

Arthur v 1809-15 7th Ave. Hous. Dev. Fund Corp.

2019 NY Slip Op 33792(U)

December 31, 2019

Supreme Court, New York County

Docket Number: 653800/2015

Judge: Paul A. Goetz

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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. PAUL A. GOETZ PART IAS MOTION 47EFM

Justice

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NORA ARTHUR,

Plaintiff,

- v -

1809-15 7TH AVENUE HOUSING DEVELOPMENT FUND CORPORATION, MICHAEL MASCHCIO, CARVER FEDERAL SAVINGS BANK, WATERFALL VICTORIA MASTER FUND LTD., WATERFALL VICTORIA REO 2013-01, LLC, JOHN DOE, JANE DOE, XYZ CORPORATION I, XYZ CORPORATION II,

Defendant.

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INDEX NO. 653800/2015
MOTION DATE 12/19/2019
MOTION SEQ. NO. 006

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 006) 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 239, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 340

were read on this motion to/for STRIKE PLEADINGS

Plaintiff Nora Arthur, who previously resided in a cooperative apartment located at 1809-15 7th Avenue, Apt #4F, New York, New York, commenced this action in 2015 to obtain redress for allegedly unlawful eviction proceedings brought by defendants 1809-15 7th Avenue Housing Development Fund Corporation and Michael Maschcio (HDFC Defendants) based on non-payment of maintenance fees and against defendants Carver Federal Savings Bank, Waterfall Victoria Master Fund Ltd. and Waterfall Victoria REO 2013-01 (Lender Defendants) for an allegedly invalid foreclosure and sale which occurred on June 4, 2014. The Lender Defendants move pursuant to CPLR 3126 for an order striking plaintiff's claims against them based on plaintiff's alleged failure to comply with her discovery obligations or, alternatively, compelling a date certain by which plaintiff must produce all outstanding discovery. The Lender Defendants

also seek an order lifting the current injunction staying the HDFC Defendants from evicting plaintiff unless plaintiff escrows on a monthly basis funds equal to her monthly mortgage, maintenance and tax payments. Plaintiff cross-moves for a stay of this case until the New York City Human Resources Administration's Adult Protective Services Program ("APS") completes its evaluation for an Article 81 guardianship for plaintiff.

By order dated July 12, 2018, this court held the motion and cross-motion in abeyance pending the evaluation and subsequent appointment of a *guardian ad litem* for plaintiff. By order dated December 30, 2019, a *guardian ad litem* was finally appointed for plaintiff for the limited purpose of assisting with collecting documents and with settlement discussions. Pursuant to the court's order dated October 24, 2019, the parties filed supplemental papers in connection with this motion.

With respect to the Lender Defendants' motion for sanctions based on plaintiff's alleged failure to respond to the Lender Defendants' document demands and interrogatories from October and December 2017, the Lender Defendants have failed to show that plaintiff's conduct was willful and contumacious so as to warrant this drastic remedy. Plaintiff was confined to a nursing home in Pennsylvania from approximately August 2017 to April 2018 and after she was released, plaintiff's counsel immediately endeavored to obtain documents from her. Affirmation of Ali Aghazadeh dated June 21, 2018. However, plaintiff was subsequently hospitalized at St. Luke's hospital and as of May 2018, plaintiff was sent to a long-term nursing home, where she currently resides. Affirmation of Elizabeth Lynch dated June 21, 2018, ¶ 9; Affidavit of Gokul Krish sworn to on November 22, 2019. Plaintiff's deteriorating health condition and her continued admittance to hospital and nursing home care have impaired her ability to provide further responses to the Lender Defendants' document demands. Although the Lender

Defendants claim that plaintiff's granddaughter, Keyara Hunt, lives in the apartment and has at times assisted with plaintiff's care and with allowing plaintiff's counsel to access plaintiff's apartment to gather documents, she could not be relied upon to consistently provide assistance with this case, particularly given that plaintiff's counsel had a lot of difficulty even reaching her. Affirmation of Ali Nani dated November 22, 2019. Given these circumstances, and plaintiff's attempts to comply with the discovery demands, plaintiff's conduct cannot be deemed willful and contumacious so as to warrant sanctions under CPLR 3126. *See Casanas v. Carlei Group, LLC*, 149 A.D.3d 515 (1st Dep't 2017). To the extent that the Lender Defendants claim that plaintiff's responses remain deficient, these issues must be addressed at the next status conference and may be remedied promptly now that plaintiff has been assigned a *guardian ad litem* who will assist in gathering documents and responding to discovery requests.

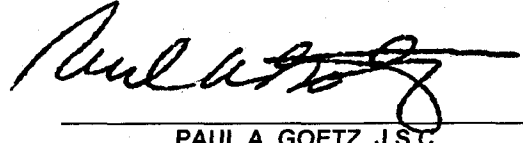
With respect to the Lender Defendants' request to lift the injunction unless plaintiff escrows on a monthly basis funds equal to her monthly mortgage, maintenance and tax payments, the Lender Defendants fail to provide a basis for this relief. The court's injunction order was directed to the HDFC Defendants, and not to the Lender Defendants, and thus they have no standing to demand additional escrow payments. Finally, plaintiff's cross-motion for a stay is denied as moot since a *guardian ad litem* has been appointed for plaintiff. Accordingly, it is

ORDERED that the Lender Defendants' motion and the plaintiff's cross-motion are denied; and it is further

ORDERED that the parties shall appear for a status conference on February 6, 2020 at 9:30 am to discuss outstanding discovery issues.

12/31/19

DATE



PAUL A. GOETZ, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: