

Taylor v First Hous. Co., Inc.

2011 NY Slip Op 31494(U)

May 23, 2011

Sup Ct, Queens County

Docket Number: 25314/10

Judge: Janice A. Taylor

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Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE JANICE A. TAYLOR IAS Part 15
Justice

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TERESA TAYLOR,
Plaintiff(s),

Index No.:25314/10
Motion Date:3/22/11
Motion Cal. No.: 33
Motion Seq. No: 1

- against -

FIRST HOUSING COMPANY, INC.,
Defendant(s).

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The following papers numbered 1 - 11 read on this motion by the plaintiff for an order issuing a preliminary injunction, reducing the plaintiff's rent contribution and directing the defendant to refund a portion of plaintiff's previously collected rent.

	<u>Papers Numbered</u>
Order to Show Cause-Affirmation-Exhibits-Service.....	1 - 4
Memorandum of Law.....	5
Affirmation in Opposition-Exhibits-Service.....	6 - 8
Reply Affirmation-Exhibits-Service.....	9 - 11

Upon the foregoing papers it is **ORDERED** that the motion is decided as follows:

This is an action for discrimination and other injuries allegedly sustained by the plaintiff. According to the complaint, plaintiff is tenant-of-record of a cooperative apartment and defendant is the owner of the building located at 161-32 Jewel Avenue, Flushing, New York. It is uncontested that, on or about June 1, 1978, plaintiff and Charles Taylor, Jr., her husband, became residents of apartment TD of the subject building. It is also uncontested that Charles Taylor, Jr. died on November 29, 1992, leaving plaintiff as the sole tenant-of-record.

Plaintiff asserts that, on or about November 10, 2006, she applied for a housing voucher, pursuant to §8 of the United States Housing Act ("Section 8 voucher"), with the New York City Housing Authority ("NYCHA"). Plaintiff further asserts that, on March 20, 2008, she received a Section 8 voucher to defray her monthly housing costs, but that the defendant refused to cooperate with

NYCHA to ensure that her voucher was renewed. Finally, plaintiff asserts that, by letter dated July 14, 2010, NYCHA informed her that her Section 8 voucher would be terminated.

On June 10, 2010, defendant commenced a non-payment action against the plaintiff in the Housing Part of the Civil Court of the City of New York, Queens County ("Housing Part action"). The Housing Part action is currently pending pursuant to Civil Court index number 65021/10.

This action was commenced on October 6, 2010 by the filing of a summons and complaint. In her complaint, plaintiff alleges that the defendant discriminated against her by refusing to accept her Section 8 voucher, that her Section 8 benefits were terminated due to the actions of the defendant, and that the defendant has unlawfully refused to grant her succession rights to the subject apartment. With this application, plaintiff seeks a preliminary injunction staying the Housing Part action during the pendency of this action. Plaintiff also seeks an order directing the defendants to reduce plaintiff's rent contribution to the amount that it would have been under the Section 8 program and directing the defendant to refund all rent collected from the plaintiff in excess of the Section 8 subsidy.

A preliminary injunction may be granted by the court, pursuant to CPLR §6301, when the party seeking such demonstrates (1) the likelihood of ultimate success on the merits of the underlying pending action, (2) the prospect of irreparable harm if the request for said preliminary injunction is denied, and (3) the balance of equities tipping in the moving party's favor (*Doe v. Axelrod*, 73 N.Y.2d 748 [1988]; *1659 Ralph Ave. Laundromat Corp. v. Ben David Enters., LLC*, 307 A.D.2d 288 [2d Dept. 2003]; *McVay v. Wing*, 303 A.D.2d 727 [2d Dept. 2003], *appeal dismissed* 100 N.Y.2d 577 [2003]). The granting or denial of a preliminary injunction is a matter which is ordinarily committed to the sound discretion of the court, and the appellate courts' power to review such decisions is limited to determining whether the lower court abused, or exceeded, its discretion (*Doe v. Axelrod, supra*). As the issuance of a preliminary injunction is used to prevent litigants from taking actions prior to the adjudication of the action on its merits, New York courts have ruled that preliminary injunctions should be issued only where such injunction is needed to maintain the *status quo* (See, *Coinmach Corp. v. Alley Pond Owners Corp.*, 25 AD3d 642 [2d Dept. 2006]; *Putter v City of New York* [1st Dept. 2006]).

In support of this application, plaintiff submits, *inter alia*, a copy of the lease between the plaintiff, Charles Taylor, Jr. and the defendant, a copy of the Section 8 voucher approved by NYCHA on

or about March 20, 2008, a copy of a request for information sent from NYCHA to the defendant, the pleadings in this action, the pleadings in the Housing Part action, and a copy of the letter received from NYCHA terminating her Section 9 subsidy.

It is clear that plaintiff has amply demonstrated that the prospect of irreparable harm could result if the instant application for a preliminary injunction is denied and that the balance of equity tip in her favor. As previously stated, plaintiff has resided at the subject property for more than 30 years and is in danger of losing her home. The issuance of a preliminary injunction would maintain the *status quo* during the pendency of this action (See, *Usman, Inc. v. Beech 140 LLC, et al.*, 68 Ad3d 932 [2d Dept. 2009]).

However, plaintiff has failed to demonstrate that she has a likelihood of success on the merits of this action. In order to demonstrate a likelihood of success, it must be shown that the movant has a clear right to relief which is plain from the undisputed facts (See, *Kohn v. Friedman, et al.*, 71 AD3d 1095 [2d Dept. 2010]; *Gagnon Bus Company v. Vallo Transportation, Ltd., et al.*, 13 Ad3d 334 [2d Dept. 2004]). Where the facts are in dispute as to the movant's claim for relief, the application for a preliminary injunction should be denied (See, *Matos v. New York City Transit Authority*, 21 Ad3d 936 [2d Dept. 2005]; *Blueberries Gourmet Inc., v. Arias Realty Corp.*, 255 Ad2d 348 [2d Dept. 1998]).

In the instant action, plaintiff has failed to show that she has a clear right to the relief sought in this action. Although plaintiff asserts that the defendant discriminated against her by failing to accept her Section 8 voucher, plaintiff has not submitted any documents from the defendant in which they refused such payment. Additionally, plaintiff asserts that her Section 8 housing subsidy was terminated due to the actions of the defendant. However, the July 14, 2010 letter from NYCHA states that her Section 8 benefits were terminated due to budget constraints within the agency, not due to any action, or inaction, by the defendant. As plaintiff has failed to demonstrate that she has a likelihood of success on the merits of this action, that portion of the instant application which seeks the issuance of a preliminary injunction must be denied by this court.

Those portions of the instant application which seek the issuance of an order directing the defendants to reduce plaintiff's rent contribution to the amount that it would have been under the Section 8 program and directing the defendant to refund all rent collected from the plaintiff in excess of the Section 8 subsidy are also denied. It is uncontested that NYCHA terminated plaintiff's Section 8 housing subsidy on or about July 10, 2010. With this

application, plaintiff is, in essence, asking this court to overturn the determination of NYCHA and grant her a housing subsidy. It is well-settled that a litigant must exhaust all of his/her administrative remedies prior to seeking intervention from the courts (see, *Schiavone/Shea/Frontier-Kemper, v. New York City Department of Environmental Protection*, 274 AD2d 586 [2d Dept. 2000]).

In this action, plaintiff asserts that she is not required to exhaust her administrative remedies before seeking leave of court. While it is true that, in limited circumstance, a litigant's claim may fall within an exception to the exhaustion doctrine, New York courts have ruled that, where the agency's action is challenged as unconstitutional or beyond the agency's power, when resort to an administrative agency would be futile or when its pursuit would cause irreparable injury, a movant may seek leave of court without exhausting his or her administrative remedies (See, *Walton v. New York State Department of Correctional Services, et al.*, 8 NY3d 186 [2007]; *Watergate II Apartment v. Buffalo Sewer Authority*, 46 NY2d 52 [1978]; *Town of Oyster Bay v. Kirkland, et al.*, 81 Ad3d 812 [2d Dept. 2011]). In this action, plaintiff in this action has not asserted that NYCHA's termination of her Section 8 housing subsidy was unconstitutional, beyond NYCHA'S power, that resort to NYCHA would be futile or that the pursuit of a final determination by NYCHA would cause irreparable injury. In fact, plaintiff does not state that she took any steps regarding NYCHA's July 12, 2010 termination of her benefits.

As plaintiff has failed to demonstrate that she has exhausted her administrative remedies and failed to demonstrate that she is not required to do so, this court cannot overturn NYCHA's termination of her housing subsidy. Accordingly, those portions of the instant application which seek an order directing the defendants to reduce plaintiff's rent contribution to the amount that it would have been under the Section 8 program and directing the defendant to refund all rent collected from the plaintiff in excess of the Section 8 subsidy are denied.

The temporary restraining order enacted by the signing of this Order to Show Cause is hereby lifted. The foregoing constitutes the decision, judgment and order of this court.

Dated: May 23, 2011

JANICE A. TAYLOR, J. S. C.

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