

Roberts v New York City Hous. Auth.

2010 NY Slip Op 33328(U)

November 22, 2010

Supreme Court, New York County

Docket Number: 401167/09

Judge: Joan A. Madden

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

PRESENT: MADON
Justice

PART 11

NATHANIEL ROBERTS

- v -

NYCHA

INDEX NO. 401167/09
MOTION DATE _____
MOTION SEQ. NO. 3
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 determined in accordance with the annexed decision and order.*

FILED

DEC 01 2010

NEW YORK
COUNTY CLERK'S OFFICE

Dated: November 27, 2010 _____
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION
Check if appropriate: DO NOT POST REFERENCE
 SUBMIT ORDER/ JUDG. SETTLE ORDER/ JUDG.

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

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 11

-----X
NATHANIEL ROBERTS,

Petitioner,

INDEX NO. 401167/09

-against-

NEW YORK CITY HOUSING AUTHORITY,

FILED

Respondent.
----- X

DEC 01 2010

JOAN A. MADDEN, J.:

NEW YORK
COUNTY CLERK'S OFFICE

In this Article 78 proceeding, petitioner seeks an order annulling the determination of respondent New York City Housing Authority ("NYCHA") which dismissed his remaining family member grievance on the grounds that he had not paid use and occupancy. Petitioner moves for an order pursuant to CPLR 3025(b) granting leave to amend the petition to add the New York City Department of Social Services ("DSS") as an additional party respondent.¹ Respondent New York City Housing Authority ("NYCHA") opposes the motion.

Leave to amend a pleading should be freely given within the court's discretion, absent prejudice or surprise to the opposing party, and provided the amendment is not plainly lacking in merit. See CPLR 3025(b); Edenwald Contracting Co., Inc. v. City of New York, 60 NY2d 957 (1983); Mezzacappa Bros., Inc. v. City of New York, 29 AD3d 494 (1st Dept), lv app den, 7 NY3d 712 (2006); Lambert v. Williams, 218 AD2d 618 (1st Dept 1995). As the party seeking

¹Petitioner originally moved by order to show cause to implead DSS as a necessary party to this proceeding. Although respondent correctly objects that the appropriate relief is a motion for leave to the amend the petition to add DSS as a party-respondent, when the parties appeared on November 10, 2010, the court, on the record, deemed that the motion would be considered as a motion to amend pursuant to CPLR 3025(b).

amendment, petitioner has the burden of establishing the merit of the proposed amendment. See Zaid Theatre Corp. v. Sona Realty Co., 18 AD3d 352 (1st Dept 2005); Hynes v. Start Elevator, Inc., 2 AD3d 178 (1st Dept 2003).

Petitioner has made a sufficient showing to be entitled to amend the petition. The facts in this proceeding present a classic "Catch-22" situation. Petitioner is seeking family member succession rights to his grandmother's Housing Authority apartment, asserting that he has lived in the apartment with his grandmother his "whole life" from the time of his birth until her death on November 28, 2006, and that she was his "legal guardian."² Petitioner also asserts that after his grandmother died, he went to the NYCHA office on the premises to tender the December 2006 rent, as he had been doing for several years, and the people in the office refused to accept it. He thereafter submitted a request for a hearing on his claim to succession rights to the apartment. NYCHA determined that petitioner was not entitled to a hearing on the merits because he had not paid use and occupancy since December 2006. Petitioner, however, asserts that he has severe psychological problems, which have qualified him to receive DSS benefits, including money in his DSS "budget for rent," but DSS will not release such funds unless and until he has a lease in his own name. Petitioner maintains that the amount in his DSS budget for rent is sufficient to pay the arrears due and owing for the apartment. Petitioner, however, is caught in an administrative Catch 22 since NYCHA will not authorize a hearing on the merits of his succession rights claim until the use and occupancy is paid up, but DSS will not authorize any

²Based on NYCHA's regulations, it appears that petitioner may have some arguable support for his remaining family member claim, as he states that he has lived with his grandmother in the apartment for his "entire life" and she was his "legal guardian." Under GM-3692, a remaining family member is defined to include "[o]riginal tenant family members, or persons born to, adopted, or declared wards of the tenant of record."

payment in the absence of a lease. Petitioner's counsel argues that since NYCHA and DSS have refused to communicate with each other in an effort to resolve this situation, DSS should be added as a respondent.

NYCHA argues that the amendment should be denied as prejudicial since petitioner's claims against DSS would delay this proceeding which has been pending since May 2009. NYCHA also argues that the amendment lacks merit. Neither argument is persuasive, in view of petitioner's severe mental condition, and the fact that he originally commenced this proceeding pro se, several months were spent trying to find him a guardian ad litem, and he has had a pro bono attorney representing him only since July 2010. Moreover, the First Department's decision in Garcia v. Franco, 248 AD2d 263 (1st Dept), lv app den, 92 NY2d 813 (1998), lends support to petitioner's position that DSS should be a respondent in this action. The two tenants in that case argued that they were faced with the identical Catch 22 situation as the petitioner in the instant proceeding. With respect to one tenant, the First Department held that NYCHA's staff had warned her at the outset as to the requirement to pay use and occupancy in order to qualify for a grievance hearing, and NYCHA had offered to assist her in preparing an application to DSS for financial relief, but the tenant had not cooperated. However, the other tenant produced proof on appeal that she had cooperated with NYCHA and DSS, and by doing so had obtained the funds necessary to pay her arrears and thus qualify for a fair hearing.

Accordingly, it is

ORDERED that petitioner's motion to amend the petition to add the New York City Department of Social Services as party-respondent to this proceeding is granted; and it is further

ORDERED that within 15 days of the date of this order, petitioner shall file with this Court and serve on the New York City Housing Authority and on the New York City Department of Social Services, an amended notice of petition and petition, adding the New York City Department of Social Services as a party-respondent; and it is further

ORDERED that within 10 of said service, the New York City Department of Social Services shall appear in this proceeding, by moving with respect to the amended petition, or serving and filing an answer to the amended petition; and it is further


ORDERED that petitioner shall serve a copy of this order with notice of entry on the Clerk of the Trial Support Office (Room 158) and the County Clerk, so that their records may be altered to reflect the change in the caption adding the new party-respondent; and it is further

ORDERED that the parties, including the new party-respondent, are directed to appear for a conference on December 23, 2010, at 9:30 a.m., in Part 11, Room 351, 60 Centre Street.

The court is notifying the parties by mailing copies of this order.

DATED: November 22, 2010

ENTER:



J.S.C.

FILED
DEC 01 2010
NEW YORK
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