

Peribanez v University Hill Apts. Inc.

2014 NY Slip Op 33216(U)

December 9, 2014

Supreme Court, New York County

Docket Number: 155961/14

Judge: Anil C. Singh

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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 61

-----X
BARBARA PERIBANEZ,

Plaintiff,

-against-

UNIVERSITY HILL APARTMENTS INC.,

Defendant.
-----X

DECISION AND
ORDER

Index No.
155961/14

HON. ANIL C. SINGH, J.:

Defendant/landlord moves to change the venue of the instant landlord-tenant dispute from New York County to Onondaga County pursuant to CPLR 507 and 510(3), contending that the residential apartment in issue is located in the city of Syracuse. Plaintiff opposes the motion.

On May 30, 2013, plaintiff Barbara Peribanez entered into a written lease agreement with defendant University Hill Apartments, Inc., for an apartment located at 1929 Genesee Street in Syracuse. The lease was for a one-year term commencing on July 1, 2013, and ending on June 30, 2014. Plaintiff contends that she vacated the premises on June 6, 2014.

Plaintiff commenced the instant action by filing a summons and complaint in New York County on June 18, 2014. The complaint alleges that the building containing the premises has at least six apartment units. Plaintiff asserts that there was

mold in the building due to leaking water pipes; the ceiling of the premises was damaged and cracked; and rats invaded her apartment.

The complaint asserts causes of action for breach of the warranty of quiet enjoyment (first cause of action), negligence (second cause of action), negligent infliction of emotional distress (third cause of action), breach of the warranty of habitability (fourth cause of action), and forfeiture of the security deposit (fifth cause of action).

At the outset, the Court notes that New York County is a proper initial venue based on defendant's residence (CPLR 503). The complaint alleges that defendant is a domestic corporation residing and having its principal place of business at 245 East 58th Street, Suite 27C, New York, New York 10022. Plaintiff exhibits a printout from the website of the New York State Department of State, Division of Corporations, which states that defendant's "principal executive office" is located at the above street address.

Discussion

Defendant's first contention is that Onondaga County is the proper venue pursuant to CPLR 507, which provides:

The place of trial of an action in which the judgment would affect the title to, or the possession, use or enjoyment of, real property shall be in the county in which any part of the subject of the action is situated.

Pointing out that the complaint at paragraph 83 alleges that the premises were

“uninhabitable and unfit for human occupancy,” defendant contends that plaintiff’s complaint on its face alleges that her possession, use and enjoyment of real property in Onondaga County was affected due to the alleged breaches and negligence of defendant.

This Court’s review of case law on the issue of venue reveals that landlord-tenant disputes seeking only monetary damages for breaches of covenants in lease agreements have consistently been treated as being transitory in nature akin to actions for breach of contract.

For example, in Weinstein Enterprises, Inc. v. Great Atlantic & Pacific Tea Co., 112 A.D.2d 219 [2d Dept., 1985], the Second Department held that a landlord’s causes of action against a tenant for damages based on the tenant’s breach of a covenant to keep the leased premises in good repair did not affect the title to, or the possession, use or enjoyment of the subject property for purposes of determining venue.

Likewise, in Port Bay Associates v. Soundview Shopping Center, 197 A.D.2d 848 [4th Dept., 1993], the Fourth Department held that a landlord-tenant dispute concerning interpretation of payment terms of a lease did not demand a judgment that would affect the title to, or the possession, use of enjoyment of the subject real property and, thus, was not a “local” action that had to be brought in the situs county (id., 197 A.D.2d 848).

By contrast, in Moschera & Catalano, Inc. v. Advanced Structures Corp., 104

A.D.2d 306 [1st Dept., 1984], a landlord commenced an action in New York County, where plaintiff's principal office was located, for a declaratory judgment as to the rights and legal relationship of the parties, including whether the tenant had an option to renew the lease in perpetuity or whether the right would terminate on a date certain. Holding that any declaratory judgment could affect a termination of the tenant's "possession, use or enjoyment" or interest in the property, the First Department held that defendant's motion to change venue pursuant to CPLR 507 from New York County to Suffolk County, where the property was located, should have been granted (Moschera, 104 A.D.2d at 307).

Here, the plaintiff is not seeking title to, or possession of, real property.

Plaintiff contends that she vacated a residential apartment on June 6, 2014, and the lease term expired on June 30, 2014. Plaintiff is not seeking to renew the lease, and defendant does not dispute that plaintiff vacated the premises. Further, plaintiff is suing only for monetary damages, not for a declaratory judgment giving her possession.

In light of these facts, the Court finds that this matter cannot result in a judgment that would affect title, possession, use or enjoyment of the subject premises. Accordingly, defendant's first contention is meritless.

In the alternative, defendant seeks a discretionary change of venue under 510(3) for the convenience of material witnesses.

“To obtain a discretionary change of venue under CPLR 510(3), the moving party must provide detailed justification for such relief in the form of the identity and availability of proposed witnesses, the nature and materiality of their anticipated testimony, and the manner in which they would be inconvenienced by the initial venue” (Martinez v. Dutchess Landaq, Inc., 301 A.D.2d 424, 425 [2003]).

Defendant points out that plaintiff herself is a resident of Onondaga County. According to defendant’s attorney, the landlord maintains its leasing office in Onondaga County at 115 Comstock Avenue in Syracuse, and defendant’s principal, Jatin Saluja, claims that while he listed defendant’s address with the Secretary of State as in New York County, he actually works on a daily basis from the Comstock Avenue address in Onondaga County. Further, the landlord contends that its maintenance employees in Onondaga County will be inconvenienced if they are called to testify at a trial in New York County. Finally, defendant asserts if any building code inspectors are called as witnesses, they will be kept from their duties unnecessarily.

“The convenience of a party’s employee is not a weighty factor in considering a motion for discretionary change of venue” (Martinez v. Dutchess Landaq, Inc., 301 A.D.2d 424, 425 [1st Dept., 2003]).

Defendant’s general allegation that nonparty witnesses, such as building code inspectors and contractors, who purportedly work or reside in Onondaga County and

would be inconvenienced by testifying in New York County, lacks evidentiary support. “Notably lacking is any evidence that these witnesses have been contacted, are willing to testify on material matters and would be inconvenienced by having to testify in New York” (id.).

Plaintiff had the right to choose a proper county in which to sue, and we find that defendant has not met its burden of showing that the balance of convenience requires a change of venue.

Accordingly, it is

ORDERED that the motion is denied; and it is further

ORDERED that counsel are directed to appear for a preliminary conference in Room 320, 80 Centre Street on March 4, 2015, at 9:30 AM.

The foregoing constitutes the decision and order of the court.

Date: 12/9/14
New York, New York


Anil C. Singh

HON. ANIL C. SINGH
SUPREME COURT JUSTICE