

Jones v Park Front Apts., LLC

2009 NY Slip Op 33241(U)

April 27, 2009

Supreme Court, New York County

Docket Number: 402878/2008

Judge: Karen Smith

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

PRESENT: KAREN S. SMITH
Justice

PART 62

Victoria Jones
- v -
Park Front Apartments, LLC

INDEX NO. 402878/08
MOTION DATE _____
MOTION SEQ. NO. 01
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 the attached memorandum decision.

FILED
MAY 04 2009
COUNTY CLERK'S OFFICE
NEW YORK

Dated: 4/27/09

KSS
HON. KAREN SMITH J.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 - I.A.S. PART 62

-----X
VICTORIA JONES

Plaintiff,

Index No. 402878/2008

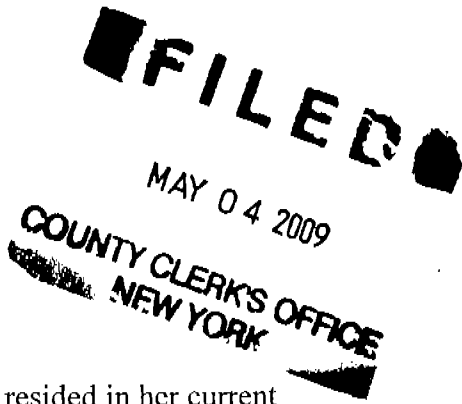
-against-

Decision and Order

PARK FRONT APARTMENTS, LLC; RICHARD
MORALE, as Acting Chairmen of the New York City
Housing Authority and the NEW YORK CITY
HOUSING AUTHORITY.

Defendants.

-----X
HON. KAREN S. SMITH



Plaintiff, an indigent 78 year old disabled woman, who has resided in her current apartment for sixteen years, and in the building for thirty-eight years, sues for a declaratory judgment requiring her landlord, defendant Park Front Apartments, LLC (“Park Front” or “defendant landlord” or “landlord”), to accept her Section 8 federal rent subsidy and to execute all necessary related documents, claiming that they are precluded from rejecting said subsidy pursuant to 1) the “Use Agreement” between defendant landlord and the Department of Housing and Urban Development (“HUD”) (the federal agency who administers the Section 8 program); 2) the J-51 tax abatement program (through which defendant Park Front received tax benefits), which precludes any landlord who has received such benefits from discriminating against persons who receive Section 8 rent subsidies, 3) New York City Human Rights Law, Sections 8-101 and 8-102(25) of the Administrative Code, which similarly bans discrimination against tenants based on receipt of Section 8 benefits, and 4) Local Law 10, Sections 8-107(5)(a)(1) and (2), and (c)(1) of the Administrative Code which make it unlawful to refuse to rent to, or to discriminate against, persons in housing accommodations because of any lawful source of income, including Section 8 vouchers. Plaintiff, in her complaint, also seeks payment of compensatory damages representing all rent paid by plaintiff in excess of her Section 8 share of the rent.

In the instant motion, plaintiff seeks a preliminary injunction enjoining defendant landlord from prosecuting its non payment proceeding it commenced against plaintiff in Housing Court, *Park Front Apts., LLC v. Victoria Jones*, Index No. 83401/2008, and ordering defendant Ricardo Morales, in his capacity as Acting Chairman of the New York City Housing Authority (“NYCHA”), to extend the expiration date of plaintiff’s Section 8 voucher #0590155 for 60 days after the conclusion of the action. Plaintiff also seeks a preliminary injunction requiring defendant landlord to accept plaintiff’s portion of the rent without prejudice, during the pendency of this action, to execute the documents required to enable plaintiff to receive Section 8 benefits, and to accept the Section 8 benefits without prejudice for the pendency of this action.

Defendant landlord does not dispute that the various provisions in the Administrative Code cited by plaintiff, bar discrimination against tenants based on their receipt of Section 8 benefits (see paragraph 6 of the Affirmation of Meryl L. Wenig, Esq., in opposition to the instant motion). Instead, defendant landlord claims that it has refused to accept plaintiff’s Section 8 voucher on two grounds - 1) that as the Section 8 voucher which plaintiff received from NYCHA in October 2007 was for a studio apartment and plaintiff currently resides in a one bedroom apartment, the landlord would be forced to execute documents, fraudulently certifying that plaintiff currently resides in a studio apartment when the landlord knows that plaintiff resides in a one bedroom apartment, and 2) defendant landlord is concerned that by accepting plaintiff’s voucher, it would be violating the Section 8 policy barring it from charging its Section 8 tenants disparate increases because plaintiff has been required by HUD to pay an annual increase in excess of what other Section 8 recipients pay, for failing to disclose income received from other family members residing with her some years ago (who no longer reside with her).

It defies logic that the agency responsible for administering the Section 8 program, who made a determination that despite plaintiff’s failure to fully disclose the income she received while receiving the benefits, she could remain in the program as long as the increases in her annual rent was in excess of the increases imposed on other Section 8 recipients, would turn around and find the landlord to have treated plaintiff disparately by accepting her Section 8 voucher. Equally disingenuous, is defendant landlord’s rejection of plaintiff’s voucher for fear that they will be somehow committing a fraud by accepting a voucher issued for a studio

apartment, knowing that at present plaintiff occupies a one bedroom apartment. As plaintiff points out in her reply papers, undisputed by defendant landlord, the only document the landlord is required to sign is the "Housing Assistance Payment" ("HAP") contract, which merely requires the landlord to specify the particular unit for which the Public Housing Authority and the landlord are bound and states "The HAP contract only applies to the household and contract unit specified in Part A of the HAP contract." There is no requirement that the landlord verify the number of bedrooms in the apartment rented by the tenant. The case relied on by defendant landlord, *Esther Keyes v. 285 Hawthorne Realty LLC*, Case No 10122173, in which the New York State Division of Human Rights found that a landlord cannot be compelled to sign government documents which misstate important information (such as the size of the apartment), and that the refusal by the landlord to do so did not constitute discrimination is not applicable here as there is no proof in any admissible form presented by defendant landlord that defendant was required to sign any document in the instant case which would have constituted a fraud on its part. The HAP contract, attached as an exhibit to plaintiff's reply papers, does not require such information.

Due deliberation having been had, and it appearing to the Court that plaintiff has met its burden of demonstrating the likelihood of success on the merits of its claims, having shown that the reasons provided by the defendant landlord for refusing to accept plaintiff's Section 8 voucher are pretextual and, as defendant landlord has conceded that it is discriminatory to deny current tenants their rights to tenancy on the basis of the receipt of Section 8 benefits; and it further appearing to the Court that to deny this 78 year old disabled plaintiff who has lived in her apartment for 16 years, in the same building for 38 years, the right to remain in her apartment, pending the outcome of this case, would constitute irreparable injury to her; and it further appearing that the balancing of the equities clearly favors plaintiff, given that plaintiff would be required to pay the difference between her rent subsidy and the rent for her one bedroom apartment going forward while the defendant landlord accepts, without prejudice, the NYCIIA subsidy for plaintiff's apartment;

The Court grants plaintiff's request for injunctive relief as follows:


It is ORDERED that:

- 1) Defendant landlord is precluded from prosecuting the landlord tenant proceeding pending against plaintiff in Housing Court pending the outcome of the instant case; and
- 2) Defendant landlord accept payment of the tenant's share of rent without prejudice; and
- 3) Defendant landlord complete the HAP contract and thereafter accept payments from NYCHA in behalf of the plaintiff without prejudice; and
- 4) Defendant Ricardo Morales, his agents, employees and any one else acting in his behalf or behalf of any other person currently serving as Acting Chairperson or Chairperson of NYCHA, extend the expiration date of plaintiff's Section 8 voucher #0590155 until the conclusion of the instant action; and it is further

ORDERED that the undertaking is fixed, as provided above, in the amount plaintiff shall be required to pay monthly as the difference between the rent for her one bedroom apartment and the subsidy to which she would be entitled, for the pendency of this action.

Dated: April 27, 2009

ENTER:


KAREN S. SMITH, J.S.C.

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