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

PRESENT: TOLUB Justice PART 15

58 WEST 105TH STREET HOUSING DEVELOPMENT FUND CORP.

-v-

ALEC HILTON

INDEX NO. 102724/07

MOTION DATE

MOTION SEQ. NO. 03

MOTION CAL. NO.

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

IN ACCORDANCE WITH ACCOMPANYING MEMORANDUM DECISION.

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

Dated: 7/27/09

WALTER B. TOLUB 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 15

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58 WEST 105 STREET HDFC,

Plaintiff,

-against-

ALEC MILTON,

Defendant.

Index No. 102724/2007
Mtn Seq. 003

WALTER B. TOLUB, J.:

This is Plaintiff's motion for possession of 58 West 105th Street, Apartment 5A, New York New York (Apartment) and ejectment of defendant from said apartment for failure to comply with this Court's April 16, 2009 order directing defendant to pay use and occupancy in the amount of $614.25 per month.

Facts

As stated in this Court's decision dated April 16, 2009, Plaintiff is a non-profit 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). Defendant however ceased paying rent in October, 2005.

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.

Plaintiff then sought 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 moved for an order dismissing the second, fifth, and seventh causes of action.

By the decision dated April 16, 2009, this Court granted plaintiff's motion to reargue the portion of the October 6, 2008 decision regarding rent, use and occupancy, or maintenance and denying defendant's cross-motion to dismiss plaintiff' s second, fifth, and seventh causes of action. In that decision, this Court held that defendant was to pay past and current use and occupancy at the rate of $614.25 per month until the underlying dispute was resolved.

By this motion, Plaintiff seeks ejectment of the defendant and possession of the apartment in question because defendant has not made any of the payments for use and occupancy in the past 45 months as required by the April 16, 2009 decision amounting to a total of $27,641.25.

Discussion

Mr. Milton offers a number of unconvincing arguments as to why plaintiff should not be granted possession of the apartment in question. First, defendant argues that plaintiff's motion is, in fact, a thinly veiled motion to reargue. This is not the case. Plaintiff's motion is for an order enforcing this Court's prior decision with which defendant has failed to comply. If the Court denied plaintiff the remedy of possession, Mr. Milton could live for free at plaintiff's expense while ignoring the Court's order to pay use and occupancy. This would both divest the April 16th decision of any real meaning and undeservedly punish the plaintiff. (Calvert v. Le Tam Realty Corp., 118 A.D.2d 426 [1st Dep't 1986]).

Defendant subsequently argues that Plaintiff's motion should be barred by the doctrine of laches. Laches only bars an action when a party has "slept on its rights" for an undue amount of time. (Fleming v. Giuliani, 3 N.Y.3d 544 [2004]). In order for laches to apply, defendant would have had to show 1) that there was an unreasonable delay in bringing an action, and 2) that the delay

prejudiced defendant in some way. (Westchester Religious Institute v. Kamerman, 248 A.D.2d 116 [1st Dep't 1998]). It is unclear whether defendant claims plaintiff waited too long in bringing the underlying suit or in making the instant motion; however, as defendant has not shown that there was an unreasonable or prejudicial delay at any time, laches is inapplicable.

Finally, defendant argues that this case should have been brought in Civil Court. This position is untenable as Civil Court lacks jurisdiction to hear the underlying action. The Housing Part of the Civil Court has limited equitable power. It can enforce housing standards and regulations (N.Y. City Civ. Ct. Act §110), order specific performance of a contract for the sale of real property worth no more than $10,000 (N.Y. City Civ. Ct. Act §203[d]), or issue injunctions relating to replevin or enforcement proceedings (N.Y. City Civ. Ct. Act §209[b]). (Goldstein v. Stephens, 118 Misc.2d 614 [1st Dep't 1983]). The Housing Part of Civil Court thus does not have the power to decide whether Mr. Milton is a shareholder of plaintiff nor to order plaintiff to assign the shares to defendant if he were to prevail.

Despite all of defendant's arguments as to why plaintiff should not be granted possession of the Apartment, two simple facts remain. First, Mr. Milton has taken full advantage of the

essential services provided by plaintiff without offering any compensation in return. Second, Mr. Milton has made none of the payments mandated by this court in its April 16, 2009 decision. The Appellate Division, First Department, has firmly established that an order of possession is the appropriate remedy for failure to pay use and occupancy. (Calvert v. Le Tam Realty Corp., 118 A.D.2d 426 [1st Dep't 1986]; 313 W. 57 Rest. Corp. v. 313 W. 57th Assoc., 186 A.D.2d 466). The Court therefore grants plaintiff's request for possession of the Apartment.

Accordingly, it is

ORDERED that Plaintiff's motion is granted in its entirety and the Defendant is directed to turnover possession of the apartment to the Plaintiff within 30 days of service of a copy of this Order with notice of entry; 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 as scheduled on September 11, 2009 at 11:00AM in room 335.

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

Dated: 7/27/09

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