

Contreras v Miscioscia
2017 NY Slip Op 32961(U)
June 19, 2017
Supreme Court, Westchester County
Docket Number: 51285/2016
Judge: Joan B. Lefkowitz
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

To commence the statutory time period for appeals as of right [CPLR 5513(a)], you are advised to serve a copy of this order, with notice of entry upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER - COMPLIANCE PART
-----X

ISRAEL CONTRERAS and LINITA METRIKAITE,

Plaintiffs,

DECISION & ORDER

Index No. 51285/2016
Motion Date: June 19, 2017
Seq. No. 2

-against-

ELEANOR MISCIOSCIA,

Defendant.

-----X

LEFKOWITZ, J.

The following papers were read on this motion by plaintiffs pursuant to CPLR 3124 compelling defendant to (a) produce documents fully itemizing her expenditure of settlement funds (confidential footnote) that she received in January 2013; and/or (b) to give deposition testimony regarding those expenditures; and (c) for such other or further relief as the Court deems just and proper. Defendant opposes the motion.

Order to Show Cause - Affirmation in Support - Exhibits A- J
Affirmation in Opposition - Exhibits A-F
Documents Filed to NYSCEF

Upon the foregoing papers and the proceedings held on June 19, 2017, this motion is determined as follows:

Relevant Facts & Procedural History:

This action concerns a rental agreement between the parties concerning a single family residence located at 36 Storm Street, Tarrytown, New York (the "premises"). It is plaintiffs' contention that this agreement constitutes a lease which provides, among other things, rental of the premises at a rate of \$1,500.00 a month, with an option to purchase the premises for the amount of the principal due on the mortgage at the time plaintiffs exercise the option (the "option"). Conversely, defendant denies that the agreement constituted a formal lease in part because the agreement failed to provide for a termination date of the tenancy. Defendant contends that the relationship between the parties with respect to the premises constituted a month-to-month tenancy, or a tenancy at will.

Plaintiffs state that they took possession of the premises pursuant to the lease executed in February, 2013 (the “lease”) and that they have lived at the premises since March, 2013. Plaintiffs state pursuant to the lease terms they paid rent in the amount of \$1,500.00, until April, 2014 when defendant raised the monthly rent to \$2,050.00. Plaintiffs aver that defendant attempted to raise the rent again in October, 2015 but that plaintiffs refused to pay the new rental rate. Plaintiffs state that in December, 2015 they gave defendant notice of their intent to exercise the option to purchase the premises but defendant refused to sell the premises to plaintiffs. Plaintiffs commenced this action on February 2, 2016 by the filing of a summons and complaint declaring the validity of the lease, permanently enjoining defendant from selling the premises to anyone other than plaintiffs, directing defendant to specifically perform her obligations under the lease including selling the premises to plaintiffs, and enjoining defendant from evicting plaintiffs from the premises (Affirmation of Mark I. Reisman, Esq., ¶9).

Defendant served her answer with affirmative defenses, counterclaims and discovery demands on plaintiffs on February 26, 2016. In her answer defendant contends, among other things, that the lease is unenforceable and was never valid. She seeks an eviction of plaintiffs from the premises, a declaration that the agreement, and the option, with respect to the premises is unenforceable, a judgment of possession and money damages for alleged rental arrears. Defendant further contends that to the extent that the lease was at one point valid, once the rent was raised to \$2,050.00, the lease terminated and the relationship between the parties with respect to the premises became a month-to-month tenancy which continues to the present. Defendant states that on or about October 1, 2015, she received notification from the mortgagee bank for the premises that the monthly mortgage payments would be increased from \$1,321.34 to \$2,223.56. Defendant further states that on November 1, 2015, she advised plaintiffs that the monthly rent would be increased to \$2,450.00, but that the plaintiffs did not agree to the increase.

The parties engaged in discovery, including depositions and paper discovery. During defendant’s deposition on November 14, 2016, she testified that at some point prior to January, 2013, she had received funds¹ as the result of a settlement of an unrelated medical malpractice action (the “settlement”). Defendant testified that from January, 2013 through April, 2014, she spent approximately \$428,000.00 of the settlement.² Plaintiffs sought disclosure of the settlement amount, which defendant refused to release on the grounds that the terms of the settlement were covered by a confidentiality agreement dated November 28, 2012. The court instructed counsel for the parties to submit memoranda on the issue. By Referee Report Order, so ordered by this

¹ The terms of the settlement agreement are confidential, and the amount of the settlement has been redacted from papers filed with NYSCEF.

² Some of the items which defendant purchased/ paid for with the settlement include: purchase of a home, new furniture, landscaping, medical expenses for her dog, cash gift to a relative for a down payment on a house, cash to a cousin for funeral expenses, medical insurance through COBRA and travel.

Court (Lefkowitz, J.) and entered on April 5, 2017, defendant was directed to provide plaintiffs with the settlement amount from the unrelated action. In the Order, the Court stated “No other information from that litigation or the settlement...is required to be disclosed to plaintiffs.” Defendant provided the settlement amount to plaintiffs’ counsel. Plaintiffs now seek a detailed and full accounting of how defendant spent the remainder of the settlement not already accounted for by defendant.

Contentions of the Parties:

Plaintiffs contend that they are entitled to discovery of an itemized list and documentary proof as to how defendant spent the balance of what she received in the settlement. Plaintiffs argue that the precise manner in which defendant spent the unaccounted amount of the settlement is relevant to the credibility of defendant’s “financial hardship” defense. Plaintiffs contend that according to defendant’s testimony unless plaintiffs paid the second rent increase she would not be able to afford to keep the house. Plaintiffs further contend that defendant testified that she had stopped paying her mortgage in January, 2016 due to financial hardship. Plaintiffs argue that defendant’s failure to pay the mortgage might trigger a foreclosure action thereby depriving plaintiffs of their option to purchase under the lease.³ Plaintiffs argue that defendant will attempt to show at trial that her demands for greater rental payments, her alleged failure to pay her mortgage and “related acts taken in violation of the lease” were grounded in large part upon defendant’s financial hardship.

In opposition, defendant contends that the main issue in this action is the validity of the agreement. Defendant takes issue with plaintiffs’ characterization that her defense is grounded in her financial hardship. Defendant argues that her defense in this action has been that the agreement and the option clause are unenforceable as a matter of law. Moreover, defendant argues that a landlord’s decision to raise rent is hers and needs no defending and that the motivation to make that decision is irrelevant. Rather, defendant states that, her financial situation is collateral at best to the issues of the case and the information plaintiffs seek is irrelevant and is an invasion of defendant’s privacy. Defendant contends that despite the broad parameters afforded the discovery process, plaintiffs have failed to show the relevancy of the information they seek.

Analysis:

CPLR 3101(a) requires “full disclosure of all matter material and necessary in the prosecution or defense of an action.” The phrase “material and necessary” is “to be interpreted liberally to require disclosure, upon request, of any facts bearing on the controversy which will

³ It is unclear from the portion of the transcript submitted in which year, or the reason why, defendant stopped paying the mortgage: “Q. When was the last time you made a payment towards the mortgage? A. January. Q. January what? (Defendant’s deposition transcript, p. 51, 21-24.) The page of the transcript ends at line 24, the next page included in the exhibit is 79.

assist preparation for trial by sharpening the issues and reducing delay and prolixity. The test is one of usefulness and reason” (*Allen v Crowell-Collier Publishing Co.*, 21 NY2d 403 [1968]; *Foster v Herbert Slepoy Corp.*, 74 AD3d 1139 [2d Dept 2010]). Although the discovery provisions of the CPLR are to be liberally construed, “a party does not have the right to uncontrolled and unfettered disclosure” (*Merkos L'Inyonei Chinuch, Inc. v Sharf*, 59 AD3d 408 [2d Dept 2009]; *Gilman & Ciocia, Inc. v Walsh*, 45 AD3d 531 [2d Dept 2007]). “It is incumbent on the party seeking disclosure to demonstrate that the method of discovery sought will result in the disclosure of relevant evidence or is reasonably calculated to lead to the discovery of information bearing on the claims” (*Foster v Herbert Slepoy Corp.*, 74 AD3d 1139 [2d Dept 2010]). The trial court has broad discretion to supervise discovery and to determine whether information sought is material and necessary in light of the issues in the matter (*Auerbach v Klein*, 30 AD3d 451 [2d Dept 2006]; *Feeley v Midas Properties, Inc.*, 168 AD2d 416 [2d Dept 1990]).

Contrary to plaintiffs’ assertions they are not entitled to a detailed and itemized accounting of the defendant’s settlement funds. In this action plaintiffs seek to enjoin defendant from selling the premises to anyone other than plaintiffs and from evicting plaintiffs from the premises as well as specific performance of the option to purchase the premises. Defendant seeks dismissal of the complaint, declaratory judgement that the agreement and /or the option to purchase contained in the agreement is unenforceable, a warrant removing plaintiffs from the premises, and \$3,150.00 in alleged rental arrears. Plaintiffs have failed to demonstrate in what way defendant’s use of her settlement funds from an unrelated action is relevant to any of the claims, counterclaims or defenses set forth in this action. Plaintiffs’ motion which seeks discovery of defendant’s personal finances is denied as there has been no persuasive showing that these documents relate to the relief sought by plaintiffs in their complaint, and any claims that these records are relevant are speculative and collateral to this litigation.

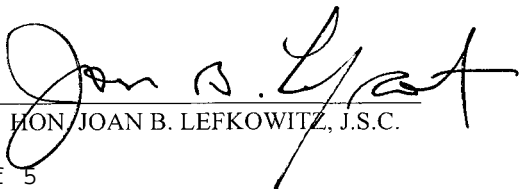
In view of the foregoing, it is

ORDERED that the motion by plaintiffs seeking to compel defendant to produce documents itemizing her expenditure of the aforementioned settlement funds is denied; and it is further

ORDERED that the parties shall appear for a conference in the Compliance Part, Courtroom 800, on June 29, 2017 at 9:30 a.m. at which time it is anticipated that the matter will be certified as ready for trial; and it is further

ORDERED that plaintiffs shall serve a copy of this order with notice of entry upon defendant within ten (10) days of entry.

Dated: White Plains, New York
June 19, 2017


HON. JOAN B. LEFKOWITZ, J.S.C.

NYSCEF DOC. NO. 130

RECEIVED NYSCEF: 06/20/2017

TO:

Mark I Reisman, Esq.
Reisman, Rubeo, McClure & Altman, LLP
Attorneys for Plaintiffs
151 Broadway
Hawthorne, NY 10532
By NYSCEF

Matthew Peter Montana, Esq.
Levine & Montana
Attorneys for Defendant
1019 Park Street, Suite 210
P.O. Box 668
Peekskill, NY 10566
By NYSCEF

cc: Compliance Part Clerk