

1898 Longfellow HDFC v Gonzalez

2009 NY Slip Op 32646(U)

November 12, 2009

Civil Court, Bronx County

Docket Number: L&T 32404/09

Judge: Sabrina B. Kraus

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CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF BRONX: HOUSING PART B

1898 LONGFELLOW HDFC,

X

Petitioner-Landlord

-against-

DECISION & ORDER
Index No.: L&T 32404/09

HON. SABRINA B. KRAUS

CARMEN GONZALEZ, HECTOR GONZALEZ,
ROBERTO TORRES SR. & CARMEN TORRES
1898 LONGFELLOW AVENUE, #A2
BRONX, NEW YORK 10460

Respondent-Tenant

“JOHN DOE” AND “JANE DOE”

Respondents-Undertenants

X

BACKGROUND

This summary holdover proceeding was commenced by **1898 LONGFELLOW HDFC** (Petitioner) and seeks to recover possession of Apartment A2 at 1898 Longfellow Avenue, Bronx, New York, 10460 (Subject Premises) based on allegations that **CARMEN GONZALEZ, HECTOR GONZALEZ, ROBERTO TORRES SR. & CARMEN TORRES** (Collectively Respondents) based on the allegation that **CARMEN GONZALEZ** and **HECTOR GONZALEZ** (Shareholders), are the shareholders of record for the Subject Premises, that they vacated owing arrears and attempted to transfer the shares to **ROBERTO TORRES SR.** and **CARMEN TORRES** (Occupants), which transfer was allegedly improper and is not recognized by Petitioner.

PROCEDURAL HISTORY

This proceeding was commenced by service of a thirty day notice dated April 27, 2009. The notice was served on all Respondents and alleged that Respondents term expired on May 31, 2009. The Notice of Petition and Petition issued on June 1, 2009, and the proceeding was initially returnable June 22, 2009. The Shareholders have not appeared in this proceeding. The Occupants appeared herein through counsel on July 13, 2009. On or about August 2009, Occupants moved for dismissal pursuant to CPLR 3211(a)(2) asserting lack of subject matter jurisdiction, or in the alterative seek dismissal based on the allegation that the predicate notice is defective.

This is the second holdover proceeding brought by Petitioner to recover the Subject Premises. A prior proceeding was commenced in August 2007,` under Index Number 51681/07 against Robert Torres Jr and Robert Torres Sr. That proceeding was dismissed after trial on June 11, 2008. The dismissal was without prejudice. The Court's order (to the extent provided in exhibit E to the moving papers which appears to be an unofficial transcript only) found that dismissal was required because Petitioner had not established that the tenancy of Carmen and Hector Gonzalez, whom Petitioner acknowledged were the last shareholders of record, had ever been legally terminated or relinquished to Petitioner. The Court additionally found that Hector and Carmen Gonzalez were necessary parties and that Carmen Torres was an occupant who's identity was known by Petitioner, and that the failure to name these individuals in the proceeding required its dismissal.

THE MOTION TO DISMISS

That prong of Respondents's motion which seeks dismissal based on lack of Subject

Matter Jurisdiction is denied. Housing Court has subject matter jurisdiction over the instant holdover proceeding. Occupants argue that Petitioner's claim that their stock certificate and proprietary lease are invalid precludes litigation of this proceeding in Housing Court. The Court disagrees. While it is true that this court lacks jurisdiction to rescind a contract, or issue a declaratory judgment regarding the parties' rights and interests in the Subject Premises, the court can, and regularly does, determine the validity and admissibility of proprietary leases and stock certificates, purporting to establish rights to possession of an apartment (*Cohen v. Goldfein*, 100 AD2d 795 [1st Dept, 1984][*civil court has ample power to determine validity of lease in summary proceeding*];

For example, in *Chopra v. Prusik*, 9 Misc3d 42 [App Term, 2nd Dept, 2005] the Appellate Term reversed a housing court decision denying a motion to vacate a default judgment. The Appellate Term acknowledged that title cannot be determined in a summary proceeding. "However, the court is not ousted from jurisdiction for purposes of determining the present right to possession at issue in this proceeding" by interposition of a defense or claim challenging title (*Id* at 44). RPAPL 743 specifically provides that any legal or equitable defense or counterclaim may be interposed in a summary proceeding. Thus, the Court in *Chopra* concluded that Housing court can and must adjudicate the tenant's claims that she was the owner pursuant to a valid deed and that the deed relied upon by the Petitioner was forged.

Similarly, in this proceeding while Petitioner may not seek a declaratory judgment that the purported transfer of the proprietary lease and stock certificate was invalid, Occupants can assert as a defense to Petitioner's claim for possession that they are the valid proprietary lessees of the Subject Premises pursuant to those documents and the Court has jurisdiction to rule on

that defense.

Additionally, it is well settled that Civil Court is the preferred forum for the resolution of landlord-tenant disputes (*Spain v. 325 West 83rd Owners Corp.*, 302 AD2d 587 [2nd Dept, 2003]; *Conforti v. Goradia*, 234 AD2d 237 [1st Dept, 1996]).

Moreover, the documents presented by Occupants purporting to establish their rights as proprietary lessees appear questionable on their face, given Mr. Torres' admission that he was acting both for the board and in his own individual capacity, in the transaction purportedly making him and his wife proprietary lessees.

Based on the forgoing Respondent's motion to dismiss for lack of Subject Matter jurisdiction is denied.

Sufficiency of the Predicate Notice

The second prong of Occupants' motion to dismiss is based on their argument that the notice fails to state facts supporting the grounds for termination and the underlying proceeding. The notice does not differentiate between the status of the Occupants and the Shareholders, and does not, for example, indicate that it is addressed to the Shareholders, as tenants, and the Occupants, as undertenants. Rather, the notice addresses both the Shareholders and the Occupants as if their interest in the Subject Premises and the grounds for termination against them are the same.

The notice states in pertinent part: "YOU HAVE NO CURRENT WRITTEN LEASE IN EFFECT. PREMISES ARE A COOPERATIVE. CARMEN GONZALEZ AND HECTOR L. GONZALEZ WERE SHAREHOLDERS OF THE APARTMENT WHO VACATED AND WRONGFULLY ATTEMPTED TO TRANSFER SHARES WHILE IN DEFAULT OF

COOPERATIVE USE AND OCCUPANCY. THEY LEFT OWING \$16,659.77 TO THE COOPERTAIVE AND ACCORDINGLY THEY HAD NO RIGHT TO TRANSFER THE SHARES. THE COOPERATIVE AFTER DULY HELD MEETINGS DOES NOT RECOGNIZE ROBERTO TORRES SR. OR CARMEN H TORRES AS SHAREHOLDERS FOR APARTMENT A2.”

The notice is inherently contradictory. It is almost as if the Petitioner wishes to state a cause of action to set aside the purported transfer of shares from the Shareholders to the Occupants. This is not a cause of action that Housing Court would have jurisdiction over. Moreover, Judge Lai, in her decision dismissing the prior holdover proceeding, held that Petitioner had not established either a termination or a surrender of the Shareholders’ leasehold interest in the Subject Premises, and this defect is not cured in the notice underlying this proceeding.

While the notice alleges facts that would presumably support a termination of the Shareholders interest under the proprietary lease inexplicably, Petitioner has not proceeded on any such basis. Petitioner could have asserted the right to terminate that proprietary lease for the Shareholders on any basis listed for termination under Article 31 therein.¹

For example, they could have sought to terminate the Shareholders interest pursuant to grounds listed in Article 31 (a) for no longer holding the stock certificate to the Subject premises, or Article 31 (c) for improper assignment.

The notice however does not refer to any particular provision of the proprietary lease

¹ While no copy of the proprietary lease for Shareholders is annexed to the motion papers, the Court presumes that the terms are substantially the same as the proprietary lease annexed to the moving papers by Occupants as exhibit K.

that Petitioner purports to proceed under, and this defect along with the fact that the notice fails to delineate the difference in grounds for proceeding against the shareholders versus the occupants make the notice impermissibly vague and insufficient to serve as a predicate for the underling proceeding.

“... (T)he appropriate standard for assessment of the adequacy of notice is one of reasonableness in view of all attendant circumstances.” **Hughes v. Lenox Hill Hospital**, 226 A.D.2d 4 (1st Dept., 1996). The notice must be definite and unequivocal. The defaults must be stated with such particularity, that the tenant will be able to understand the specific claim, and present a defense. **Carriage Court Inn Inc. v. Rains**, 138 Misc.2d 444 (Civ. Ct., N.Y. Co., Gangel-Jacob, J.).

The notice here by failing to delineate the alleged interest of the Shareholders and the occupants in the Subject Premises and by failing to specify under which provisions of the proprietary lease the Shareholders’ interest is sought to be terminated, fails to meet the minimum necessary requirements.

CONCLUSION

Based on the foregoing, Respondent’s motion is granted and the proceeding is dismissed without prejudice. This constitutes the decision and order of this Court.

Dated: November 12, 2009
Bronx, New York

Hon. Sabrina B. Kraus
J.H.C.

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