

Richardson v 49 Terrace Corp.

2013 NY Slip Op 32060(U)

September 3, 2013

Supreme Court, New York County

Docket Number: 102962/12

Judge: Doris Ling-Cohan

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

PRESENT: **JUSTICE DORIS LING-COHAN**

PART 36

Justice

Curtis Richardson

INDEX NO.

102962/12

MOTION DATE

- v -

MOTION SEQ. NO.

3

MOTION CAL. NO.

49 Temace Corp.

The following papers, numbered 1 to 9 were read on this motion to/for injunctive relief

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

1, 2, 3, 4, 5

Answering Affidavits — Exhibits

6

FILED

Replying Affidavits

7

interim order 7/3/12, 1/22/13

SEP 05 2013

8, 9

Cross-Motion: Yes No

NEW YORK COUNTY CLERKS OFFICE

Upon the foregoing papers, it is ordered that this motion

relief is deemed moot. Not Admitted

See the attached memorandum decision of 9/3/13

Admitted for deposition with notes

~~Deposition notes 0025009~~

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Dated: 9/2/13

JUSTICE DORIS LING-COHAN J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

SUBMIT ORDER/ JUDG.

SETTLE ORDER/ JUDG.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 36

-----x
CURTIS RICHARDSON,
Plaintiff,

Index No.: 102962/12

-against-

49 TERRACE CORPORATION, a New York
Corporation,

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Defendant.

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DORIS LING-COHAN, J.:

NEW YORK
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The court is in receipt of the Appellate Term decision issued in the underlying landlord-tenant proceeding (New York County Index Number L&T 92485/10), and, *sua sponte*, issues the below decision. See *49 Terrace Corp. V. Richardson*, 2013 NY Slip Op 51306(U) (App Term, First Dept, August 9, 2013).

Prior to the commencement of this case, in which plaintiff/tenant Richardson seeks, inter alia, a declaratory judgment on a claim of succession rights, defendant/landlord 49 Terrace commenced a summary holdover proceeding, in the Landlord-tenant part of the Civil Court, entitled 49 Terrace Corp. v Curtis Richardson, index number L&T 92485/10 ("Civil Court proceeding"). Such holdover proceeding was premised on the fact that Richardson was a licensee, with a license that expired. Motion sequence number 002, Ex. C. Richardson defended the housing court proceeding,

represented by counsel, alleging succession rights to the apartment and that 49 Terrace breached the warranty of habitability. *Id.* at Ex. D.

In the Civil Court proceeding, tenant Richardson moved to dismiss, which was denied on December 27, 2011. Motion, Ex. F. In such denial, the court stated that Richardson's claim to succession rights could not be decided on the papers, that 49 Terrace's acceptance of rent from Richardson was not determinative of succession rights, and that there were triable issues of fact concerning the succession issue. The Civil Court decision also ordered Richardson to continue to pay use and occupancy, as provided by a so-ordered stipulation entered into by the parties. *Id.*; Ex. E.

Thereafter, by order dated March 13, 2012, Richardson's answer to the summary proceeding was stricken, based on his failure to tender ongoing use and occupancy, pursuant to Real Property Actions and Proceedings Law (RPAPL) § 745. Motion, Ex. H. A trial was held, at which it was determined that Richardson was, indeed, a licensee with an expired license, based, *inter alia*, upon the striking of the answer, and the landlord was awarded possession of the subject apartment. Motion, Ex. H. Richardson moved to reargue, which motion was denied on June 12, 2012. Motion, Ex. J. Richardson noticed an appeal of the March 13,

2012 decision in the summary proceeding, in which his answer was stricken. Motion, Ex. K.

Significantly, by decision/order dated August 9, 2013, the Appellate Term, First Department reversed the March 13, 2012 Civil Court decision, which had granted the landlord's motion to strike tenant Richardson's answer, reinstated tenant Richardson's answer and *remanded the matter to the Civil Court*, for further proceedings on the holdover petition. See *49 Terrace Corp. V. Richardson*, 2013 NY Slip Op 51306(U) (App Term, First Dept, August 9, 2013). Thus, consistent with the August 9, 2013 decision/order by the Appellate Term, First Department, the within action, in which tenant Richardson seeks both a declaratory judgment that he is entitled to succession rights to the subject apartment and that 49 Terrace breached the warranty of habitability is dismissed, without prejudice to pursue such defenses in the context of the Civil Court holdover proceeding, which was commenced, prior to the plaintiff's commencement of the within action. As stated by the Appellate Division, First Department in *Brecker v. 295 Cent. Park W., Inc.*, (71 AD3d 564 [1st Dept 2010]), in dismissing a Supreme Court declaratory judgment action commenced by a tenant with respect to a succession rights claim,

"[w]hen no other action or proceeding is pending in Civil Court, a tenant may commence an action in Supreme Court seeking declaration of succession right

to a rent-regulated apartment...*however, Civil Court is the strongly preferred forum for resolving landlord-tenant disputes...Once a summary proceeding has been commenced in Civil Court where complete relief can be afforded to the tenant, there is no further basis for invoking the equitable jurisdiction of Supreme Court...*".

(citations omitted, emphasis supplied). Here, the within action was commenced by plaintiff/tenant, only *after* his answer was struck in the Civil Court holdover proceeding, which was commenced against him by his landlord. As such Civil Court proceeding and tenant Richardson's answer have been reinstated, there is no basis for this action to continue.¹

It is noted that the *previously commenced* summary holdover proceeding by 49 Terrace, involves the very same issues pending before this court, namely whether tenant Curtis Richardson has any legal rights to the subject apartment. Moreover, it is noted that it would be a waste of judicial resources, resources of the parties, and could result in inconsistent results, to allow the within issues to be pursued in two separate forums.

Based on the above, it is

¹ The court notes that, while defendant 49 Terrace has moved to dismiss this case (Motion Sequence Number 002), arguing that it is barred by collateral estoppel and res judicata, this court need not reach such issues and they are deemed moot (by separate order), as dismissal is warranted based upon the August 9, 2013 ruling by the Appellate Term, First Department.

ORDERED that consistent with the August 9, 2013 decision/order by the Appellate Term, First Department (49 Terrace Corp. V. Richardson, 2013 NY Slip Op 51306[U][App Term, First Dept, August 8, 2013], this court, *sua sponte*, dismisses the complaint, without costs and without prejudice to plaintiff Curtis Richardson pursuing his succession rights claim and breach of warranty of habitability claim, in the context of the previously commenced summary holdover proceeding, which has been reinstated, by order dated August 9, 2013 of the Appellate Term, First Department; and it is further

ORDERED that, upon proof of service of a copy of this order with notice of entry, the Clerk is directed to enter judgment of dismissal, without costs; and it is further

ORDERED that within 30 days of entry of this order, defendant shall serve a copy upon plaintiff with notice of entry.

Dated: September 3, 2013

FILED

~~Doris Ling-Cohan, J.S.C.~~

SEP 05 2013

**NEW YORK
COUNTY CLERK'S OFFICE**

J:\Dismiss\Richardson.revised after app div decision august 2013.wpd