

Ben-Reuven v Lincoln Plaza Assoc. LLC

2014 NY Slip Op 31775(U)

July 7, 2014

Sup Ct, NY County

Docket Number: 654235/13

Judge: Cynthia S. Kern

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: Part 55

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ZIVA BEN-REUVEN,

Plaintiff,

Index No. 654235/13

-against-

DECISION/ORDER

LINCOLN PLAZA ASSOCIATES LLC and OGDEN
CAP PROPERTIES LLC,

Defendants.

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HON. CYNTHIA KERN, J.S.C.

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion
for : _____

Papers	Numbered
Notice of Motion and Affidavits Annexed.....	<u>1</u>
Answering Affidavits and Cross Motion.....	<u>2</u>
Replying Affidavits.....	<u>3</u>
Exhibits.....	<u>3</u>

Plaintiff commenced the instant action seeking to compel defendants Lincoln Plaza Associates LLC (“Lincoln Plaza”) and Ogden CAP Properties LLC (“Ogden”) to consent to her request to sublet her apartment. Plaintiff now moves for an order pursuant to CPLR § 3212 granting her summary judgment on her complaint. For the reasons set forth below, plaintiff’s motion is denied.

The relevant facts are as follows. Plaintiff is the rent stabilized tenant of apartment 37-V in the building located at 20 West 64th Street, New York, New York (the “subject apartment”) pursuant to an original lease agreement dated November 22, 1976 (the “Lease”). Ogden is the property manager of the building and Lincoln Plaza is the building’s owner/landlord. In a letter

dated January 2, 2013, plaintiff, by her attorney, wrote to Ogden to “explore the possibility of [plaintiff] obtaining a buyout from her apartment so that she can vacate in the near future.” This possibility was rejected by defendants. Thereafter, by letter dated August 8, 2013, plaintiff expressed a desire to sublet the subject apartment for one year while she lives in Israel to care for her ill sister. By letter dated August 20, 2013, counsel for Lincoln Plaza advised plaintiff that her letter did not constitute a proper request for permission to sublet and that if plaintiff submitted a proper request, Lincoln Plaza would respond.

By e-mail sent to Ogden on August 22, 2013, plaintiff solicited another buyout of the Lease, this time seeking \$20,000, and advising that if a buyout was not agreed upon, she was going to “find a sub tenant within a few days.” Lincoln Plaza again refused to negotiate a buyout. By letter dated August 30, 2013, plaintiff requested permission from Ogden to sublet the subject apartment to Ben Zion Rasabi and Asaf Yeminy for a two-year term commencing on September 1, 2013 and ending on August 31, 2015. Lincoln Plaza then sent plaintiff a questionnaire to fill out in connection with her request. In a letter dated September 23, 2013, plaintiff’s counsel sent defendants responses to Lincoln Plaza’s questionnaire along with other documentation relative to plaintiff’s request.

By letter dated October 2, 2013, Lincoln Plaza refused its consent to the sublet request and informed plaintiff of the bases for its decision, which included, *inter alia*, that (1) plaintiff failed to meaningfully address Lincoln Plaza’s inquiries in the questionnaire; (2) plaintiff failed to comply with the provisions of the Rent Stabilization Code, which require that the requesting tenant establish primary residence of the apartment being sublet; (3) plaintiff failed to establish that the proposed subtenants contained in the request were qualified to sublet the subject

apartment; (4) the proposed sublease contains financial terms that are improper and illegal; and (5) the proposed sublease contains provisions that are objectionable to Lincoln Plaza. Plaintiff then commenced the instant action in December 2013 seeking an order compelling Lincoln Plaza to consent to her sublet request and now moves for an Order pursuant to CPLR § 3212 granting her summary judgment on her complaint.

On a motion for summary judgment, the movant bears the burden of presenting sufficient evidence to demonstrate the absence of any material issues of fact. *See Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320, 324 (1986). Summary judgment should not be granted where there is any doubt as to the existence of a material issue of fact. *See Zuckerman v. City of New York*, 49 N.Y.2d 557, 562 (1980). Once the movant establishes a *prima facie* right to judgment as a matter of law, the burden shifts to the party opposing the motion to “produce evidentiary proof in admissible form sufficient to require a trial of material questions of fact on which he rests his claim.” *Id.*

In the present case, plaintiff has failed to establish her *prima facie* right to summary judgment as she has not shown that defendants’ withholding of consent to sublease the subject apartment was unreasonable as a matter of law. Pursuant to Real Property Law § 226-b(2),

(a) A tenant renting a residence pursuant to an existing lease in a dwelling having four or more residential units shall have the right to sublease his premises subject to the written consent of the landlord in advance of the subletting. Such consent shall not be unreasonably withheld....

(c) ...If the landlord reasonably withholds consent, there shall be no subletting and the tenant shall not be released from the lease. If the landlord unreasonably withholds consent, the tenant may sublet in accordance with the request and may recover the costs of the proceeding and attorneys fees if it is found that the owner acted in bad

faith by withholding consent.

Whether a landlord reasonably withholds consent to a proposed sublet is dependent on whether the landlord “consider[ed] [] objective factors” such as, *inter alia*, the financial responsibility of the subtenant and the nature of the occupancy. See *Kenney v. Eddygate Park Associates*, 19 A.D.3d 859 (3d Dept 2005). Further, it is generally a fact-specific inquiry that should not be determined by summary judgment. See *Credit Suisse First Boston v. Utrecht-America Fin. Co.*, 80 A.D.3d 485 (1st Dept 2011). Here, plaintiff has failed to establish that defendants’ refusal to consent to the sublease of the subject apartment was unreasonable as a matter of law. Indeed, in their letter dated October 2, 2013, defendants set forth numerous reasons and explanations as to why they were rejecting plaintiff’s request to sublet, including, *inter alia*, that it is unclear from plaintiff’s actions whether she actually plans to return to the subject apartment, that plaintiff did not properly or fully fill out the questionnaire provided by defendants with specifics about plaintiff’s temporary move to Israel and the proposed subtenants, such as their qualifications and the “*bona fides*” of their intentions with respect to the proposed sublet. Specifically, defendants’ eight page letter expressed concerns about the proposed subtenants’ employment, the location of their current residence and whether the proposed tenants were honest when they asserted that they had never previously been involved in any other litigation as defendants have asserted otherwise. Additionally, defendants’ letter expressed concern about certain provisions of the proposed sublease and whether those provisions were reasonable and/or legal, specifically that the proposed sublease would allow plaintiff and the proposed subtenants to modify the sublease without Lincoln Plaza’s prior written consent or approval and appeared to contemplate the proposed subtenants using the rent-stabilized subject apartment as a short-term hotel for transient

