

Crisafulli v Southbridge Towers, Inc.

2019 NY Slip Op 33583(U)

December 5, 2019

Supreme Court, New York County

Docket Number: 160450/2016

Judge: Kathryn E. Freed

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. KATHRYN E. FREED PART IAS MOTION 2EFM

Justice

-----X INDEX NO. 160450/2016

PAULINE CRISAFULLI,

MOTION SEQ. NO. 002

Plaintiff,

- v -

DECISION AND ORDER

SOUTHBRIDGE TOWERS, INC,

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 002) 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99 were read on this motion to/for RENEW/REARGUE/RESETTLE/RECONSIDER

In this declaratory judgment action, plaintiff Pauline Crisafulli ("Crisafulli") moves, pursuant to CPLR 2221 (e), to renew a prior motion by defendant Southbridge Towers, Inc. ("Southbridge") to dismiss the complaint pursuant to CPLR 3211 (a) (7) (motion sequence 001) ("the underlying motion") (Docs. 70-82). By order entered May 8, 2017 ("the 5/8/17 order"), this Court (Edwards, J. S.C.) dismissed the complaint against Southbridge with prejudice, reasoning, inter alia, that Crisafulli failed to set forth specific allegations to establish each and every element of any of the causes of action set forth in her complaint (Doc. 77). Southbridge opposes the motion (Doc. 84-98). After oral argument and a review of the parties' papers and the relevant statutes and caselaw, the motion is denied.

FACTUAL AND PROCEDURAL HISTORY:

The underlying facts of this matter are set forth in detail in the 5/8/17 order (Doc. 77). Additional relevant facts are set forth below. In February 2014, Southbridge initiated a holdover proceeding against Crisafulli in the Civil Court of the City of New York (“the Housing Court”) for alleged violations of her lease agreement with respect to an apartment located at 90 Beekman Street, Apartment 7H, New York, New York (“the apartment”) (Doc. 85). Southbridge alleged, *inter alia*, that Crisafulli was not living in the apartment and was instead assigning and/or subletting it in violation of her lease agreement (Doc. 85). By order dated October 14, 2014 (“the 10/14/14 order”), the Housing Court (Saxe, H.C.J.) struck Crisafulli’s answer for failure to comply with Southbridge’s various discovery demands, and the matter was scheduled for an inquest (Doc. 86). Following the inquest, the court held, by order dated October 16, 2014 (“the 10/16/14 order”), that Crisafulli had violated the occupancy agreement and had no right to continue to reside as a tenant in the apartment (Docs. 87).¹

Crisafulli filed a notice of appeal and was granted a stay of the eviction proceedings in the Appellate Term, but, given her failure to perfect the appeal, the Appellate Term lifted the stay of the execution of the warrant of eviction on June 9, 2016 (Doc. 89). Southbridge served Crisafulli with a notice of eviction on or about November 9, 2016 (Doc. 96). However, days prior to the scheduled eviction, Crisafulli moved, by order to show cause, to stay the execution of the eviction and vacate the judgment (Doc. 90). Crisafulli argued, *inter alia*, that her prior

¹ Crisafulli filed a motion to renew or reargue, which the Housing Court denied by order dated December 3, 2014 (“the 12/3/14 order”) (Doc. 88). The Housing Court held, *inter alia*, that Crisafulli should have moved to vacate the default or the striking of the answer pursuant to CPLR 5015 (a) (Doc. 88).

defaults were due to the ineffective assistance of her former counsel and that she was vested with new ownership rights that warranted a stay of the judgment of eviction (Doc. 90).

With respect to her argument about ownership, Crisafulli claimed to have participated in a vote to convert the apartment building from a Mitchell Lama Housing Complex into a privately owned cooperative in December 2014 (Doc 90). She claimed that Southbridge notified her in February 2015 that the apartment was being converted into a privately owned cooperative and that she received a proprietary lease and stock certificate for her shares in January 2016 (Doc. 90). In opposition to Crisafulli's order to show cause, Southbridge argued, *inter alia*, that the stock certificate and proprietary lease were inadvertently sent to Crisafulli and that she failed to set forth a reasonable excuse and a meritorious defense for her default (Doc. 91). By order dated December 15, 2016 ("the 12/15/16 order"), the Housing Court rejected the argument about the stock certificate and proprietary lease, finding that this was irrelevant since it was well-established that the documents had been issued in error (Doc. 93).²

On or about December 12, 2016, Crisafulli commenced the instant action (Doc. 94). She alleged, *inter alia*, that based on the prior issuance of the proprietary lease and the stock certificate, she owned the apartment (Doc. 94). In May 2018, the Appellate Division affirmed the 5/8/17 order, reasoning that Crisafulli failed to appeal from the 12/15/16 order and that she was "collaterally estopped from relitigating the issue of the validity of the proprietary lease and stock certificate" (Doc. 96).

Following an appeal to the Appellate Term in the Housing Court matter, Crisafulli was granted a stay of the judgment of eviction to allow her to move, by order to show cause, to

² Although the copy of this Order was not legible in the NYSCEF system, defendant provided the Court with a legible copy.

vacate the underlying judgment on grounds of ineffective assistance of counsel (Doc. 80). By order dated April 19, 2018 (“the 4/19/18 order”), the Housing Court (Stanley, J.H.C.) vacated the 10/14/14 and 10/16/14 orders (Doc. 80), reasoning that “Crisafulli’s prior counsel was suffering from a mental illness which may have caused the various defaults in th[e] case, which in turn led to [her] answer being stricken, and ultimately a judgment of possession being awarded to [Southbridge]” (Doc. 80). Although the court noted Crisafulli’s prior unsuccessful attempts to establish her status as a shareholder of the cooperative, it held that “she ha[d] not yet had the opportunity to defend herself, with the assistance of competent counsel, against the allegations in [the Housing Court matter] that she was not primarily residing in the subject apartment and was instead illegally subletting the premises” (Doc. 80).

LEGAL CONCLUSIONS:

As an initial matter, “on a post-appeal motion to renew, the movant bears a heavy burden of showing due diligence in presenting the new evidence to the Supreme Court in order to imbue the appellate decision with a degree of certainty” (*Davi v Occhino*, 116 AD3d 651, 652 [2d Dept 2014] [internal quotation marks and citations omitted]). Here, Crisafulli fails to meet this heavy burden because, although she cites to the 4/19/18 order as “new evidence” in support of her motion to renew, this decision was issued approximately 13 months prior to the filing of the instant motion and before the Appellate Division rendered a decision on her appeal (*see Vyrtil Trucking Corp. v Browne*, 157 AD3d 842, 843 [2d Dept 2018], *lv dismissed* 32 NY3d 951 [2018]; *Davi v Occhino*, 116 AD3d at 652-653; *Abrams v Berelson*, 94 AD3d 782, 784 [2d Dept 2012], *appeal dismissed* 19 NY3d 949 [2012]; *Andrews v New York City Housing Authority*, 90 AD3d 962, 963 [2d Dept 2011], *lv dismissed* 19 NY3d 916 [2012]).

In any event, Crisafulli fails to establish that the 4/19/18 order would change the determination in the 5/8/17 order. A motion for leave to renew a prior motion must be based, in pertinent part, “upon new facts not offered on the prior motion that would change the prior determination” (CPLR 2221 [e] [2]; *see Abu Dhabi Commercial Bank, P.J.S.C. v Credit Suisse Sec. (USA) LLC*, 114 AD3d 432, 432 [1st Dept 2014]). In support of her motion, Crisafulli argues, *inter alia*, that the vacatur of the default judgment “changes [her] standing in this matter” and “puts [her] in the position of being named on the stock [certificate] and lease for the premises while pursuing this matter wherein she is seeking in part a declaratory judgment naming her the lawful owner of the premises and leaving [Southbridge] with no lawful claim to possession and/or ownership of the premises” (Doc. 72).

The Housing Court action was limited to allegations that Crisafulli violated the terms of her lease agreement, which are distinct from the declaratory judgment action before this Court. The 4/19/18 order made no determination regarding Crisafulli’s ownership rights to the apartment and addressed only whether she could remain in the apartment as a tenant. However, this Court acknowledges that the Housing Court’s determination in the 12/15/16 order regarding the proprietary lease and stock certificate was based only on its prior finding that Crisafulli was not a tenant at the time of its issuance. Thus, the 4/19/18 order, which allowed Crisafulli to defend her status as a tenant of the apartment, could have potentially affected the prior finding regarding the proprietary lease and the stock certificate. Assuming, *arguendo*, that Crisafulli prevailed in the Housing Court action, she would have been entitled to the proprietary lease and stock certificate and, thus, would have had a claim for ownership rights to the apartment. However, Crisafulli has proffered no evidence that any determination has been made regarding her status as a tenant that would change this Court’s prior determination (*see* CPLR 2221 [e]);

Redstone v Herzer, 162 AD3d 583, 584 [1st Dept 2018]). Moreover, pursuant to the Appellate Division's order, which Crisafulli has not appealed, she is collaterally estopped from relitigating her alleged ownership rights to the apartment based on the proprietary lease and stock certificate (see Moon 170 Mercer, Inc. v Vella, 146 AD3d 537, 537-538 [1st Dept 2017, lv denied 29 NY3d 919 [2017]; H.K.D. Seafood v 25 N. Moore Assoc., 271 AD2d 351, 351 [1st Dept 2000]; P.W.B. Enters. v Moklam Enters., 221 AD2d 184, 184-185 [1st Dept 1995]). Therefore, this motion must be denied.

The remaining arguments are either without merit or need not be addressed given the findings above.


Therefore, in accordance with the foregoing, it is hereby:

ORDERED that the motion by plaintiff seeking leave to renew defendant Southbridge Towers, Inc.'s motion to dismiss is denied; and it is further

ORDERED that plaintiff shall serve a copy of this order, with notice of entry, upon defendant within 30 days after this order is uploaded to NYSCEF; and it is further

ORDERED that this constitutes the decision of the Court.

12/5/2019
DATE


KATHRYN E. FREED, J.S.C.

CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION

APPLICATION: GRANTED DENIED GRANTED IN PART OTHER

CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER

INCLUDES TRANSFER/REASSIGN FIDUCIARY APPOINTMENT REFERENCE