

SAP V/ATLAS 845 WEA Assoc. NF LLC v Spiritos

2013 NY Slip Op 30986(U)

May 8, 2013

Supreme Court, New York County

Docket Number: L & T 51740/12

Judge: Sabrina B. Kraus

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

SAP V/ATLAS 845 WEA ASSOCIATES NF LLC X

HON. SABRINA B. KRAUS

Petitioners-Landlord

-against-

ANDREA SPIRITOS
845 WEST END AVENUE
APARTMENT 15A
NEW YORK, NY 10025

Respondent-Tenant

X

DECISION & ORDER
Index No.: L&T 51740/12

BACKGROUND

This summary nonpayment proceeding was commenced by **SAP V/ATLAS 845 WEA ASSOCIATES NF LLC** (Petitioner) and seeks to recover possession of **Apartment 15A at 845 WEST END AVENUE, NEW YORK , NY 10025** (Subject Premises), a rent stabilized apartment, based on allegations that **ANDREA SPIRITOS** (Respondent) has failed to pay rent for the Subject Premises. The last tenant of record was a rent control tenant. Respondent initially signed a deregulated lease in 1999 for a rent of \$5,250.00. The basis for exemption from regulation was high rent vacancy deregulation. However, at the inception of the tenancy Petitioner’s predecessor in interest was receiving a J-51 tax abatement and in light of the subsequent ruling by the Court of Appeals in *Roberts* infra, Petitioner acknowledged the rent stabilization status and recalculated the rent.

PROCEDURAL HISTORY

Petitioner issued a three day rent demand dated December 21, 2011 seeking \$157,101.89 in rent arrears for a period covering October 1, 2009 through December 1, 2011 at a monthly rent of \$7,391.27. The petition is dated January 11, 2012, and asserts that the Subject Premises are subject to Rent Stabilization, and that the rental sought does not exceed the legal regulated rent. The proceeding was originally returnable in Part E, but was transferred by the court (Saunders, J) based on a notation on the file that the Subject Premises is a Condominium.

Respondent appeared through counsel and filed an answer, counterclaim and Demand for Bill of Particulars on January 26, 2012, and the proceeding was originally returnable on February 2, 2012.

On March 19, 2012, Petitioner moved for summary judgment and related relief. On April 12, 2012, Respondent cross-moved for a stay pending a determination of Respondent's overcharge complaint/ fair market rent appeal at DHCR, alternatively Respondent asked the court to award it summary judgment and set a new legal rent for the Subject Premises.

On April 12, 2012, the court (Stanley, J.) issued an order marking the proceeding off calendar. The order provided:

This proceeding is marked off calendar pending the DHCR decision XI-410063R & filed on 9/17/09. Court will request expedition. In the interim u&o is set at the rate of \$6,000.00 per month & is owed from January 2012 forward.
Jan through April 2012 u&o of \$24,000.00 to be paid by April 30, 2010.
Ongoing u&o to be paid by the 10th of each month.
All motions held in abeyance.

On April 16, 2012, the court (Stanley, J) wrote a letter to Leslie Torres, Deputy Commissioner for Office of Rent Administration at DHCR requesting an expedited decision. A copy of the letter is in the court file. The letter provided in pertinent part:

The landlord has commenced a non-payment proceeding under L&T Index No. 51740/2012, because of frustration over delay in the pending DHCR decision. Without your intervention, this non-payment proceeding may very well result in respondent's eviction before your agency's determination of the merits of the claim. This ancillary proceeding remains pending before me until such time as you make a determination.

On June 4, 2012, John D. Lance, Acting Bureau Chief of the Overcharge/Luxury Decontrol Bureau wrote back to the court, advising that an expedited determination was not possible. The letter provided in pertinent part:

A DHCR determination in the matter you seek would directly implicate an assessment of the appropriate remedy in the wake of the Court of Appeals decision in Roberts v Tishman-Speyer Properties, 13 NY3d 270, 890 NYS2d 388 (2009) which, by its terms, left open various issues on remand, and as part of future litigation, which have yet to be decided.

The Appellate Division subsequently noted in Gerard v. Clermont York Associates, 81 A.D.3d 497, 916 N.Y.S.2d 502 (1st Dept.) That the open legal issue identified therein should be addressed by the Courts rather than DHCR.

The Courts have subsequently made a number of determinations touching on an appropriate assessment of overcharges. While the Appellate Division in Gordon v. 305 Riverside Corp., 2012 N.Y. App. Div. Lexis 2306, 2012 N.Y. Slip OP 02382 (1st Dept., March 29, 2012) recently left open for further review on remand the possibility of assessing overcharges using some alternative formula based on the specific facts in that matter, the court otherwise held that the base date for overcharges calculation is properly four years from the date of a complaint's filing.

This decision confirmed the predominant view of the Courts below that have reached a final determination with respect to rent overcharges (in the absence of a vacancy on the base date as in Gordon Supra). Those decisions have limited review of rental data to four years prior to the filing of a tenant complaint in reaching an assessment of what would ultimately be an appropriate overcharge calculation (Citations omitted).

Just as not all of the issues raised by Roberts itself have not been fully resolved, we are not yet in a position to expedite the pending overcharge proceeding to a complete determination as you seek. Under the circumstances, we can now only synthesize some of the salient determinations on the issues that affect this particular overcharge case. While not the final administrative determination that

you are seeking, we believe the analysis may prove useful in fashioning the appropriate interim relief with respect to your non-payment proceeding, during the matter's pendency before DHCR.

On August 22, 2012, Petitioner's counsel wrote to the court acknowledging receipt of the DHCR response, and asking that the court restore the proceeding to the calendar and make a determination on the pending motions.

On October 25, 2012, Petitioner formally moved for an order restoring the proceeding to the calendar for the court to determine the pending motions. On November 16, 2012, the court reserved decision on the pending motions. On January 24, 2013, the court (Stanley, J) issued a decision denying Petitioner's motion for summary judgment, and Respondent's motion for a stay. The court severed Respondent's fourth counterclaim and sixth counterclaim, and dismissed Respondent's fifth and seventh counterclaims without prejudice. The decision further provided that a determination of the legal regulated rent was an issue of fact to be determined at trial.

The decision scheduled trial for February 28, 2013 at 9:30 am.

On February 28, 2013, Respondent moved for discovery. On April 24, 2013, Petitioner cross moved seeking dismissal of Respondent's affirmative defenses and counterclaims and dismissal of the proceeding pursuant to RPAPL 745(2)(c)(i), or in the alternative, summary judgement. The motions were marked submitted on April 24, 2013, and are consolidated herein for disposition.

MOTIONS

Disclosure is granted to a party in a summary proceeding only after obtaining leave of court and when ample need is shown [*New York University v. Farkas*, 121 Misc.2d 643 (Civ. Ct. N.Y.Co. 1983)]. Discovery is not ordinarily permitted in nonpayment proceedings as "... there

are usually insufficient facts in dispute to justify any further delay to the landlord's recovery of rent...". A summary nonpayment proceeding is intended to be quickly resolved (*Zirinsky v Violet Mills Inc* 152 Misc2d 538).

This proceeding has been pending since December 2011. Additionally, Respondent had been paying use and occupancy, but ceased making said payments effective March 2013. Respondent waited to the eve of trial to seek disclosure, and her request is anything but narrowly tailored, it seeks to conduct at least two depositions and production of all documents "...material and necessary in the prosecution of this proceeding."

As Respondent has failed to establish ample need, failed to narrowly tailor her discovery request, and waited until the eve of trial to move for disclosure the motion is denied.

CROSS-MOTION

Petitioner's cross-motion essentially seeks to reargue the determination made by Judge Stanley in his January 24, 2013 order, therefore that portion of the motion seeking summary judgment and dismissal of defenses and counterclaims is denied, as the motion fails to comply with the requirements of CPLR 2221.

Similarly Petitioner's motion for relief pursuant to RPAPL 745(2) is denied. No rent deposit was ordered in this case. The court directed payment of use and occupancy pending its stay which was lifted. The only reason March and April use and occupancy are an issue is because the parties elected to engage in further and somewhat repetitious motion practice rather than proceed to trial on February 28, 2013 as directed by the prior court order.

Based on the foregoing the cross-motion is denied.

Trial is scheduled for June 10, 2013, at 9:30 am and this is final versus both parties.

CONCLUSION

This constitutes the decision and order of this court.

Dated: May 8, 2013
New York, NY

Hon. Sabrina B. Kraus, J.H.C.

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