

Feingold v River Place I Holdings, LLC.

2017 NY Slip Op 32223(U)

October 19, 2017

Supreme Court, New York County

Docket Number: 150084/2012

Judge: Ellen M. Coin

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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: IAS PART 63

-----X
LEON FEINGOLD,

Plaintiff,

Index No. 150084/2012

-against-

DECISION AND ORDER

RIVER PLACE I HOLDINGS, LLC.,

Defendant.

-----X
ELLEN M. COIN, A.J.S.C.

Plaintiff Leon Feingold moves for an order: (1) directing defendant to recognize the three individuals whom he has identified to defendant as his roommates, as valid occupants of apartment 1406 (Apartment) in the building located at One River Place in Manhattan (Building); (2) enjoining defendant from taking any steps to block plaintiff from residing in the Apartment, with three roommates; and (3) granting plaintiff the attorney’s fees that he has incurred in bringing this motion and in successfully litigating his first cause of action and defending against defendant’s counterclaims. Defendant River Place I Holdings, LLC cross-moves (i) pursuant to CPLR 3025 (b) and (c) for an order amending defendant’s answer, or permitting the pleading to be amended to conform with the evidence, and (ii) pursuant to CPLR 2221, for leave to renew its motion for summary judgment on its first counterclaim, declaring that plaintiff has profited on his rent stabilized Apartment.

Plaintiff’s motion arises from defendant’s response to a letter from plaintiff’s attorney, advising defendant that Victor Sorel, a former roommate of plaintiff, had been allowed to enter the Building and use the elevator at night, and had entered the Apartment, frightening plaintiff’s

female roommate. Defendant stated that it would not bar Mr. Sorel from the Building, nor allow Michal Podolski, whom plaintiff had identified as Mr. Sorel's replacement in the Apartment, to receive any services from the Building, until such time as Mr. Sorel advised in writing that he no longer resides in the Apartment. Defendant contended that to act otherwise might make it liable to Mr. Sorel.

It is undisputed, five years into this litigation, that plaintiff's lease entitles him to have up to three roommates. As a mere occupant, Mr. Sorel acquired no right of tenancy. Real Property Law § 235 (6); *Starrett City, Inc. v Smith*, 25 Misc 3d 42, 46 (App Term 2d Dept 2009). Once plaintiff notified defendant that Mr. Sorel was no longer a resident of the Apartment, defendant's obligations to Mr. Sorel, and any possible liability to him, were no different from defendant's obligations, and possible liability to, any other nonresident entering the Building. Defendant may no more condition Mr. Podolski's right to receive building services upon receipt of a letter from Mr. Sorel, than it could, in plaintiff's felicitous analogy, condition the receipt of services by a tenant's new spouse upon the receipt of a letter from tenant's divorced spouse.

However, plaintiff has no right to overcharge his roommates, in violation of the Rent Stabilization Law (RSL). RSL § 2525.7 provides that a tenant may not charge an occupant more than his or her proportionate share of the rent, measured by dividing the total rent by the number of tenants and occupants. *First Hudson Capital, LLC v Seaborn*, 54 AD3d 251, 251-252 (1st Dept 2008). Plaintiff's current rent for the Apartment is \$5,201.10. Mr. Podolski's occupant application lists his monthly rent obligation to plaintiff as \$1,500.00. See Axelrod affirmation, exhibit E and Vredjian affidavit, ¶ 5. Thus, plaintiff is overcharging Mr. Podolski \$173.72 per month. It is established that a court of law will not aid a party to an illegal transaction to obtain

the fruits thereof. *Spivak v Sachs*, 16 NY2d 163, 168 (1965); *Harris v Economic Opportunity Commn. of Nassau County, Inc.*, 171 AD2d 223, 229 (2d Dept 1991). Accordingly, the first two branches of plaintiff's motion are denied.

That branch of the motion which seeks attorney's fees is also denied, because plaintiff is not a prevailing party on the instant motion, and he did not prevail on two of his three causes of action.

A motion to amend a pleading to conform to the evidence can be made at any time. *Kimso Apts., LLC v Gandhi*, 24 NY3d 403, 411 (2014). Accordingly, defendant is granted leave to renew its motion seeking a "declaratory judgment that plaintiff has charged his roommates/sharers/co-occupants amounts exceeding their proportionate share of the legal regulated rent for the apartment, in violation of RSC § 2525.7." However, inasmuch as defendant "does not seek a forward looking determination, but only a declaration that Plaintiff violated both his lease and the Rent Stabilization Code" (Axelrod, reply affirmation, § 5), defendant's motion is denied. A declaratory judgment may not be issued, absent an actual controversy. *Long Isl. Light. Co. v Allianz Underwriters Ins. Co.*, 35 AD3d 253, 253 (1st Dept 2006). Moreover, "the general purpose of the declaratory judgment is to serve some practical end in quieting or stabilizing an uncertain or disputed jural relation either as to present or prospective obligations." *Krieger v Krieger*, 25 NY2d 364, 366 (1969), quoting *James v Alderton Dock Yards*, 256 NY 298, 305 (1931). Here, defendant does not even suggest for what purpose it seeks declaratory relief.

Accordingly, it is hereby

ORDERED that the motion of plaintiff Leon Feingold is denied; and it is further

ORDERED that the cross-motion of defendant River Place I Holdings LLC is denied.

Dated: 10/19/17

ENTER:



J.S.C.

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