

Matter of Maldonado v Crotona Park W. Hous. Dev.
2016 NY Slip Op 32979(U)
March 18, 2016
Supreme Court, Bronx County
Docket Number: 250739/2015
Judge: Howard H. Sherman
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF THE BRONX

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In the Matter of the Application of

Diamond Maldonado

Index No.: 250739/2015

Petitioner,

for an Order pursuant to Article 78 of the
Civil Practice Law and Rules

Decision and Order

-against-

Crotona Park West Housing Development and
Housing Preservation Development

Howard H. Sherman
J.S.C.

Respondents
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The following papers numbered 1 to 3 read on this motion to amend the petition noticed on September 28, 2015 and duly submitted October 5, 2015

Notice of Motion , Affirmation , Exhibits A-F	1
Affirmation in Opposition -Deft Crotona	2
Affirmation in Reply	3

Upon the foregoing papers the motion by petitioner for leave to serve an amended petition is granted upon the terms set forth below.

Procedural Background

Petitioner resides in the apartment of her deceased mother, Anna Arocho, who was the rent-stabilized tenant of record in a building owned by the defendant HDPC. Anna Arocho also received a section 8 subsidy (see, 42 U.S.C. § 1437f). Ms. Arocho died on September 3, 2014, and according to the last annual re-certification dated February 5, 2014, the Section 8 Participant Household was comprised only of the named tenant. Upon the tenant's death, respondent New York City Department of Housing

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Preservation and Development (DHPD) terminated the Section 8 subsidy effective September 30, 2014.

In December 2014, Diamond Maldonado requested reinstatement of Section 8 subsidy benefits and an informal hearing , and by letter dated January 6, 2015, she was advised by DHPD that she could not retain use of the Section 8 voucher, nor did she have standing to appeal the termination as she was not a member of the household for at least six months prior to the date of the tenant's death, and, as a consequence , could not be considered a remaining family member.

In January 2015, the respondent HDPC commenced a holdover proceeding seeking to evict the petitioner.

By order to show cause dated May 8, 2015, Diamond Maldonado commenced this proceeding seeking to vacate DHPD's final determination upholding the termination of the decedent's Section 8 rent subsidy, and denying her request for an informal hearing. By the terms of the order to show cause the proceeding in the Housing Part of the Civil Court of the City of New York was stayed pending this court's determination of this Article 78 Proceeding.

Motion

Petitioner moves for an order pursuant to CPLR § 3025(b) granting leave to serve an amended petition to permit her newly retained counsel, the Legal Aid Society , to assert appropriate defenses on her behalf based upon the review of the administrative

record. A proposed amended petition is annexed as an exhibit to the moving papers.

Discussion and Conclusions

It is fundamental that leave to amend a pleading should be freely granted (CPLR 3025 (b)) as “ long as there is no surprise or prejudice to the opposing party ” with delay alone insufficient for such purpose as “[p]rejudice 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. ” *Kocourek v. Booz Allen Hamilton Inc.*, 85 A.D.3d 502, 925 N.Y.S.2d 51 [1st Dept. 2011] There is no showing of either surprise or of prejudice resulting from the granting of the requested relief.

Accordingly, it is ORDERED that the motion of the plaintiff for leave to interpose an amended petition be and hereby is granted, and it is further

ORDERED that the proposed amended petition submitted as an exhibit to the moving papers be and hereby is deemed timely served nunc pro tunc, and it is further

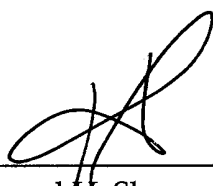
ORDERED that the respondents have thirty (30) days to file and serve any answer to the amended petition or to make any motion addressed to the amended petition, and it is further

ORDERED that petitioner file and serve reply thereto , if any, no later than May 10, 2016 on which date the proceeding shall be deemed fully submitted, and it is further

ORDERED that the holdover proceeding in the Housing Part of the Civil Court of the City of New York seeking the removal of the petitioner from the subject premises be and hereby is stayed pending the determination of this proceeding.

This shall constitute the decision and order of this court.

Dated: March 18, 2016


Howard H. Sherman