

Sherman Nagle Realty, Corp. v Cano
2019 NY Slip Op 32596(U)
May 28, 2019
Civil Court of the City of New York, New York County
Docket Number: 74853/17
Judge: Kimon C. Thermos
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CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK: HOUSING PART D

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SHERMAN NAGLE REALTY, CORP.,

Petitioner,

-against-

MARTHA CANO,

Respondent.

INDEX #: 74853/17

DECISION/ORDER

HON. KIMON C. THERMOS

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Recitation, as required by CPLR §2219(a), of the papers considered in review of the instant motions.

Papers	Numbered
Notice of Motion and Affidavit.....	1
Notice of Cross-Motion, Affirmation and Annexed (ex. A-P).....	2
Affirmation in Further Support of Motion and in Opposition to Cross-Motion.....	3
Reply Affirmation and Annexed (ex. A).....	4

Appearing for Petitioner: Kaplain & DuVal, LLP, By: Christopher J. DuVal, Esq.
Appearing for Respondent: Northern Manhattan Improvement Corp., By: Jesenia Ponce, Esq.

Upon the foregoing cited papers and after oral argument, the Decision/Order on the motion and cross-motion is as follows:

PROCEDURAL HISTORY

Petitioner commenced this nonpayment proceeding in September 2017, seeking possession of the subject unregulated apartment based upon \$1,539.50 in rent arrears due from August 2017 through September 2017 at a preferential rent of \$1,025.00 per month. Respondent's granddaughter Priscilla Carpio filed a *pro se* answer on October 3, 2017, asserting a general denial and alleging that the rent, or part of the rent, had already been paid to Petitioner.

This case first appeared on the court's calendar on October 12, 2017. On that date, the case was adjourned until November 20, 2017 for Respondent to contact the New York City Department of Social Services ("DSS") regarding DSS checks that were not reflected on the rent history for the subject apartment. On November 20, 2017, the case was adjourned until December 12, 2017 for Respondent to subpoena DSS. On December 12, 2017, the case was further adjourned until January 11, 2018 for Petitioner to subpoena DSS. On that date,

Respondent paid \$739.00 and agreed to pay another \$739.00 by December 31, 2017 by stipulation between the parties.

On January 11, 2018, the case was adjourned until February 14, 2018, at Petitioner's request, since Petitioner's counsel did not have a rent history. On February 14, 2018, the case was further adjourned until March 16, 2018 for Respondent to bring in proof of payments since December 23, 2016. On that date, Respondent stipulated to pay \$1,478.00 by February 28, 2018. Petitioner claimed that an additional \$1,181.50 was due and was to obtain the file relative to a prior case between the parties by the next court date.

On March 16, 2018, the parties settled the case by stipulation in which Respondent acknowledged that \$2,355.50 was due in arrears through March 31, 2018 and agreed to pay same in the following manner: \$138.30 by March 31, 2018; \$1,617.00 by April 10, 2018; and \$600.00 by April 30, 2018. It was noted that Respondent disputed the \$600.00 amount due by April 30, 2018 and was to provide proof of payments since January 2017 to Petitioner by April 30, 2018 or pay the \$600.00 by that date. The stipulation also provided that, in the event that Respondent failed to make the payments, Petitioner could move for the entry of a final judgment and warrant of eviction.

On May 15, 2018, Petitioner's counsel moved to restore this matter to the court's calendar for a final judgment on the basis that Respondent failed to make payments as per the stipulation dated March 16, 2018. The motion was made returnable on May 30, 2018. On that date, the motion was adjourned until July 9, 2018 for Respondent to be referred to the Assigned Counsel Program as it was noted that she was 76 years old and had a child with muscular dystrophy.

Northern Manhattan Improvement Corporation filed a notice of appearance on behalf of Respondent on July 9, 2018. By two-attorney stipulation on that date, the motion was adjourned until August 30, 2018 for Respondent's counsel to subpoena DHCR and SCRIE. It was also agreed that Respondent would pay July 2018 rent by July 15, 2018 and ongoing rent by the 10th day of each month without prejudice beginning on August 10, 2018. In addition, it was noted that Respondent's counsel would refer Respondent to APS and request an HPD inspection. On August 30, 2018, the motion was further adjourned until October 31, 2018. It was noted that Respondent was "pending SCRIE reinstatement."

On October 29, 2018, Respondent cross-moved for an Order vacating the March 16, 2018 stipulation and any Orders issued pursuant thereto on the basis that Respondent was a *pro se* litigant at the time that she entered into the stipulation and therein inadvertently waived meritorious defenses and counterclaims. Respondent also seeks leave to file an amended answer and conduct discovery. The motion was made returnable on October 31, 2018. In her proposed amended answer, Respondent asserts affirmative defenses alleging that the petition fails to state the facts upon which the proceeding is based as required by RPAPL §741(4); the petition fails to properly state the rent regulatory status of the premises as mandated by RPAPL §741(4); the subject premises remains rent stabilized as Petitioner has not shown that the premises was properly deregulated; rent overcharge; improper rent demand pursuant to RPAPL §711(2); and breach of the warranty of habitability. In addition, Respondent asserts counterclaims for rent overcharge, treble damage, breach of the warranty of habitability; legal fees pursuant to RPL §234; and further asserts that Respondent is entitled to a rent stabilized lease and a rent abatement.

In her affirmation in support of Respondent's cross-motion, Respondent's counsel contends that the DHCR rent registration history for the subject apartment raises several concerns about the apartment's regulatory status and the proper legal rent that warrant deeper inquiry. More specifically, Respondent's counsel points out that the legal rent in 2006 of \$924.85 was increased by 116.25% in 2007 to \$2,000.00. In addition, although the subsequent legal rent does not increase over \$2,050.00, the subject apartment was registered as exempt due to high rent vacancy in 2013. However, the high rent deregulation threshold in 2013 was \$2,500.00. Respondent's counsel further contends that there is no proof of the individual apartment improvements noted in the registration in 2006 that would justify such a substantial increase in rent. Instead, Respondent's counsel alleges that repairs have remained outstanding since the commencement of Respondent's tenancy.

In opposition, Petitioner's counsel argues that the subject apartment was properly deregulated due to high rent vacancy in 2013, before Respondent moved into the apartment in 2014 and, therefore, the petition properly states that the apartment is unregulated.

On October 31, 2018, the motions were adjourned until December 21, 2018 for oral argument. After two additional adjournments, oral argument was conducted on March 19, 2019, after which the motions were submitted for decision.

DISCUSSION

The court favors stipulations of settlement and does not set them aside lightly, since they are essentially contracts. However, in its discretion, the court will vacate a stipulation upon a showing of good cause, such as fraud, collusion, mistake, accident or other sufficient ground. *Hallock v State of New York*, 64 N.Y.2d 224 (1984); *400 West 59th Street Partners, LLC v Edwards*, 28 Misc.3d 93 (App. Term 1st Dept 2010); *Living Arts v Kazuko Hillyer Intern*, 166 A.D.2d 284 (1st Dept. 1990); *1541 Williamsbridge Realty LLC v Ramsay*, 45 Misc.3d 1224A (Civ. Bronx 2014).

“Good cause is demonstrated where it appears that a party has 'inadvertently, unadvisably or improvidently entered into an agreement which will take the case out of the due and ordinary course of proceeding in the action and works to his prejudice.'" *Cabbad v Melendez*, 81 A.D.2d 626 (2nd Dept. 1981, citing *In re Estate of Frutiger*, 29 N.Y.2d 143 (1971)). See also, *45-48 47th St. Corp. v. Murphy*, where the court vacated a stipulation, after finding that tenant had inadvertently waived a right under the Rent Stabilization Code. Thus, the court held that a potential meritorious defense was shown, and good cause was demonstrated. *45-48 47th St. Corp. v. Murphy*, 45 Misc.3d 23 (App. Term. 2nd Dept. 2014).

Furthermore, in *144 Woodruff Corp. v Lacrete*, the court held that

“A party's lack of representation at the time of entry into the stipulation is a significant factor to be considered in determining whether good cause exists to vacate the stipulation. While lack of representation is not sufficient to invalidate a stipulation, good cause for vacatur exists where the lack of representation has resulted in a stipulation whose terms are unduly one-sided or unfair. Unfairness will be found where a *pro se* tenant has failed to assert a substantial defense to the landlord's claims in the proceeding.”

144 Woodruff Corp. v Lacrete, 154 Misc.2d 301, 302 (Civ. Kings 1992).

In the case at bar, this Court finds that Respondent has demonstrated good cause to vacate the stipulation dated March 16, 2018, in that Respondent has shown that, when she entered into the stipulation as a *pro se* tenant, she inadvertently waived potential meritorious defenses regarding, *inter alia*, the regulatory status and legal rent of the subject apartment. *45-48 47th St. Corp. v. Murphy*, *supra*. and *144 Woodruff Corp. v Lacrete*, *supra*. See also, RSC §2520.13, which provides that an agreement by a tenant to waive the benefit of any provision of the Rent Stabilization Law or Code is void.

In light of the foregoing, and since vacatur of the stipulation dated March 16, 2018 will restore the parties to substantially their former position, that portion of Respondent's motion seeking to vacate the stipulation dated March 16, 2018 is granted.

As there were no Orders issued pursuant to the March 16, 2018 stipulation, that branch of Respondent's motion seeking vacatur of any such Orders is denied as moot.

Next, that branch of Respondent's motion seeking leave to amend her answer is granted in accordance with CPLR §3025(b).

Pursuant to CPLR §3025(b), leave to amend a pleading should be freely granted absent unfair prejudice or surprise to the opposing party directly resulting from delay in seeking such leave and as long as the proposed amendment is not palpably insufficient or totally devoid of merit as a matter of law. *46 East 91st Street Associates, LLC v Bogoch*, 23 Misc.3d 36 (1st Dept. 2009).

Herein, Petitioner has not demonstrated that unfair prejudice or surprise inured to it from any delay in Respondent's seeking leave to amend her answer. Furthermore, Respondent's proposed defenses and counterclaims are not palpably insufficient or totally devoid of merit. Therefore, this Court grants Respondent leave to amend her answer to the extent that Respondent is directed to file and serve her amended answer, in the form annexed to the instant cross-motion as Exhibit "M," with Verification, within 20 days of the date of this Order.

Finally, that branch of Respondent's motion seeking leave to conduct discovery is also granted, pursuant to CPLR §408, to the extent stated herein, as Respondent has shown ample need for same. *New York University v. Farkas*, 121 Misc. 2d 643 (Civ. NY 1983); *Harris v. Bigelow*, 135 Misc. 2d 331 (Civ. NY 1987).

Contrary to Petitioner's contention, Respondent's request for discovery beyond the four-year look back period under CPLR §213-a is permissible, since the discovery is sought to determine the apartment's rent regulatory status. *Gersten v. 56 7th Ave. LLC*, 88 A.D.3d 189 (App. Term 1st Dept. 2001); *East West Renovating Co. v. DHCR*, 16 A.D.3d 166 (1st Dept. 2005); *Thompson Assets LLC v Raffelo*, 2018 NY Slip Op 51411U (1st Dept. 2018).

Notwithstanding, in granting leave to conduct discovery, the court may structure discovery orders in a manner that protects the interests of all parties and elicits relevant information directly related to the issues before the court. *Parrallax 109 Partners LLC v. Molina*, 2002 NY Slip Op 50296U (App. Term 1st Dept. 2002). Discovery requests that are irrelevant,

overly broad, unduly burdensome and/or which seek information/documents that are not in the exclusive control of the party from which discovery is sought will not be granted. *Law Offices of Binder & Binder, P.C. v. O'Shea*, 44 A.D.3d 626 (2nd Dept. 2007); *244 Madison LLC v. Pearson*, 2005 NY Misc. Lexis 3326 (Civ. Kings 2005); *Center for Behavioral Health Services v. Bock*, 18 Misc.3d 1111A (Civ. Kings 2008); *Theodoli v. 170 East 77th LLC*, 24 Misc3d 1103 (Sup. NY 2009).

Upon review of Respondent's notice to produce and interrogatories dated October 29, 2018, which are annexed to her cross-motion as Exhibit "O", this Court finds that a protective order is necessary, as some of Respondent's discovery demands are overly broad, irrelevant, unduly burdensome and/or seek information/documents that are not in Petitioner's exclusive control. Therefore, the Court structures the sought discovery as follows: Within 30 days from the date of this Decision/Order, Petitioner is directed to respond to

- (1) Respondent's notice to produce dated October 29, 2018, except for demand number "12", which is hereby deemed overly broad and/or unduly burdensome. Furthermore, Petitioner's response to demand number "3" of said notice to produce is to be limited to the subject apartment only; and
- (2) Respondent's interrogatories dated October 29, 2018, except for demand number "1", since the sought information and documents are matters of public record and, thus, are not within Petitioner's exclusive control.

CONCLUSION

Accordingly, Petitioner's motion is granted solely to the extent that the matter is restored to the court's calendar for determination of the instant motions. Petitioner's requests for a final judgment and warrant of eviction are denied.

Respondent's cross-motion is granted solely to the extent that the stipulation dated March 16, 2018 is hereby vacated and Respondent is granted leave to amend her answer and conduct discovery as provided herein.

This matter is marked off the court's calendar for completion of discovery and may be restored for trial or any further relief under this Order, by stipulation or motion.

This constitutes the Decision and Order of this Court.

Dated: May 28, 2019
New York, N.Y.



Kimon C. Thermos, J.H.C.