

Lee v 191 Edge Water Equity LLC

2016 NY Slip Op 32228(U)

October 28, 2016

Supreme Court, New York County

Docket Number: 156317/16

Judge: Arlene P. Bluth

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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 32

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**Index No. 156317/16
Motion Seq. 001**

Shannon Lee and Bobae Choi,

Plaintiffs,

-against-

**DECISION AND ORDER
ARLENE P. BLUTH, JSC**

191 Edge Water Equity LLC et al.,

Defendants.

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For the following reasons, plaintiff’s motion for a stay of related proceedings currently pending in the housing part of civil court is denied and defendants’ pre-answer cross-motion to dismiss this action is also denied.¹

Prior to the commencement of this action, defendant 191 Edge Water Equity LLC (“Edge Water”), as landlord, commenced separate holdover proceedings against plaintiffs Lee and Choi (“tenants”) based upon the expiration of their respective rental agreements. The housing court petitions allege that those rental agreements were subleases for cooperative apartments and that the terms had ended (commonly called a “lease expiration holdover”). The petitions allege that, as cooperative apartments, the Rent Stabilization Law (“RSL”) did not apply.

In their respective answers, each tenant asserted the affirmative defense that she should be protected by the RSL because the claim that the building is a cooperative is false. The tenants claim that although the building may be a cooperative in name and landlord a unit owner, in

¹To avoid confusion (plaintiffs here are respondents in the housing court), the court will refer to the parties as landlord and tenant.

reality it is just a sham in order to avoid the RSL, as there have been no board elections, no board meetings and, except for three of the twenty five units, no sales. Moreover, the three sold units reverted back to the owner/sponsor within a year.

After the tenants asserted this "sham" affirmative defense, they commenced the instant action for a declaratory judgment, seeking a determination that the RSL protects these tenants. The tenants have expressed concern that the housing court lacks the jurisdiction to determine whether the cooperative claim is a sham, and even if it does have the jurisdiction, the housing court judge is unlikely to look beyond the plain meaning of the documents. The tenants also claim, without support, that the landlord's position in housing court is that the housing court lacks the jurisdiction to determine whether the co-op claim is a sham. Because of these issues, the instant motion is made to stay the housing court holdover proceedings and have all matters determined by this Court.

The landlord brings a pre-answer cross-motion to dismiss because the "sham" claim asserted here has already been asserted as affirmative defenses in the pending holdover proceedings. Moreover, the landlord has affirmatively taken the position here that the housing court ~~housing court~~ has the jurisdiction to determine whether the units are subject to the RSL. And in order to determine that, it follows that the housing court must determine whether the units are in fact (and not just in name) cooperatives. If it is not a sham, and they are cooperative apartments that were sublet to tenants, then the RSL does not apply. If, however, they are really rental units masquerading as a sham co-op, then the RSL provides protections to the tenants.

ARLENE P. BLUTH
J.S.C.

Housing Court Jurisdiction

Tenants have the right to have their claims adjudicated, and to have a court look past the fact that the rental agreement form may say “sublease” and into the substance of whether the building is a “sham” co-op, one in name only but operated as a for-profit rental building. The housing court is the most natural place to litigate this issue and the affirmative defense is already pending there.

“The doctrine of judicial estoppel or the doctrine of inconsistent positions precludes a party who assumed a certain position in a prior legal proceeding and who secured a judgment in his or her favor from assuming a contrary position in another action simply because his or her interests have changed” (*Baje Realty Corp. v Cutler*, 32 AD3d 307, 309, 820 NYS2d 57 [1st Dept 2006] [internal quotations and citations omitted]). Having taken the position in this action that the housing court has the jurisdiction to determine whether the co-op designation is a sham, if the landlord takes the contrary position in the housing court and prevails, then the landlord would be judicially estopped before this Court from claiming that the housing court should determine this issue. The landlord has represented to this court that it will not contest the authority of the housing court to make the determination. If the housing court exercises jurisdiction, then whichever party does not agree with the housing court’s determination may appeal.

This Court is aware, however, that it is possible for the housing court to *sua sponte* determine that it lacks the jurisdiction to adjudicate the “sham co-op” affirmative defense. In that event, the “sham co-op” issue will be litigated in the instant action. Therefore, the tenants are given leave to bring this application again - for a stay of the housing court proceedings - in

the event the housing court declines to address the “sham co-op” defense. Any stay, however, would be conditioned upon payment of use and occupancy, as the record shows that approximately \$100,000 (for all three apartments) is past due as of September 2016.

Cross-Motion to Dismiss

The instant complaint is not limited to the “sham co-op” declaratory relief; tenants also seek, *inter alia*, punitive damages, which were not sought in housing court. Therefore, the complaint is not dismissed. Defendants are directed to serve and file an answer pursuant to the CPLR.

Case Management

Tenants did not seek discovery in the instant motion, although the papers make clear that documents they need (records of board elections, meeting minutes of board meetings and annual shareholder meetings and other indications that the building was run as a cooperative) are solely within the landlord’s control. This parties are directed to appear for a preliminary conference on November 22, 2016 at 2:30 PM.

Accordingly, it is hereby

ORDERED that plaintiffs’ motion to stay the housing court proceedings is denied with leave to bring the motion again in the event the housing court declines to determine the “sham co-op” defense; and it is further

ORDERED that defendants' cross-motion to dismiss is denied and defendants are to serve and file an answer to the complaint in accordance with the CPLR.

The preliminary conference will be held on November 22, 2016 at 2:30 PM.

This is the Decision and Order of the Court.

Dated: October 28, 2016
New York, New York

ARLENE P. BLUTH

J.S.C.

ARLENE P. BLUTH, JSC