

SMJ Assoc., LLC v Sendax-Taubenfeld
2015 NY Slip Op 31121(U)
June 30, 2015
Supreme Court, New York County
Docket Number: 450086/12
Judge: Anil C. Singh
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK:

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SMJ ASSOCIATES, LLC a/k/a
SMJ ASSOCIATES 3, LLC,

Plaintiff,

-against-

DECISION AND
ORDER

Index No.
450086/12

JENNIFER SENDAX-TAUBENFELD a/k/a
JENNIFER SENDAX-TAUBENFELD f/k/a
JENNIFER SENDAX,

Defendant.

-----X

HON. ANIL C. SINGH, J.:

Plaintiff SMJ Associates LLC moves pursuant to CPLR 3025 for leave to file a second amended verified complaint, adding a cause of action for unpaid rent/use and occupancy. Defendant opposes the motion.

Plaintiff/landlord is the manager of the residential apartment building located at 500 East 87th Street in Manhattan. Defendant/tenant resided in apartment 15E pursuant to a lease agreement dated October 24, 1996.

In 2008, tenant commenced a prior action against landlord (the “2008 action”) alleging that landlord had overcharged her rent on the apartment, which she asserted was subject to rent regulation. The parties, by their respective counsel, entered into a stipulation that discontinued the 2008 action with

prejudice. Landlord agreed to pay tenant \$20,000 and her counsel \$10,000; waived the tenant's rent between January 1, 2008, and April 30, 2011; reduced the monthly rent to \$2,000; and extended the lease term to December 31, 2012, by which date tenant agreed to vacate the premises. The stipulation provided further that tenant would not commence any further legal action in the Civil Court of the City of New York, or any further proceeding before the DHCR, in connection with the rent overcharge.

On or about June 10, 2011, tenant commenced an administrative proceeding against landlord with DHCR.

Subsequently, landlord commenced the instant action against tenant, alleging that tenant breached the 2008 settlement agreement by commencing the DHCR proceeding.

Landlord's current verified complaint alleges three causes of action. The first cause of action seeks monetary damages under the settlement agreement. The second cause of action seeks a declaratory judgment that tenant's commencement of the DHCR proceeding in 2011 breached the agreement and/or that tenant breached the implied covenant of good faith and fair dealing within the agreement when she commenced the DHCR proceeding. The third cause of action seeks a permanent injunction ordering tenant to withdraw the DHCR proceeding, and

permanently enjoining tenant from commencing any other action or DHCR proceeding concerning alleged rent overcharges with respect to the apartment, or the rent-stabilized status of the apartment.

Landlord exhibits the sworn affidavit of Staffard Garson in support of the motion to amend the complaint. Mr. Garson contends that, as a result of tenant's breaches of the agreement, landlord has incurred monetary damages of not less than \$124,280, comprised of the \$2,000 per month rent that tenant failed to pay during the May 2011 through December 2012 period, as well as higher market rent that landlord would have received from a new tenant beginning in January 2013. By this motion, landlord is seeking to amend the current verified complaint to add one cause of action. Mr. Garson asserts that the proposed cause of action, labeled "Unpaid Rent/Use and Occupancy," provides an alternate claim for landlord to recover a fair value amount of monies from defendant for the May 1, 2011, through September 3, 2014, period during which defendant occupied the apartment but failed to pay plaintiff any monies.

In response, tenant asserts that the application to file a second amended complaint should be denied for three reasons. First, landlord's second request to amend the complaint is being made nearly four years after commencement of this action and over a year-and-a-half after filing its first amended complaint. Second,

landlord has offered no excuse for the lengthy delay in filing the instant motion. Third, tenant contends that this motion was intended to delay landlord's deposition.

Discussion

“Leave to amend pleadings under CPLR 3025(b) should be freely given, and denied only if there is prejudice or surprise resulting directly from the delay, or if the proposed amendment is palpably improper or insufficient as a matter of law” (McGhee v. Odell, 96 A.D.3d 449, 450 [1st Dept., 2012] (internal quotation marks and citations omitted)). “A party opposing leave to amend must overcome a heavy presumption of validity in favor of [permitting amendment]” (id.). “Mere lateness is not a barrier to the amendment” (Robinson v. Day, 103 A.D.3d 584, 584 [1st Dept., 2013]). “Prejudice requires some indication that the defendant has been hindered in the preparation of his case or has been prevented from taking some measure in support of his position” (id.).

In short, the Court finds that there is no indication that defendant has been hindered in the preparation of her case, or has been prevented from taking some measure in support of her position. Accordingly, it is

ORDERED that plaintiff's motion for leave to amend the complaint is granted, and the amended complaint in the proposed form annexed to the moving

papers shall be deemed served upon service of a copy of this order with notice of entry; and it is further

ORDERED that the defendant shall serve an answer to the amended complaint or otherwise respond thereto within 20 days from the date of said service.

The foregoing constitutes the decision and order of the court.

Date: June 30, 2015
New York, New York



Anil C. Singh

**HON. ANIL C. SINGH
SUPREME COURT JUSTICE**