conference on May 22, 2009 at 11:00 AM in room 335 at 60 Centre Street.

This memorandum opinion constitutes the decision and order of the Court.

Dated: 4/13/09



HON. WALTER B. TOLUB, J.S.C.

FILED
APR 16 2009
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