

SP 96-97 St. LLC v Narthey

2016 NY Slip Op 30766(U)

April 29, 2016

Civil Court of the City of New York, New York County

Docket Number: L&T 80386/2015

Judge: Sabrina B. Kraus

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.

This opinion is uncorrected and not selected for official publication.

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK: HOUSING PART D

SP 96-97 STREET LLC,

Petitioner-Landlord

HON. SABRINA B. KRAUS

-against-

DECISION & ORDER

Index No.: L&T 80386/2015

MARCELINA NARTEY
ALBERTA MONZANO
135 West 96th Street, Apt. 3B
New York, New York 10028

Respondents-Tenants

EULALIA SEGUNIAL
“JOHN DOE” AND “JANE DOE”

Respondents -Undertenants
_____X

BACKGROUND

This summary holdover proceeding was commenced by **SP 96-97 STREET LLC** (Petitioner) against **MARCELINA NARTEY** and **ALBERTA MONZANO** (collectively “Respondents”), the last tenants of record of 135 West 96th Street, Apt. 3B, New York, New York 10028 (Subject Premises), based on the allegation that Respondents’ lease had expired and they no longer had the right to remain in possession.

PROCEDURAL HISTORY

No predicate notice was served herein. The petition is dated October 14, 2015, and the

proceeding was initially returnable October 30, 2015. DC 37 did not appear on behalf of Respondents but made an application for an adjournment. The court (Stoller, J) issued a written order adjourning the proceeding to December 16, 2015 at 2:15 pm, and making a referral to Adult Protective Services (APS) for Monzano.

On December 16, 2015, Petitioner moved for an order directing Respondents to pay use and occupancy, counsel appeared on behalf of Nartey, and the proceeding was adjourned by stipulation to February 3, 2016, for Respondents to file an answer and for motion practice.

On December 30, 2015, APS notified the court in writing that Monzano was not eligible for protective services, and had sufficient mental and physical capacity to protect her interests herein.

Nartey served an answer dated January 12, 2016 asserting a general denial and that the petition failed to state a cause of action. Nartey served an amended answer dated January 22, 2016, with a second affirmative defense asserting that Petitioner had failed to plead the proper regulatory status of the Subject Premises, that the Subject Premises were subject to Rent Stabilization and that Petitioner had fraudulently and unlawfully deregulated the Subject Premises.

On February 3, 2016, Petitioner moved for an order dismissing Nartey's second affirmative defense.

On March 8, 2016, DC 37 moved for the appointment of a guardian ad litem for Monzano. The moving papers asserted that Monzano suffered from medical ailments that limited her ability to walk and made it difficult for her to appear in court. The motion was granted by the court

(Kraus, J)¹, on default of Monzano appearing and without opposition from Petitioner, and Narthey was appointed as GAL for Monzano.

On the same date, Narthey moved for leave to amend her answer because Petitioner, in motion papers had challenged Narthey's right to serve the amended pleading. The proceeding was adjourned for additional motion papers and on March 20, 2016, the court reserved decision on the pending motions.

The pending motions (Seq. Nos 1, 2, and 4) are consolidated herein for determination.

MOTION FOR LEAVE TO AMEND NARTEY'S ANSWER

Narthey's motion for leave to amend her answer is granted. CPLR § 3025(a) provides that a party may amend its pleading once without leave of court, and pursuant to CPLR 3025(b) leave to amend may be sought from the court at any time and is to be freely granted on such terms as may be just. §909 (a) of the New York City Civil Court Act provides that a pleading may be amended without leave within ten days after its service.

In this case, the amended pleading was served promptly and there is no prejudice to Petitioner who, even absent said defense, would have been required to establish the alleged exemption from rent regulation as part of its *prima facie* case at trial.

PETITIONER'S MOTION TO STRIKE THE SECOND AFFIRMATIVE DEFENSE

Petitioner's motion to dismiss the second affirmative defense is denied. Petitioner relies on a stipulation of settlement from in a prior holdover proceeding under Index Number 89655/2008, pertaining to Apartment 8E, at 120 West 97th Street, wherein Respondents were

¹ On March 4, 2016, the proceeding was transferred from Part H to Part R for calendar control purposes.

represented by counsel. In that stipulation, Respondents consented to vacate the apartment and in consideration for same, Respondents were given a five year lease for the Subject Premises. Said stipulation provides in pertinent part:

Respondents acknowledge that the Alternate Apartment (Subject Premises) pursuant to Rent Stabilization Code Section 2520.11(r)(4), has been exempt from all forms of rent regulation and is no longer subject to the Rent Stabilization Code, since at least April 1, 2007, and the last free market tenant of this apartment paid a monthly rent of \$2895.00.

As consideration hereunder, Respondents will be relocating to a fully renovated apartment which is exempt from rent regulation and the Petitioner is setting a rent for the Alternate Apartment that is well below the market rent ...

Respondents agree that they will have no right to remain in the Alternate Apartment beyond April 30, 2015, and a failure to vacate the Alternate Apartment on or before April 30, 2015 will be deemed a breach of this Stipulation.

The parties can not stipulate to create or take away rent regulated status of an apartment.

Either under the law it is subject or it is exempt. It is well settled that “an agreement in purported or actual settlement of a landlord-tenant dispute which waives the benefit of a statutory protection is unenforceable as a matter of public policy, even if it benefits the tenant (*Drucker v. Mauro*, 30 A.D.3d 37, 38, [2006]).” Deregulation of apartments is only “available through regular, officially authorized means [and] not by private compact (*Draper v. Georgia Props., Inc.*, 94 N.Y.2d 809, 811, 701 N.Y.S.2d 322, 723 N.E.2d 71 [1999]).”

Moreover, the rent registration for the Subject Premises does not establish on its face that the legal regulated rent the rent for any rent regulated tenant in possession ever exceeded \$415.80 (*Altman v 283 West Fourth LLC* 127 AD3d 654). Nor was any evidence regarding renovations to the Subject premises provided in the motion papers [Rent Stabilization Law § 26–504.2(a)].

Based on the foregoing, there are questions of fact to be resolved at trial concerning the status of the Subject Premises and Petitioner has not established the right to summary dismissal of Respondent's second affirmative defense.

PETITIONER'S MOTION FOR USE AND OCCUPANCY

Petitioner seeks an order directing Respondents pay use and occupancy from May 1, 2015 at the last agreed rate of \$1,125.51 without prejudice, pursuant to RPAPL § 745. There is no basis to allow Respondents to remain in the Subject Premises rent free during the litigation, even where there is a dispute as to the legality of the rent in the last lease agreement (*Levinson v 390 West End Associates LLC* 22 AD3d 397).

RPAPL § 745(2)(a) provides in pertinent part “in a summary proceeding upon the second of two adjournments at the request of the respondent, or, upon the thirtieth day after the first appearance of the parties in court less any days that the proceeding has been adjourned upon the request of the petitioner, whichever occurs sooner, the court shall direct that the respondent, upon an application by the petitioner, deposit with the court within five days sums of rent or use and occupancy accrued from the date the petition and notice of petition are served upon the respondent, and all sums as they become due for rent and use and occupancy ...”.

Respondents were served with the Notice of Petition and Petition on October 20, 2015. This proceeding has been pending for well over thirty days. Respondents shall deposit into court on or before May 6, 2016, use and occupancy for November 2015 through May 2016, at a monthly of \$1,125.51, for a total of \$7,878.57, and shall deposit use and occupancy for June 2016 forward by the fifth of each month *pendente lite*.

The proceeding is restored to the calendar for trial on May 9, 2016 at 9:30 am.

This constitutes the decision and order of the court.

Dated: New York, New York
April 29, 2016

Sabrina B. Kraus, JHC

TO: KOSSOFF PLLC
Attorneys for Petitioner
By: ASHLEY R. ELEM, ESQ
217 Broadway, Suite 401
New York, New York 10007
212.267.6364

JOAN L. BERANBAUM
Attorneys for Respondent
KRZYSZTOF LACH, of Counsel
DC 37 HEALTH AND SECURITY PLAN
MUNICIPAL EMPLOYEES LEGAL SERVICES
125 Barclay Street, 10th Floor
New York, NY 10007-2179
212.815.1875