

Jeanne D'Arc Residence Inc. v Aragon
2012 NY Slip Op 31205(U)
May 7, 2012
HCIV, New York County
Docket Number: 57126/12
Judge: Sabrina B. Kraus
Republished from New York State Unified Court System's E-Courts Service. Search E-Courts (http://www.nycourts.gov/ecourts) for any additional information on this case.
This opinion is uncorrected and not selected for official publication.

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK: HOUSING PART R
_____X

THE JEANNE D’ARC RESIDENCE INC,

Petitioner-Landlord

HON. SABRINA B. KRAUS

-against-

DECISION & ORDER
Index No.: L&T 57126/12

SORAYA ARAGON
253 WEST 24TH STREET
APARTMENT 520
NEW YORK, NY 10011,

Respondent-Tenant

_____X

BACKGROUND

This summary holdover proceeding was commenced by **THE JEANNE D’ARC RESIDENCE INC** (Petitioner) against **SORAYA ARAGON** (Respondent), seeking to recover possession of Apartment 520, at 253 WEST 24TH STREET, New York, NY 10011 (Subject Premises) based on the expiration of the lease for the Subject Premises.

PROCEDURAL HISTORY

This proceeding was commenced by service of a Notice of Petition and Petition issued February 29, 2012. The parties appeared in court on March 15, 2012, and the proceeding was adjourned to April 4, 2012, for Respondent to file an answer and for trial. On April 4, 2012, Respondent filed a written answer. On April 4, 2012, after Respondent’s application for an adjournment was denied by the judge presiding in the Resolution Part, the proceeding was assigned to Part N for trial, and the trial began. The proceeding was adjourned to April 16,

2012, for continued trial. On April 13, 2012, Respondent moved by Order to Show Cause for the recusal of the Trial Judge assigned to Part N. The Court declined to sign the *ex parte* application. On April 16, 2012, Respondent appeared for continued trial, but was taken from the courthouse by ambulance to the hospital, after she alleged she had chest pains. The proceeding was adjourned to May 2, 2012, for continued trial. On May 2, 2012, the court declared a mistrial and the proceeding was reassigned to Part R for a trial *de novo*. The trial commenced on May 2, 2012 and continued and concluded on May 3, 2012. On May 3, 2012, the Court reserved decision.

TRIAL

The trial was conducted with some difficulty. Respondent acted in a manner intended to be disruptive, presumably believing that her behavior would delay an adjudication on the merits herein. On May 2, 2012, Respondent made an application for an adjournment prior to the commencement of the trial, stating she was not prepared to proceed with the trial, the application was denied by the Court.

At trial, Petitioner presented the testimony of Eileen Piazza. Ms. Piazza is employed by Petitioner as an administrator, and is in charge of the residence run by Petitioner in the Subject Building. The residence is a temporary home, which provides a secure and inexpensive environment for women who are furthering their careers or education in New York.

Currently Petitioner limits any stay to a maximum of five years, but at the time Respondent commenced living there, the policy allowed a maximum of ten years. There is a waiting list of several months for people to be admitted to the residence. The subject building is six stories and has one hundred and forty units.

Respondent is in possession of the Subject Premises, pursuant to a written lease agreement dated December 22, 2001 (Exhibit 1). Paragraph two of the lease entitled "Room Leased, The term of lease" provides in pertinent part:

The term of the lease is 1 year beginning on January 1, 2002 and ending on December 31, 2002 and subject to being renewed thereafter upon the mutual agreement of the parties to the lease, for additional one year periods until February 2011, at which time the tenancy will terminate and no further extensions of this lease will be granted.

Ms. Piazza testified that lease are renewed each year, but that Petitioner is under no obligation to renew the leases. If the lease is renewed a renewal is executed annually and the renewal also will reference the maximum term. Respondent and Ms. Piazza executed a lease renewal for the Subject Premises on January 6, 2011 (Exhibit 2) for a term from January 1, 2011 through December 31, 2011. The renewal provided in part :

All the other terms, covenants and conditions of the original lease are incorporated by reference herein and shall remain in full force and effect for the duration of the extended lease term and you are reminded that in no case will your yearly lease be renewed beyond ten (10) years from your initial residency date.

Respondent signed the renewal as Elva S. Aragon, and the initial lease as Soraya Aragon.

Ms. Piazza testified that, because Respondent had lived in the Subject Premises ten years, no further renewals were offered, after Respondent's term expired on December 31, 2011.

On October 27, 2011, Ms. Piazza sent Respondent a letter regarding the end of her lease term (Exhibit 6). Ms. Piazza testified that she mailed one copy by certified mail and delivered a copy to Respondent by sliding it under the door of the Subject Premises. The letter advises Respondent that her residency will expire on December 31, 2011, and will not be renewed after said date. The letter also asserts that Respondent failed to pay rent due for August through October 2011.

Ms. Piazza testified that since June 2011, when Respondent was first notified of the expiration of her tenancy, Respondent reacted poorly and emotionally to the idea that she had to move out. Ms. Piazza testified that Respondent stated she would not agree to leave, and that Respondent has not paid rent since the summer of 2011.

Ms. Piazza testified that it is unusual for a resident to remain for the maximum allowable term, and that generally after a year or two residents move on.

Additional documents offered by Petitioner in evidence include a Certificate of Incorporation, dated March 16, 1896, certified by the Department of State, on April 2, 2012 (Exhibit 5). The Certificate of Incorporation provides in pertinent part that :

The particular objects for which the Corporation is formed, are to care for and promote the welfare of friendless French-speaking girls, to surround them with wholesome influences, to provide a temporary home for them while seeking employment, and to aid them in securing employment.

Exhibit 3 in evidence is a certification from the Department of State dated March 29, 2012, which provides that the Corporation has not been dissolved, and that a certificate of amendment was filed changing the corporate name to The Jeanne D'Arc Residence on May 19, 1987. Certified copies of the Deed (Exhibit 4) and Multiple Dwelling Registration were also entered into evidence (Exhibit 7).

On cross-examination, Ms. Piazza testified that she was first hired by Petitioner to work as an Assistant for Sister Marlene, the previous administrator, and that after two years, she replaced Sister Marlene. The residence is run by the Congregation of Divine Providence and Ms. Piazza reports directly to Sister Fran Moore who is located in Kentucky. Sister Fran Moore is the Mother Superior in the United States of the Congregation of Divine Providence. Ms.

Piazza often meets with Sister Fran Moore and keeps her apprised of all issues and decisions made regarding the residence.

Ms. Piazza testified that she is very familiar with the building, and that she often visits all parts of the building. Ms. Piazza testified that the building is safe and in good condition. Ms. Piazza acknowledged she was aware that Respondent had previously complained of conditions in the Subject Premises, including a complaint regarding bedbugs, but asserted that Respondent's complaint were unfounded.

Ms. Piazza does not reside in the subject building and her work hours from approximately 7:30 am to 4:30 pm.

Respondent's cross-examination of Ms. Piazza was ended by the Court, based on Respondent's failure after repeated warnings and much leeway to ask any questions related to the central issue in this proceeding, ie whether Petitioner has proven a claim to possession and any legal defenses Respondent may have to Petitioner's claim to entitlement of possession.

After Ms. Piazza's testimony concluded, Petitioner rested and the proceeding was adjourned to the next morning for continued trial. Respondent was directed to bring three copies of any document she wished to offer into evidence for trial, in accordance with this Court's Part Rules. Respondent asserted she could not afford to make any photocopies. The Court offered to make the copies for her, if she left the documents with staff by 4:30 pm, Respondent stated it would be impossible for her to do so, because she needed the documents to remain in her possession, to prepare for continued trial.

The following morning when the parties appeared for continued trial, Respondent was asked to turn over any documents she wished to have admitted into evidence so that the Court

could mark them for identification and make the necessary photocopies. Initially, Respondent refused to comply. After a warning by the Court on the record, Respondent complied. Respondent then produced several hundreds of pages of documents she asserted needed to be marked for identification and that she intended to offer into evidence at trial. Court staff spent approximately two hours making copies, as a courtesy to Respondent, and marking the documents for identification. Once that had been done, the Court called the case for continued trial.

Respondent made an application for an adjournment stating she could not continue with the trial, because she had a headache. The application was denied. Respondent then refused to take the witness stand to testify on her own behalf, or to call any witnesses. The Court advised her, on the record, that if she failed to take the stand or call a witness, the record would be closed. Respondent continued to refuse to take the stand. The record was closed and decision reserved. The Court had intended to keep a copy of the numerous documents that had been marked for identification for Respondent, but she physically grabbed them away from Court staff and steadfastly refused to leave the copies made for the court, by court staff, as a record. Petitioner's counsel however was provided with copies of the documents marked for identification, and was able to remain in possession of those copies. The trial concluded at this point in time.

The Court additionally takes judicial notice of the stated purpose of Petitioner as indicated on their website (<http://www.cdpkentucky.org/pages.php?cur=227>). The page cited provides:

The Jeanne d'Arc Residence is a nonprofit organization located in Manhattan, within the Archdiocese of New York. It is a charitable ministry of the Congregation of Divine Providence

of Kentucky, to care for the welfare of young women of limited means who come to New York City seeking to improve their lives. Its purpose is to care for the spiritual and temporal needs of women.

The residence was founded and incorporated in 1896 by Reverend Theop Wucher as a temporary home for French girls who were separated from their families. In 1897 it was decided to place the home under the direction of a community, and in 1898 the Congregation of Divine Providence accepted stewardship of this ministry to women.

Finally, when the proceeding was assigned to part R for trial delivered with the file for this proceeding, were the files of three HP proceedings between the parties under Index Nos 1498/2011, 1637/2011 and 6155/2011. The Court takes judicial notice of these files. The proceedings were consolidated for joint trial. After trial, the Court (Wendt, J) dismissed all three proceedings pursuant to a written decision and order dated March 6, 2012, which provided in pertinent part:

After trial in these three consolidated actions, for the reasons stated on the record, after careful consideration of all of the testimony of the witnesses and the numerous exhibits submitted in evidence, the Court finds that (tenant) has entirely failed to establish her claim in any of these consolidated proceedings. Accordingly, these three consolidated proceedings are dismissed after trial.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court finds that Petitioner is the owner of 253 West 24th Street, and that there exists a landlord -tenant relationship between the parties pursuant to the written lease dated December 22, 2001 (Exhibit 1). The Court finds that Respondent is the tenant of Record of the Subject Premises and that her lease was last renewed for a period through and including December 31, 2011 (Exhibit 2). The Court finds that the Subject Premises are exempt from rent regulation pursuant to § 2520.11(f) of the Rent Stabilization Code.

The Court finds that Respondent's tenancy expired December 31, 2011, pursuant to the last renewal agreement between the parties, and that as of said date respondent had resided in the Subject premises for the maximum allowable term of ten years. The Court finds that no rent was tendered by Respondent or accepted by Petitioner between December 31, 2011, and the initial return date of this proceeding March 15, 2012. Based on the foregoing, the Court finds no predicate notice was required after the expiration of Respondent's lease.

The Court finds that the Notice of Petition and Petition issued on February 29, 2012 and were properly served on Respondent by conspicuous place delivery on March 8, 2012, at 1:07 pm, with a prior attempt on March 5, 2012 at 8:25 pm, and a subsequent mailing on March 9, 2012.

The Court finds that Respondent failed to establish any defense to Petitioner's underlying cause of action. Petitioner's claim for use and occupancy and Respondent's second counterclaim for a "rent abatement" are severed for a plenary action. The balance of the defenses and counterclaims asserted by Respondent are dismissed with prejudice in light of her failure to provide any evidence in support of same.

CONCLUSION

Based on the foregoing, Petitioner is awarded a final judgment of possession as against Respondent . The warrant of eviction may issue forthwith. There is no stay on the execution of the warrant.

This constitutes the decision and order of this Court.¹

Dated: New York, New York
May 7, 2012

Sabrina B. Kraus, JHC

TO: JEFFREY GOLKIN, ESQ..
Attorneys for Petitioner
150 Broadway, Suite 701
New York, NY 10038
(212) 393-1200

SORAYA ARAGON
Respondent *pro se*
253 West 24th Street
Apartment 520
New York, NY 10011

¹ Exhibits may be picked up within thirty days of the date of this decision from the second floor record room at 111 Centre Street. After thirty days, the exhibits may be shredded in accordance with administrative directives.