

151 First Ave. Hous. Dev. Corp. v Gorman
2014 NY Slip Op 32325(U)
August 29, 2014
Supreme Court, New York County
Docket Number: 153936/2014
Judge: Barbara Jaffe
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : IAS PART 12

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151 FIRST AVENUE HOUSING DEVELOPMENT
CORPORATION,

Index No. 153936/2014

Plaintiff,

Mot. seq. no. 001

-against-

DECISION AND ORDER

ROBERT GORMAN,

Defendant.

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BARBARA JAFFE, J.:

For plaintiff:

Linda S. Roth, Esq.
Gregory J. Skiff, Esq.
Tarter Krinsky *et al.*
1350 Broadway, 11th fl.
New York, NY 10018
212-216-8000

By notice of motion, plaintiff moves for an order granting it a default judgment against defendant.

I. BACKGROUND

On or about November 10, 1987, defendant entered into a proprietary lease with plaintiff, the fee owner of the building located at 151 First Avenue in Manhattan. Article 28 of the lease provides that upon by demand by plaintiff, defendant must pay expenses, including reasonable attorney fees and disbursements incurred as a result of his default. Article 31 provides, *inter alia*, that defendant's lease is terminable and his shares surrendered upon a vote, at a duly called meeting, of two-thirds of plaintiff's board of directors finding defendant's conduct objectionable. Following the vote, plaintiff must notify defendant that his lease will expire on a date at least five days thereafter, whereupon defendant must surrender the apartment, and plaintiff may repossess

and remove all persons and property from it. Article 32(c) provides, *inter alia*, that following the surrender of the apartment and the issuance of a new lease, plaintiff must apply the proceeds from the new lease to pay down defendant's debt, which includes attorney fees and other expenses incurred by plaintiff. (NYSCEF 3).

In or around April 2011, plaintiff observed a leak emanating from defendant's apartment. Defendant refused plaintiff's repeated requests to enter his apartment in order to inspect and fix the leak, which continued for over two years, damaging other apartments and areas in the building, and giving rise to the issuance of violations from the New York City Department of Housing Preservation and Development. Defendant also refused to remove items from his fire escape and other common areas, creating fire and safety hazards, and became delinquent in his maintenance payments. (NYSCEF 1).

On May 15, 2013, plaintiff's board voted unanimously to declare defendant's tenancy objectionable. (NYSCEF 5, 18).

On August 1, 2013, plaintiff served via certified mail and return receipt a notice of default dated July 30, 2013, advising, among other things, that defendant owed \$24,400 in past-due maintenance and other charges, that his conduct was dangerous and constituted violations of the lease, and that plaintiff would elect to terminate his tenancy if he failed to cure the defaults detailed in the letter before September 6, 2013. (NYSCEF 4).

On November 6, 2013, plaintiff served via certified mail and return receipt a letter of the same date notifying defendant of his failure to cure the objectionable conduct set forth in the notice of default, and that the board would hold a special meeting on November 21, 2013 to vote on whether to terminate his proprietary lease, which plaintiff invited defendant and his attorney

to attend to refute the charges. (NYSCEF 5).

At the November 21, 2013 special meeting, unattended by defendant or his attorney, the board found that defendant had made no effort to address the conduct detailed in the notice of default and unanimously voted to terminate his lease. (NYSCEF 18).

On or about December 15, 2013, plaintiff notified defendant of the vote, that his lease would terminate on December 31, 2013, and that it would commence proceedings to remove him from his apartment if he thereafter remained in possession. (NYSCEF 6)

On or about April 23, 2014, plaintiff commenced this action by summons and verified complaint, alleging that defendant had not voluntarily surrendered possession of his apartment, nor given any indication of doing so. Plaintiff seeks a declaration adjudging its termination of defendant's lease to be proper, adjudging defendant's shares to be cancelled, and adjudging defendant's continued occupancy in the apartment to be unlawful. It seeks an order directing the sheriff to remove defendant from the apartment, and an award of costs, disbursements, and attorney fees. (NYSCEF 1).

On May 6, 2014, following the fifth failed attempt to serve defendant personally at his apartment, plaintiff affixed the pleadings on defendant's door, and mailed the pleadings to defendant's apartment. (NYSCEF 8). Although plaintiff alleges that defendant admitted knowledge of this action in a letter to a boardmember dated May 17, 2014, as plaintiff fails to attach the letter, I do not consider this allegation.

On June 26, 2014, plaintiff provided additional notice to defendant by mailing him the pleadings. (NYSCEF 21). On July 7, 2014, plaintiff mailed defendant this instant notice of motion and the motion's supporting papers. (NYSCEF 24).

II. ANALYSIS

When a defendant fails to appear in an action, the plaintiff may seek a default judgment against him. (CPLR § 3215[a]). On a motion for a default judgment, the plaintiff must provide proof of the facts constituting its claims (CPLR § 3215[f]); conclusory allegations are insufficient (*St. Paul Fire & Marine Ins. Co. v A.L. Eastmond & Sons, Inc.*, 244 AD2d 294 [1st Dept 1997]).

The supreme court may render a declaratory judgment having the effect of a final judgment as to parties' rights in a justiciable controversy. (CPLR § 3001)

Pursuant to the business judgment rule, a court will defer to the determination of a residential cooperative board. (*Matter of Levandusky v One Fifth Ave. Apt. Corp.*, 75 NY2d 530, 538 [1990]). Consequently, a court shall not scrutinize a cooperative board's determination to terminate a lease unless the aggrieved shareholder shows that the board acted outside the scope of its authority, in a manner not legitimately furthering a corporate purpose, or in bad faith. (40 *West 67th Street Corp v Pullman*, 100 NY2d 147, 155 [2003]).

Pursuant to New York Real Property Actions and Proceedings Law § 711(1), the termination of a lease due to a tenant's objectionable conduct must be supported by "competent evidence . . . that the tenant is objectionable." A coop board's determination that the tenant's behavior is objectionable and its vote to terminate his lease on that basis constitutes competent evidence. (*Pullman*, 100 NY2d at 155).

Here, the board unanimously found objectionable defendant's failure to attempt to address the defaults described in the July 30/August 1, 2013 notice, some of which endangered other residents. On that basis, the board voted to terminate his lease. Plaintiff also acted within the scope of its authority, having duly convened the special meeting, which defendant declined to

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attend. There is also no evidence that the board acted in bad faith or in furtherance of an illegitimate purpose. Consequently, plaintiff has provided competent evidence necessary to sustain its determination. (*See Pullman*, 100 NY2d at 155-157 [termination of lease not reviewable when cooperative adhered to procedure set forth in lease, when tenant failed to appear at special meeting, when decision based on specific finding as to tenant's objectionable conduct, and in absence of evidence that determination based on impermissible considerations]).

III. CONCLUSION

Accordingly, it is hereby

ORDERED, that plaintiff 151 First Avenue Housing Development Corporation's motion for an order granting it a default judgment against defendant Robert Gorman is granted; it is further

ADJUDGED and DECLARED, that plaintiff properly exercised its right and authority to terminate defendant's proprietary lease and cancel his shares; it is further

ADJUDGED and DECLARED, that as of January 1, 2014, defendant's lease is terminated and that the shares of stock issued to defendant appurtenant to the proprietary lease are cancelled; it is further

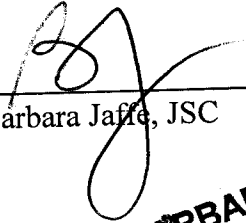
ADJUDGED and DECLARED, that as of January 1, 2014, defendant has ceased to have any right to occupy apartment #4-F in the building located at 151 First Avenue, New York, New York (the apartment) pursuant to the lease; it is further

ADJUDGED and DECLARED, that plaintiff is entitled to possession of the apartment, and that the Sheriff for the City and County of New York is directed to execute this judgment, and eject, evict, and remove defendant and all persons and things from the apartment and deliver

vacant possession of the apartment to plaintiff; and it is further

ORDERED, that plaintiff is directed to submit proof of costs, disbursements and reasonable attorney fees, including an affirmation demonstrating its entitlement thereto, within 30 days of plaintiff's demand of said payment from defendant, along with proof of said demand.

ENTER:


Barbara Jaffe, JSC

BARBARA JAFFE
J.S.C.

DATED: August 29, 2014
New York, New York