

562 Associates LP v Tejada

2013 NY Slip Op 31139(U)

May 28, 2013

HCIV, New York County

Docket Number: 55958/2013

Judge: Sabrina B. Kraus

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

562 Associates LP,

X

Petitioner-Landlord

-against-

DECISION & ORDER

Index No.: L& T 55958/2013

HON. SABRINA B. KRAUS

EDGAR TEJADA
562 WEST 174TH STREET- Apt 21
New York, New York 10033

Respondent-Tenant

JOHN DOE and/or JANE DOE

Respondent-Undertenants

X

BACKGROUND

This summary holdover proceeding was commenced by **562 ASSOCIATES LP** (Petitioner) against **EDGAR TEJADA** (Respondent) the rent stabilized tenant of record, seeking to recover possession of 562 WEST 174TH STREET- Apt 21, New York, New York 10033(Subject Premises) based on the allegation that Respondent has unlawfully sublet the Subject Premises to “John Doe” or “Jane Doe”. “Jane Doe” is described as an unidentified Spanish speaking female. Petitioner further asserts that Respondent resides either in a home in New jersey, next door in Apt. 22 or some other unknown location.

Respondent appeared herein, and asserted that the same claim was previously brought by

Petitioner and discontinued with prejudice.

Petitioner moved for an order allowing them discovery, and Respondent made an oral application for a cross-motion to dismiss this proceeding based on the fact that Petitioner discontinued the prior proceeding with prejudice.

On May 24, 2013, the papers were submitted and the court reserved decision.

ALLEGATIONS IN PRIOR PROCEEDING AND THIS PROCEEDING

In May 2007, the same Petitioner, represented by the same attorneys commenced, an illegal sublet proceeding against Respondent. In that case, instead of an “identified Spanish speaking female,” Petitioner alleged the occupant was Milagros Tejada.¹ That proceeding was brought under Index Number 70918/2007.

That proceeding was adjourned through October 2007, when it was scheduled for a final trial date, and discontinued by Petitioner with prejudice pursuant to a stipulation so ordered by the court. In both proceedings, Petitioner asserts that Respondent may actually live at 65 Luke Avenue Bergenfield, New Jersey.

In the 2007 proceeding, Petitioner asserted a breach of paragraph 4 of Respondent’s lease which prohibits subletting, and further alleged that Milagros Tejada was living in the Subject Premises even though she is the tenant of record of Apt. 22 in the same building.

In this proceeding, Petitioner alleges a breach of the same lease provision, and instead of claiming that the tenants of apt. 22 are living in the Subject Premises, Petitioner alleges Respondent is living in Apt 22. Petitioner asserts Respondent either lives in the New Jersey

¹ The court has requisitioned the file from the 2007 proceeding and takes judicial notice of its contents.

home, apt 22 or someplace else, but acknowledges that the tenant is apt 22 is Respondent's mother.

There is no reference to any nonprimary residence proceeding having been commenced against Respondent at any time from 2007 through 2013. The last lease renewal signed by Respondent is dated January 26, 2011, and was valid through and including January 31, 2013.

DISCUSSION

“It is well settled that once claims are brought to a final conclusion (i.e., such as a discontinuance with prejudice), all other claims arising out of the same transaction or series of transactions are barred, even if based upon different theories or if seeking a different remedy and regardless of whether the court actually addressed them in the prior action (*Wonforo Associates v Maloof* 2002 NY Slip Op 50316(u)).”

“A stipulation of discontinuance with prejudice, without reservation of right or limitation of claims disposed of is entitled to preclusive effect under the doctrine of res judicata (*Liberty Associates v Etkin* 69 Ad3d 681, 682).”

In *Harmir Realty Co. v. Shahar* 3 Misc3d 133(A) the Appellate Term reversed the decision of a trial court which awarded the landlord a final judgment on a subletting proceeding, after a prior subletting proceeding had been discontinued with prejudice.

The court held in pertinent part:

In determining tenant's motion for summary judgment, Civil Court erred in failing to give preclusive effect to the stipulated discontinuance with prejudice. Under the doctrine of res judicata, a new claim constitutes the same cause of action as the formerly litigated claim if they both arise out of the same transactions or occurrences or series of transactions and occurrences.... Here, the same foundation facts form the basis for both proceedings..... Strict enforcement of stipulations of settlement serves the interest of efficient dispute resolution and

ensures finality in the litigation process.
Id (see also *Engel v Wolfsohn* 38 Misc3d 17 discontinuance with prejudice was a final determination of the controversy on the merits).

However, in a different case, *Monacelli v Farrington* 240 AD2d 296 the Appellate Division held that the discontinuance with prejudice of a 1979 holdover proceeding against Respondent had no preclusive effect on a 1995 proceeding based on owners' use. The decision does not specify, but implies that the 1979 holdover was based on nonprimary residence and that the discontinuance with prejudice only meant that respondent was entitled to a renewal lease and not "... a life estate in the subject apartment (*id* at 297)."

"Generally, a set of facts will be deemed a single "transaction" for res judicata purposes if the facts are closely related in time, space, motivation or origin, such that treating them as a unit would be convenient to trial and would conform to the parties' expectations (*Schwartzreich v EPC Carting Co., Inc.* 246 AD2d 439,441)."

Finally, it has been held that even where the term "with prejudice" raises a presumption that the stipulation is to be given res judicata effect in a subsequent proceeding, a court may always consider evidence that the parties intended otherwise (*Singleton Mgt Inc. v. Compere* 243 AD2d 213). No such evidence has been offered by petitioner herein.

The claims made by Petitioner in this proceeding are nearly identical to the claims made in 2007. Both concern the nature of Respondent's relationship to the home in New Jersey and to Apt. 22 in the Subject Building. It appears there has only been one or two lease renewals issued since the 2007 proceeding, which asserted Respondent's lease had been "deemed" renewed through a period running through January 1, 2009.

Petitioner offers no explanation as to why the previous proceeding was discontinued with prejudice, nor why no nonprimary residence proceeding was commenced in the interim. Nor does Petitioner assert what if any facts or transactions have taken place since the discontinuance of the prior proceeding, that led to the commencement of a new proceeding on nearly identical allegations. The hearsay conversation where Respondent's mother asserts that she lives with him next door is not enough of a new fact to justify this proceeding, since the issue of Respondent and his mother living together was asserted in the prior proceeding.

The parties are identical down to the attorney representing Petitioner and the agent for Petitioner who signed the predicate notices.

There is no affidavit from Petitioner's agent or any one with first hand knowledge offered either on the moving papers or the opposition papers, instead counsel simply claims in a conclusory manner, based primarily on the passage of time, that Respondent's argument that the prior stipulation be accorded *res judicata* effect is "baseless."

In the prior proceeding service of the petition was alleged to have been on Carmen Tejada a female of 40-45 years old. So in the prior proceeding it was also asserted that another woman occupied the Subject Premises.

Respondent submits voluminous documentation in opposition to Petitioner's motion for discovery and in support of his cross-motion to dismiss.¹ Respondent submits a New York State Driver's license issued in August 2010 showing the Subject Premises is his residence. Additionally, Respondent shows that he is employed as a corrections officer for the city of New York. Respondent submits tax documents for 2011 and 2012 showing the Subject Premises is listed as his address. Respondent shows documentation confirming his service as juror in

January 2013, as a resident of the Subject Premises. Respondent shows banking records in his name which are sent to the Subject Premises. Respondent shows a motor vehicle which is registered to him at the Subject Premises as of February 2013. Similarly, Respondent shows insurance documents and credit card statements which list the Subject Premises as his address. Respondent maintains a Con Edison account in his name at the Subject Premises.

Moreover, Respondent provides documentation which identifies the person living in the New Jersey home as Jose Rosa and that Mr. Rosa lives in said home with his son and files taxes from said address. In addition to these documents many more have been produced by Respondent.

Based on the foregoing, the court finds that the allegations in this proceeding arise out of the same transactions and occurrences as the prior proceeding in that they allege that Respondent either lives in the New Jersey home, or next door with his mother and that others are in occupancy of the Subject Premises. The nature of Respondent's relationship to the New Jersey home and Apt 22 were specifically raised in the prior proceeding.

While a little over four years have passed since the prior proceeding, this fact alone is not sufficient to deem what appear to be nearly identical allegations as constituting a new cause of actions.

Moreover, Petitioner has failed on these papers to establish ample need for discovery in this proceeding.

Based on the foregoing, Petitioner's motion for discovery is denied and Respondent's cross-motion to dismiss this proceeding is granted.

This constitutes the decision and order of this court.

SABRINA B. KRAUS
JHC

Dated: New York, New York
May 28, 2013

TO: ROSE & ROSE
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EDGAR TEJADA
Respondent - *Pro Se*
562 West 174th Street - Apt 21
New York, New York 10033

1. As Respondent is *pro se* the court allowed him to submit documents on the return date and provide a copy to Petitioner's counsel. For the purposes of clarity the court lists herein each document submitted by Respondent and considered by the court.

- A. Copies of the predicate notices from the 2007 proceeding and this proceeding.
- B. DHCR registration for 1984 through 2007 showing tenant of record for Subject premises from 2003 through 2007 was Neris Tejada.
- C. May 21, 2013 letter from TD Bank.
- D. Motor Vehicle registrations from 2003 through 2013 on two pages.
- E. Proof of Juror service on July 9 and 10, 2009 at 111 Centre Street.
- F. Jury summons dated January 14, 2013.
- G. Explanation of benefits form dated April 4, 2013.
- H. April 18, 2013 letter from geico re motor vehicle insurance.

- I. Billing statement from Toyota dated May 17, 2013.
- J. Phone bill for Milagros Tejada due on April 6, 2013.
- K. 2011 IT-201 form for Resident Income Tax (4 pages).
- L. 2011 1040 EZ form (3 pages).
- M. 2012 IT-201 form (6 pages).
- N. 2012 1040 form (6 pages).
- O. May 2013 Con Edison Bill.
- P. Check from Us Treasury dated 2/14/13 with copy of envelope.
- Q. Package of documents re Jose Rosa (11 pages).
- R. 2012 1040 A form for Jose Rosa (9 pages).
- S. Pension statement dated December 29, 2012.
- T. NYCER documents for 2011, 2012, and 2013 (5 pages).
- U. January 25, 2013 letter from Aetna.
- V. Citibank statement for January 2013.
- W. Bank of America statement for Feb 2013.
- X. NYCER letter dated March 4, 2013.
- Y. Certificate of Title for motor vehicle dated February 21, 2013.
- Z. Citibank credit card statements for January through April 2013(2 sets).
- AA. January 24, 2013 letter from Southern District Jury Department.
- BB. Photocopies of drivers license, work id and insurance card.