

41 E. 1st St. Rehab Corp. v Lopez

2010 NY Slip Op 33545(U)

December 27, 2010

Civ Ct, NY County

Docket Number: L&T 50724/07

Judge: Sabrina B. Kraus

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CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK: HOUSING PART S

41 EAST 1ST STREET REHAB CORP. X

Petitioner-Landlord

-against-

DECISION & ORDER
Index No.: L&T 50724/07

HON. SABRINA B. KRAUS

ROSA LOPEZ
41 East 1st Street, Apt. 2E
New York, New York 10003
Respondent-Tenant

“JOHN and/or JANE DOE”

X

BACKGROUND

This summary holdover proceeding was commenced by **41 EAST 1ST STREET REHAB CORP.** (Petitioner), and seeks to recover possession of **2E**, at **41 East 1st Street, New York, New York, 10003** (Subject Premises), based on the allegation that **ROSA LOPEZ**, the rent-stabilized tenant of record, does not maintain the Subject Premises as her primary residence.

PROCEDURAL HISTORY

On July 31, 2009, the proceeding was transferred to Part S and the trial commenced. Prior to the testimony of any witnesses, the parties stipulated to the admission of certain documents. The following documents were stipulated into evidence as Petitioner’s Exhibits: 1- a certified deed for the Subject Premises, dated February 9, 1990, labeled “Deed in Lieu of Foreclosure” between 41 East Village Associates and 41 East 1st Rehab. Corp.; and 2- a

certified copy of the Multiple Dwelling Registration for the Subject Premises; and 3- certified copies of DHCR rent registrations for the Subject Premises; and 4 & 4(a) - the original lease for Respondent dated December 31, 1996, and the most recent lease renewal for a term through December 31, 2006; and 5- the deposition transcript for Respondent's February 5, 2008 deposition (admitted over Respondent's objection); and 6 - a copy of Respondent's Florida Driver's License, issued June 12, 2006; and 7- a copy of Respondent's passport valid for a period from April 1994 through April 2004; and 8 - bank records produced by Respondent during discovery for the years 2005 and 2006.

Respondent put into evidence two certified documents, the certificate of incorporation for 41 East 1st Rehab Corp. (*exhibit A*), and a document dated July 22, 2009 stating that 41 East 1st Rehab Corp., incorporated on January 26, 1990, was dissolved by proclamation on September 29, 1993 for failure to pay taxes and that said dissolution has not been annulled (*exhibit B*).

As a result of the Corporate dissolution, Petitioner moved for a continuance, and the Court issued an order granting Petitioner's application. The order provided in pertinent part that "... the court grant(s) Petitioner's application to mark the proceeding off calendar pending reinstatement or other motion for relief. If Petitioner has proof of reinstatement, proceeding may be restored... Petitioner reserves its right to argue that Respondent waived the defense regarding the dissolution by failure to include it in the original or amended answer herein."

On or about October 7, 2009, Petitioner moved to restore the proceeding for continued trial, asserting that the corporation had been reinstated. The motion was denied pursuant to a

decision and order of this Court dated December 24, 2009. The motion was denied because Petitioner had not paid its back taxes and the corporation had not been reinstated.

Petitioner now makes a second motion to restore the proceeding for continued trial.

THE MOTIONS

Petitioner's moving papers are based solely on an attorney affirmation and annexed documentation pertaining to the reinstatement of Petitioner. There is no explanation as to why so much time has elapsed before Petitioner moved to restore the case to the calendar. There is no explanation as to the last motion made by Petitioner which appeared to have been made on false representations. There is no reference as to the merits of Petitioner's claim against the Respondent.

Respondent cross-moves for an order dismissing the proceeding and granting Respondent sanctions and attorneys fees. Respondent's cross-motion relies principally on CPLR 3404 and case law pertaining to that statute.

Discussion

22 NYCRR 208.14 governs restoration of proceedings to the calendar in Civil Court. 22 NYCRR 208.14 (c) provides that "(a)ctions stricken from the calendar may be restored to the calendar only upon stipulation of all parties so ordered by the court or by motion on notice to all other parties, made within one years after the action is stricken. A motion must be supported by affidavit by a person having firsthand knowledge, satisfactorily explaining the reasons for the action having been stricken And showing that it is presently ready for trial."

The statute makes no reference to restoration after the one year period has elapsed. However, appellate case law holds that such a motion may be made and granted "...upon (a)

showing of a potentially meritorious cause of action..., a reasonable excuse for the delay in seeking restoration, a lack of prejudice to (respondent), and the absence of an intent to abandon the cause of action[*Barreto v. Kotaj* 23 Misc3d 142(A)(App Term, 1st Dept, 2009)(citations omitted)].”

In the case at bar, Petitioner’s motion is not supported by an affidavit, offers no excuse for the delay in seeking restoration, does not address the merits of the underlying claim, and as noted, does not explain the previous motion for restoration which does not appear to have been made in good faith. Given the foregoing, Petitioner’s motion to restore is denied [*see also Ambrose v. Ridzewick* 19 Misc3d 143(a)(App Term, 2nd Dept, 2008)(*motion to restore properly denied absent reasonable excuse for delay*); *Sawak v. Brown* 20 Misc3d 136(A)(App Term, 2nd Dept, 2008)(*failure to offer reasonable excuse in restoration of proceeding to calendar merited denial of motion to restore*)].

Respondent’s cross-motion to dismiss based on CPLR 3404 is also denied. It is now well settled that CPLR 3404 is not applicable to cases pending before the Civil Court of the City of New York (*Chavez v. 407 Seventh Avenue Corp.* 39 AD3d 454). Respondent’s motion for sanctions and attorneys fees are also denied.

This constitutes the decision and order of this Court.

Dated: Bronx, New York
December 27, 2010

Sabrina B. Kraus, JHC

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