

Stuhr Gardens Assoc., LLC v Doe
2016 NY Slip Op 30796(U)
May 2, 2016
City Court of Peekskill, Westchester County
Docket Number: LT-85-16
Judge: Reginald J. Johnson
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proceedings.¹ According to the lease, only Ms. Greene and Ms. Imani Wright were the named tenants at the subject premises.² At some point, Zagora Wright p/k/a Jane Doe came into possession of the subject premises prior to her name be formally added to the lease, and it is she who opposes the holdover proceeding.³

For the reasons that follow, the holdover proceeding is dismissed.

Procedural History

On or about January 25, 2016, the Landlord served, by substituted service, three Notices to Quit To Squatter or Intruder on Jane Doe #1, Jane Doe #2, and Jane Doe #3 at the subject premises. The required follow up mailings were timely as to one Jane Doe but untimely as to the other two Jane Does.⁴

On February 10, 2016, the Landlord commenced this holdover proceeding against Jane Doe #1, Jane Doe #2, and Jane Doe #3.

¹ Imani Wright relinquished her rights to the subject premises in a written letter sworn to on or about August 5, 2015 (See, Pet's "4" in evid.). Kimberly Greene relinquished her rights to the subject premises in a written letter dated January 12, 2016 (See, Pet's "3" in evid.).

² See the Lease marked as Pet's "2" in evidence.

³ Kimberly Greene appeared in this action and identified herself as one of the Jane Does; she later withdrew herself as a party from this proceeding with the consent of the Landlord's attorney. Zagora Wright appeared and identified herself as an occupant of the premises and thereupon her name was properly substituted as one of the Jane Does. See, Triborough Bridge & Tunnel Auth. v. Wimpfheimer, 633 N.Y.S.2d 695 (App. Term 1st Dept. 1995).

⁴ Real Property Actions and Proceedings Law (RPAPL) §713(3) states that service of a 10-day notice to quit upon a squatter or intruder must be made in accordance with RPAPL §735(1) which states that where service is made by "nail and mail" substituted service, a follow up mailing within one day of same must be made by first class regular mail and registered or certified mail. See, Marrero v. Escoto, 145 Misc.2d 974 (App. Term 2nd Dept. 1990). In the case at bar, one follow up mailing was made on 1/26/16 and the other

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On February 23, 2016, Ms. Greene and Ms. Zagora Wright appeared and this matter was adjourned on consent to March 1, 2016.

On March 1, 2016, Ms. Green and Ms. Zagora Wright appeared and this matter was scheduled for trial on March 8, 2016.

On March 8, 2016, this matter proceeded to trial.

TrialTestimony of Louise Mullane

At trial, the Landlord presented the testimony of Louise Mullane; she testified that she is the Supervisor of Community Service Occupancy for Stuhr Gardens Associate, LLC. Ms. Mullane said she has been the Director of the Occupancy Department for the Community Housing Management Company (C.H.M.C.) for 5 years.⁵ In her capacity as Director of C.H.M.C, she said she oversees the Occupancy Department which entails handling certifications and re-certifications of Housing Urban Development (H.U.D.) Section 8 applications. According to Ms. Mullane, Stuhr Gardens consists of mixed apartment units--some subject to the Section 8 Program, some subject to standard market rent rates, and some subject to tax credits.

Ms. Mullane said that the subject premises were leased to Ms. Greene under a H.U.D. lease for one year, which commenced on

two were made on 1/28/16.

⁵ The Community Housing Management Company is the agent for Stuhr Gardens Assoc., LLC. (See the Lease marked as Pet's "2" in evid. ¶3).

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November 1, 2013 and expired on October 31, 2014; thereafter, the lease renewed on a month-to-month basis. Ms. Mullane stated that page 13 of the Lease (Pet's "2" in evid. ¶32) listed the only tenants who were to occupy the subject premises.

Ms. Mullane testified that C.H.M.C. received letters from Ms. Imani Wright and Ms. Greene informing it that they no longer resided at the subject premises. (Pet's "3" and "4" in evid.). In response to Ms. Green's letter, the Landlord took action to take possession of the premises. Ms. Mullane stated that although Ms. Greene had paid the rent for the month of January 2016 (Pet's "5" in evid), she failed to give the required 30 days' prior notice of her intent to vacate the premises (See Pet. "2" in evid. ¶23a.; Pet's "3" in evid.).

Ms. Mullane then went on to explain the processes that involves Section 8 housing and Tax Credit housing and the differences between them. Ms. Mullane further testified that she, Ms. Greene and Zagora Wright had a telephone conference call in which it was discussed, *inter alia*, that Zagora had to go through a screening process, which included a criminal background check, before a determination could be made about adding her to the Lease. They also argued about Zagora's occupancy of the subject premises, which Ms. Mullane argued was improper.

On cross examination, Ms. Mullane said that the Lease was the most updated lease for Ms. Greene; she further stated that Imani was

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removed from the Lease as a tenant. Ms. Mullane stated that Ms. Greene requested that Zagora be added to the Lease as a named tenant. However, she said she informed Ms. Greene that she would have to complete a new application as head of household and request that Zagora be added to the Lease; that Zagora would have to undergo criminal and credit background checks, together with income and asset verification checks in accordance with H.U.D. guidelines; that the completed application would have to be submitted to C.H.M.C.; and that if the application was approved a new lease would be submitted to Ms. Greene and Zagora for their signatures.

Ms. Mullane said that Ms. Greene only made a verbal request to add Zagora to the Lease, and that no income and asset information from Zagora was provided so she could not be added to the Lease until the application process was completed. Ms. Mullane stated that since the Lease expired, it was renewable on a month-to-month basis.

On re-direct examination, Ms. Mullane said that the term of the Lease was 11/1/13 to 10/31/14 and thereafter it renewed on a month-to-month basis; she further stated that a Tax Credit Recertification Notice was sent to Ms. Greene for the subject premises but that the recertification was never completed. The subject premises was a tax credit eligible unit and that the only named tenants on the Lease was Kimberly Greene and Imani Wright.

Index No. LT-85-16Testimony of Lela Yesin

Ms. Lela Yesin testified that she is employed as an Occupancy Specialist for C.H.M.C. for approximately 4 years and 10 months; her responsibilities include certifying tenants for H.U.D. and Tax Credit Services at Stuhr Gardens. She said she is familiar with the subject premises.

In the Summer of 2015, Ms. Yesin said that she met with Ms. Greene and Zagora in the Community Room at Stuhr Gardens to certify Ms. Greene's income for the Tax Credit Program.⁶ The purpose of the meeting was to verify income, asset, and bank account information. Ms. Yesin said that Ms. Greene was retired and she wanted to receive a subsidy. Ms. Yesin said that Ms. Greene needed to provide further documentation regarding her pension as well as verification of income. At the time of the meeting, Imani was no longer a tenant at the subject premises but that Ms. Greene wanted to add Zagora to the Lease. According to Ms. Yesin, Ms. Greene needed to provide a birth certificate, social security information, signed forms, and paystubs⁷--Zagora was not employed at the time of the meeting.

Ms. Yesin said that the subject premises was a market rate unit subject to a tax credit, not a Section 8 subsidy. Ms. Yesin further stated

⁶ See, C.H.M.C. Memorandum to Kimberly Greene dated July 7, 2015 regarding the Annual Federal Tax Credit Recertification on August 5, 2015 marked as Pet's "6" in evidence.

⁷ At the time of the meeting, Ms. Greene's pension payments had not been finalized by the State.

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that Ms. Greene did not send enough documentary information to change the status of the subject premises from market rate to a Section 8 subsidy. Ms. Yesin said that the Lease term commenced on 11/1/13 to 10/31/14 and that no subsequent lease was ever offered after the Lease (Pet's "2" in evid.) expired; that she never verbally represented to anyone that a new lease was going to be provided to Zagora; that no new lease was ever given with Zagora's name on it; and that in January 2016 Ms. Greene was no longer a tenant in the subject premises and that she failed to give sufficient notice of her intent to vacate the subject premises.

Testimony of Kimberly Greene

Ms. Kimberly Greene testified that in August 2015 she and Zagora met with Ms. Yesin in order to re-certify; she said she provided Ms. Yesin with bank statements and proof of income. At the meeting, Ms. Greene said that she requested that Zagora be added to the lease.

On November 15, 2015, Ms. Greene said that she spoke with Ms. Yesin and inquired about the status of the re-certification process. In particular, Ms. Greene inquired about the length of the delay in processing the paperwork she submitted to Ms. Yesin. Ms. Greene said that Ms. Yessin said the delay was attributable to the difficulty in trying to determine the amount of her income. Ms. Greene said that Ms. Yesin told her that Zagora was already added to the Lease and that she was waiting for her supervisor to make a determination about the re-

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certification application.

Ms. Greene said that in January 2016, she informed C.H.M.C. in writing that she moved to the State of Georgia.

On cross examination, Ms. Greene said that the subject premises was subject to market rate rent since November 1, 2013. During the November 15, 2015 meeting, Ms. Greene informed the C.H.M.C. that she was retired and that her income had changed. In the Summer of 2015, Ms. Greene said that she did not know the exact amount of her retirement income and that C.H.M.C. informed her that an estimate of her retirement income was insufficient. However, Ms. Greene maintained that she provided proof of her retirement income to C.H.M.C.

In November 2015, around Thanksgiving, Ms. Greene said that Ms. Yesin told her that she was still waiting for a determination as to whether she was qualified for a Section 8 subsidy.

With regard to the telephone conference call, Ms. Greene said that she, Ms. Mullane, Zagora, and Kathryn Apicella were the participants, and that Ms. Apicella reiterated that Zagora was a squatter. Ms. Greene said that during the conference call, she was told by someone that although Zagora was not on the Lease, she would be added to it.

Lastly, Ms. Greene said that during the August 2015 meeting, Zagora had obtained new employment and was seeking to obtain employment information from her new employer.

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Ms. Zagora Wright did not testify at this trial.

Discussion**I. Jurisdiction of the Court**

The City Court has statutory jurisdiction over summary proceedings to recover possession of real property located within the City and to remove tenants therefrom, and to render a judgment for rent due without regard to the amount. See, Uniform City Court Act (U.C.C.A.) §203(a)(8) and §204. In fact, the City Court is the preferred forum to resolve landlord tenant disputes. See, Winters v. Rokoszak, 94 A.D.3d 1009 (2nd Dept. 2012).

It is well settled that where a tenant is neither in possession nor claiming possession of the premises prior to the commencement of the summary proceeding, the Court lacks subject matter jurisdiction to entertain the proceeding. See, Jah Jeh Realty Corp. v. Staten Island University Hospital—EAP, 15 Misc.3d 131(A) (App. Term, 2d & 11th Jud. Dists. 2007) citing Concord Vil Mgt. LLC v. Stevens, NYLJ, Feb. 8, 2000 [App. Term, 9th & 10th Jud. Dists]; 2 Dolan, Rasch's Landlord and Tenant—Summary Proceedings §38:26 [4th ed].

In the case at bar, it is undisputed that Ms. Greene vacated the premises in or about January 2016,⁸ prior to the commencement of

⁸ See Ms. Greene's letter to C.M.H.C. dated January 12, 2016 marked as Pet's "3" in evid.

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the proceedings herein, so that therefore this Court would not have subject matter jurisdiction over a summary proceeding against her. See, Concord Vil Mgt. LLC v. Stevens, *supra*. Further, Ms. Green was not named as a party in the current proceedings and even though she appeared and declared that she was one of the Jane Does, she subsequently voluntarily withdrew herself from this proceeding with the consent of the Landlord’s attorney. Therefore, she has no further interest in this proceeding and/or in the subject premises.

Since Zagora was in possession of the subject premises prior to the commencement of this holdover proceeding, the Court has jurisdiction over this proceeding as it relates to her. See, U.C.C.A. §203(a)(8) and §204.

II. Squatter or Intruder Proceeding

A “squatter” is a person “who, without any legal authority, settles on the lands of another⁹”; an “intruder” is a person “who enters on property where such person has no right¹⁰.” See, 89 N.Y. Jur.2d Real Property—Possessory Actions §79. The principle underlying a “squatter” proceeding is that “the alleged squatter is unlawfully trespassing upon and remaining in possession of real property.” See, 2 Dolan, Rasch’s Landlord and Tenant—Summary Proceedings §35:13 [4th ed].

A “squatter” proceeding may be maintained after a 10-day notice to

⁹ See, Williams v. Alt, 226 N.Y. 283 (1919).

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quit is properly served upon the respondent in the manner prescribed by statute, where such person or the person to whom such person succeeded intruded into or squatted upon the property without the permission of the person who is entitled to possession and the occupancy continued without permission or permission was revoked and notice of said revocation was given to the person to be removed. See, RPAPL §713(3); Marrero v. Escoto, 145 Misc.2d 974 (App. Term 2nd Dept. 1990).

It has been held that in order to properly maintain a “squatter” proceeding, the offending occupant had to have intruded into or squatted upon the premises, in the first instance, without the permission of the owner, the owner’s predecessor, or **one entitled to possession**. See, Robbins v. De Lee, 34 A.D.2d 870 (3rd Dept. 1970). Specifically, “[a] squatter proceeding can be maintained only if **the occupant never had permission**, from the landlord or **other person entitled to possession**, to be on the premises.” Goffe v. Goffe, 14 Misc.3d 130(A) (App. Term 9th & 10th Jud. Dists. 2007) (citations omitted) (emphasis added). The Goffe Court found dispositive that since the occupant’s mother gave him a key to the house, he occupied the premises with permission thereby rendering the squatter proceeding commenced against him by his father improper warranting dismissal.

In the case at bar, there is little dispute that Zagora had been

¹⁰ Id.

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residing at the subject premises with the permission of Ms. Greene, a lawful tenant entitled to possession, at least since 2015, because the unrebutted testimony indicated that Ms. Mullane and Ms. Apicella protested the presence of Zagora as an occupant of the subject premises. In fact, Ms. Apicella specifically referred to Zagora as a “squatter.” There was no question, however, that Ms. Mullane and Ms. Apicella were fully aware that Zagora was an occupant at the subject premises with the permission of her mother, Ms. Greene. In fact, Ms. Greene requested that Zagora’s name be added to the Lease. Since Zagora entered into possession of the subject premises with the permission of Ms. Greene, a lawful tenant entitled to possession, this squatter proceeding is improperly maintained warranting dismissal. See, Hodge v. Gaither, 1 Misc.3d 902(A) (N.Y. City Civ. Bronx Co. 2003).

Since Zagora obtained exclusive possession of the subject premises after Ms. Greene vacated, she was a tenant-at-will. See, DiStasio v. DiStasio, 47 Misc.3d 144(A) (App. Term 9th & 10th Jud. Dists. 2015). As a tenant-at-will, Zagora was entitled to a 30-day written notice to quit, not a 10-day notice to quit. See, Rodriguez v. Greco, 31 Misc.3d 136(A) (App. Term 9th & 10th Jud. Dists. 2011); Real Property Law §228.

III. Commencement of Proceedings Against Jane Does

Civil Practice Law and Rules (CPLR) §1024 states

A party who is ignorant, in whole or in part, of the name or

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identity of a person who may be properly be made a party, may proceed against such person as an unknown party by designating so much of his name and identity as is known. If the name or remainder of the name becomes known all subsequent proceedings shall be taken under the true name and all prior proceedings shall be deemed amended accordingly.

It is well settled law that a holdover proceeding will be dismissed on the ground that a tenant or occupant, whose name and identity were known to the landlord, was improperly designated as “John Doe.” See, 1234 Broadway, LLC v. Hsien Hua Ying, 50 Misc.3d 140(A) (App. Term 1st Dept. 2016); Triborough Bridge and Tunnel Authority v. Wimpfheimer, 165 Misc.2d 584 (App. Term 1st Dept. 1995).

In the case at bar, it is beyond cavil that the name and identity of Zagora Wright was known to the Landlord prior to the commencement of this holdover proceeding.¹¹ The trial testimony of Ms. Mullane and Ms. Yesin clearly indicated that they knew the name and identity of Zagora Wright prior to this proceeding and that they knew efforts were being made to add Zagora’s name to the Lease. In fact, Zagora attended

¹¹ It is irrelevant that the Landlord moved to amend the caption to properly name Zagora as a Respondent after commencement of this proceeding, since it’s the denomination of Zagora as a “Jane Doe”, when the Landlord had knowledge of her name and identity prior to the proceeding, that renders the petition jurisdictionally defective. See, ABKCO Indus. Inc. v. Lennon, 52 A.D.2d 435 (1st Dept. 1976); Capital Resources Corp. v. Doe, 154 Misc.2d 864 (N.Y.C. Civ. Ct. 1992).

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the re-certification meeting with Ms. Greene and Ms. Yesin on August 5, 2015.

Based on the foregoing, it is

Ordered that the holdover proceeding is dismissed.

The foregoing constitutes the Decision and Order of the Court.

Hon. Reginald J. Johnson
City Court Judge

Dated: Peekskill, NY
May 2, 2016

Judgment entered in accordance with the foregoing on this ____ day of May, 2016.

Concetta Cardinale
Chief Clerk

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