

Dickson v MacDougal St. Synagogue Beth-Midrash

2013 NY Slip Op 31816(U)

August 8, 2013

Sup Ct, New York County

Docket Number: 403053/11

Judge: Donna M. Mills

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SUPREME COURT OF THE STATE OF NEW YORK— NEW YORK COUNTY

PRESENT : DONNA M. MILLS
Justice

PART 58

JONATHAN DICKSON,

INDEX NO. 403053/11

Plaintiff,

MOTION DATE _____

-v-

MOTION SEQ. No. 03

MACDOUGAL STREET SYNAGOGUE BETH-
MIDRASH, et al.,

Defendants.

MOTION CAL No. _____

The following papers, numbered 1 to _____ were read on this motion for _____.

PAPERS NUMBERED

Notice of Motion/Order to Show Cause-Affidavits- Exhibits.... 1-4

Answering Affidavits- Exhibits _____ 5-6

Replying Affidavits _____

CROSS-MOTION: YES NO

Upon the foregoing papers, it is ordered that this motion is:

FILED

AUG 08 2013

DECIDED IN ACCORDANCE WITH ATTACHED ORDER.

COUNTY CLERK'S OFFICE
NEW YORK

Dated: 8/6/13

Donna M. Mills
J.S.C.

Check one: FINAL DISPOSITION

DONNA M. MILLS, J.S.C.
NON-FINAL DISPOSITION

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

JONATHAN DICKSON,

INDEX NO.
403053/11

Plaintiff,

- against -

MACDOUGAL STREET SYNAGOGUE
BETH-MIDRASH, N.Y.A.H., INC., NICOLE
GALPERN, JOSE FAJARDO, and BRUCE
SOBERS,

DECISION/ORDER

FILED

AUG 08 2013

Defendants.

COUNTY CLERK'S OFFICE
NEW YORK

DONNA M. MILLS, J:

In this residential landlord/tenant action, plaintiff Jonathan Dickson moves for an order granting leave to amend his amended complaint to add another party defendant, and for a preliminary injunction. Defendants cross -move for summary judgment dismissing the complaint against the individual defendants.

BACKGROUND

Dickson is a tenant of a residential apartment, unit 4C, in a building located at 1372 York Avenue in the County, City and State of New York. Dickson maintains that apartment 4C in which he resides in the building, is an illegally subdivided single room occupancy apartment. He states that the non-party African & Hispanic American Realty of NY, ("AHAR") commenced a holdover proceeding in the Housing Part of the Civil Court on the grounds that he is not a Rent Stabilized tenant of the subject apartment. Plaintiff had previously commenced this action praying for, among other things, a declaratory judgment declaring him the sole rent stabilized tenant of the apartment.

Plaintiff now seeks leave to amend his complaint pursuant to CPLR § 302(b) to add as a party defendant African and Hispanic American Realty of NY, and preliminarily enjoining defendant pursuant to CPLR §§ 6301 and 6311 from prosecuting or proceeding

in any holdover eviction proceeding against plaintiff, and, in particular, proceeding in the matter of African & Hispanic American Realty of NY v Jonathan Dickson, L & T Index No. 59329/13. Defendants oppose plaintiff's motion, and cross-move for summary judgment dismissing plaintiff's proposed second amended complaint as to defendants, Nicole Galpern, Jose Fajardo and Bruce Sobers.

APPLICABLE LAW AND DISCUSSION

In the absence of significant prejudice or surprise to the opposing party, leave to amend a pleading should be freely given (see CPLR 3025 [b], unless the proposed amendment is palpably insufficient or patently devoid of merit (see Bernardi v Spyratos, 79 AD3d 684, 688 [2010])).

The proposed amendment is neither palpably insufficient nor patently devoid of merit, and there is no evidence that the amendment, which merely adds a new defendant for the purposes of enjoining them from prosecuting the holdover eviction proceeding and does not add additional claims against defendants.

Plaintiff also seeks a preliminary injunction staying the prosecution of summary holdover proceedings against him in Housing Court. To prevail in a motion for preliminary injunction, the party seeking injunctive relief must demonstrate a likelihood of success on the merits, that it will suffer irreparable injury if the relief is not granted, and that the equities balance in its favor (W.T. Grant Co. v Sroggi, 52 NY2d 496, 517 [1981]). The Court recognizes that preliminary injunctions in the context of housing matters are normally not favored. It has been held that the Civil Court's Housing Court is the preferred forum for resolving landlord-tenant issues (Post v 120 East End Ave. Corp., 62 NY2d 19 [1984]). "Only where Civil Court is without authority to grant the relief sought should the prosecution of a summary proceeding be stayed" (Scheff v 230 East 73rd Owners Corp., 203 AD2d 151, 152 [1st Dept. 1994]). Thus, given this strong preference for resolving landlord-tenant

disputes in the Civil Court, plaintiff must make a clear prima facie showing entitlement to an injunction staying the prosecution or commencement of summary holdover proceedings against him (CPLR 6301; 6312). The core issue in this action is whether plaintiff is a rent stabilized tenant.

While plaintiff argues that it will be irreparably harmed absent the granting of a preliminary injunction and seeks a preliminary injunction restraining defendants from taking any action to evict him, or an order staying the holdover proceeding, this Court will not grant a stay of the holdover proceeding. "It is well settled that [the] Civil Court has jurisdiction over landlord-tenant disputes encompassed in summary proceedings and that when it has the power to decide the dispute, it is desirable that it should do so" (Subkoff v Broadway-13th Assoc., 139 Misc 2d 176, 177 [1988]; see also Lun Far Co., 40 AD2d at 794).

Both this action and the holdover proceeding pending in the Civil Court involve a dispute over the rent stabilization claims, and the resolution of this dispute will determine the rights of the parties. While the Civil Court may not issue a declaratory judgment (see CPLR 3001; BLF Realty Holding Corp. v Kasher, 183 Misc 2d 953, 954 [2000]), it nevertheless can grant the parties the reality of full relief.

All that remains of plaintiff's lawsuit is his demand to be declared the sole rent stabilized tenant of the apartment and his claims for money damages. Clearly this case boils down to a dispute between a tenant and his landlord about the legal status of his tenancy. Because there is no theory under which they would be liable to plaintiff, defendants, Jose Fajardo, Nicole Galpern and Bruce Sobers who are employees or former employees of the corporate defendants, are entitled to summary judgment dismissing the amended complaint against them.

Accordingly it is

ORDERED that the plaintiff's motion for leave to amend the amended complaint is granted, in part, as follows: leave is granted to amend the amended complaint in the form annexed to the moving papers as to all defendants with the exception of Nicole Galpern, Jose Fajardo and Bruce Sobers; the proposed second amended complaint shall be deemed served upon service of a copy of this order with notice of entry; and it is further

ORDERED that the defendants shall answer the second amended complaint or otherwise respond thereto within 20 days from the date of said service; and it is further

ORDERED that plaintiff's motion for a preliminary injunction is denied; and it is further

ORDERED that any stays in this action are hereby vacated; and it is further

ORDERED that the cross motion of defendants Nicole Galpern, Jose Fajardo and Bruce Sobers for summary judgment is granted and the amended complaint is dismissed as to those defendants; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly; and it is further

ORDERED that counsel are directed to appear for a status conference in Room 574, 111 Centre Street, on October 11, 2013, at 10:00 AM.

Dated:

FILED

AUG 08 2013

COUNTY CLERK'S OFFICE
NEW YORK

So Ordered

Donna Mills

Donna M. Mills, J.S.C.