

Mousaw v Stasior

2013 NY Slip Op 31917(U)

August 14, 2013

Sup Ct, Albany County

Docket Number: 6298-12

Judge: Joseph C. Teresi

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STATE OF NEW YORK
SUPREME COURT

COUNTY OF ALBANY

JOHN A. MOUSAW,

Plaintiff,

-against-

GEORGE O. STASIOR,

Defendant.

DECISION and ORDER
INDEX NO. 6298-12
RJI NO. 01-13-110478

Supreme Court Albany County All Purpose Term, July 19, 2013
Assigned to Justice Joseph C. Teresi

APPEARANCES:

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TERESI, J.:

From August 2010 until June 2012, Defendant rented Plaintiff's home (hereinafter "the Residence") pursuant to a written lease agreement, dated June 5, 2010 (hereinafter "the Lease"). After Defendant vacated the Residence, Plaintiff commenced this action to recover: unpaid rent, late fees, unpaid water bills, and property damages. Issue was joined and discovery is ongoing. Plaintiff now moves for summary judgment on each of his four claims. Defendant opposed the

motion. While Plaintiff demonstrated his entitlement to summary judgment on his unpaid rent, late fees, and water bills claims, he failed to establish his entitlement to judgment as a matter of law on his property damages claim.

It is well established that Plaintiff as “[t]he moving party bears the [initial] burden of establishing that no material issues of triable fact exist and that [he] is entitled to judgment as a matter of law.” (U.W. Marx, Inc. v Koko Contr., Inc., 97 AD3d 893, 894 [3d Dept 2012]). “Once this burden has been met, it becomes incumbent upon the [Defendant] to come forward with competent, admissible evidence creating a genuine triable issue of fact.” (Wells v Ronning, 269 AD2d 690, 691 [3d Dept 2000]). Moreover, “[t]he evidence is viewed in the light most favorable to [Defendant, the non-moving party,] and he receives the benefit of every reasonable inference.” (Beckerleg v Tractor Supply Co., 107 AD3d 1208, 1208 [3d Dept 2013], quoting Tenkate v Tops Mkts., LLC, 38 AD3d 987 [3d Dept 2007][internal quotation marks omitted]).

On this record, Plaintiff demonstrated his entitlement judgement as a matter of law on his unpaid rent, late fees, and water bills claims. Plaintiff supports his motion with a copy of the Lease and his personal affidavit. The Lease explicitly includes Defendant’s obligations to: “pay to [Plaintiff] eighteen hundred and fifteen DOLLARS (\$1,850) per month as rent... [on] the 1st day of each calendar month,” and pay any charges “for water utility.” The Lease also states that “[i]n the event that any payment required to be paid by [Defendant] is not made within ten (10) days of when due... [Defendant] shall pay to [Plaintiff]... a ‘late fee’ in the amount of one hundred DOLLARS (\$100).” Plaintiff’s affidavit then established Defendant’s breach of the above three terms. Plaintiff itemized the months Defendant occupied the Residence and failed to pay his \$1,850 obligation. He further supported such contention with a copy of the record he

kept contemporaneously with Defendant's rental payments. He duly established Defendant's failure to pay a total of \$6,250 in rent. Similarly, Plaintiff's affidavit and contemporaneous record established the specific months Defendant failed to pay his monthly rent in full within ten days of the date it was due. Again Plaintiff demonstrated the precise amount of late fees, \$1,100, Defendant is obligated to pay. Plaintiff likewise demonstrated that Defendant failed to pay two water bills. He detailed the time period and amount applicable to each water bill, which total \$164. With such showing, Plaintiff sufficiently established his entitlement to judgement as a matter of law on each of these claims.

With the burden shifted, Defendant raised no triable issue of fact. He denied neither his failure to pay rent in the amount of \$6,250 nor the \$164 in water bills. Instead, Defendant agrees that "if there remains unpaid rent... [he] is responsible to pay those sums of money." He also "acknowledges that... he is responsible for utilities and water expense and if any unpaid sums exist from that circumstance, that [he] is responsible to meet those obligations." He similarly raised no genuine issue of fact relative to his late fees. While he claims that his late fees should be reduced "[i]n fairness and equity," he offered no competent evidence to demonstrate that he does not owe the full amount of late fees Plaintiff demonstrated. His theoretical assertions were not based on the Lease's language or any factual showing. As such, Defendant failed to raise a triable issue of fact on Plaintiff's claims for unpaid rent, late fees, or water bills.

Accordingly, Plaintiff is granted summary judgment on his unpaid rent (\$6,250), late fees (\$1,100) and water bills (\$164) claims.

Plaintiff failed, however, to demonstrate his entitlement to summary judgment on his property damages claim. First, Plaintiff's reliance on a "Stanley Steamer" unsworn damage

statement is misplaced because it is “inadmissible hearsay, [and] insufficient to support the motion for summary judgment.” (Ulster County, N.Y. v CSI, Inc., 95 AD3d 1634, 1636 [3d Dept 2012]). Similarly, Plaintiff’s recounting of the “verbal estimate [he] received from a local contractor” for window damage is also inadmissible hearsay and of no probative value. In addition, Plaintiff’s unsupported and speculative statement about his Berkline rocker-recliner’s value is likewise unavailing. Finally, Plaintiff did not demonstrate, as a matter of law, that Defendant’s failure to keep the residence in “good and sanitary condition” required the professional cleaning Plaintiff obtained nearly two months after Defendant vacated the Residence. Because Plaintiff failed to establish his entitlement to judgment as a matter of law on his property damages claim, this portion of his motion for summary judgment is denied.

This Decision and Order is being returned to the attorneys for the Plaintiff. A copy of this Decision and Order and all other original papers submitted on this motion are being delivered to the Albany County Clerk for filing. The signing of this Decision and Order shall not constitute entry or filing under CPLR §2220. Counsel is not relieved from the applicable provision of that section respecting filing, entry and notice of entry.

So Ordered.

Dated: Albany, New York
August 14, 2013


Joseph C. Teresi, J.S.C.

PAPERS CONSIDERED:

1. Notice of Motion, dated June 21, 2013; Affidavit of John A. Mousaw, dated June 20, 2013, with attached exhibits A-O; Affirmation of Jessica R. Vigers, dated June 21, 2013, with attached exhibits A-B.
2. Affidavit of George O. Strasier, dated July 12, 2013; Affirmation of Richard H. Weiskopf, dated July 12, 2013, with attached exhibit A.
3. Affidavit of John A. Mousaw, dated July 15, 2013, with attached exhibits A-B; Affirmation of Jessica R. Vigers, dated July 17, 2013.