Walton v Ecumenical Community Dev. Org. Inc.
2020 NY Slip Op 31381(U)
May 13, 2020
Supreme Court, New York County
Docket Number: 451942/2013
Judge: Nancy M. Bannon

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: I.A.S. PART 42

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RUTH WALTON and MARY WALTON,

Plaintiffs,

DECISION AND ORDER

- v -

Index No. 451942/2013

MOT SEQ 003

ECUMENICAL COMMUNITY DEVELOPMENT ORGANIZATION INC., ECDO MANAGEMENT CORPORATION, RICHARD WRIGHT HOUSES, L.P., DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT OF THE CITY OF NEW YORK, and RUTHANNE VISNAUSKAS, AS COMMISSIONER OF THE DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT OF THE CITY OF NEW YORK

Defendants.

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NANCY M. BANNON, J.:

I. INTRODUCTION

In this action to recover for discrimination in housing on the basis of disability, defendants Ecumenical Community Development Organization, Inc. (ECDO), ECDO Management Corporation (ECDO Management), and Richard Wright Houses, L.P. (RWH) (collectively the ECDO defendants) move (i) for summary judgment dismissing the complaint as against them; or in the alternative (ii) marking the action off the court's calendar pending resolution of a related action entitled ECDO v GVS, Inc. and Ruth Walton, Index No. 156405/2012 (the companion action). The plaintiffs oppose the motion. The motions are denied.

II. BACKGROUND

RWH purchased the building located at 654 St. Nicholas Avenue, New York, New York 10030 (the building) from New York City on or about June 12, 2008, pursuant to a regulatory agreement (the regulatory agreement). Under the regulatory agreement ECDO, a non-profit developer, was to rehabilitate the building under HPD's Neighborhood Redevelopment Program as an Urban Development Action Area Project with a construction loan provided by HPD and funded by the federal government. The regulatory agreement states that no person shall on the grounds of disability be excluded from participation in, be denied the benefits of, or be subjected to discrimination in the building. The regulatory agreement further required the ECDO Defendant to comply with the Americans with Disabilities Act (the ADA) and Section 504 of the Federal Rehabilitation Act (FRA) and was subject to federal regulations regarding displacement and relocation of current tenants.

Plaintiff Ruth Walton (Ruth) had been renting Apartment 23 in the building (the original apartment) from New York City for 25 years along with Charles Ruffin, the father of her children. Ruffin is Walton's spouse and not a party to this action. Plaintiff Mary Walton (Mary) is their daughter, a member of

their household, and it is undisputed that she has been wheelchair-bound since 2007 due to a com-induced illness.

To facilitate the renovation, the ECDO Defendants offered Ruffin and Plaintiff Ruth Walton the opportunity to move into another residence during the renovation. Ruffin and Ruth accepted this offer and the ECDO Defendants rented apartment #66 at the building located at 600 West 164th Street, New York, New York 10032 (the new apartment) on their behalf. It is undisputed that the new apartment is wheelchair accessible.

In furtherance thereof, on November 3, 2008, Ruth and Ruffin, signed a Temporary Relocation Agreement (the temporary agreement) for the new apartment for a one-year term. Under this temporary agreement, the plaintiffs paid $286.00 per month in rent to the ECDO Defendants who paid the remaining $2,279.00 of the $2,565.00 in total monthly rent for the apartment. In the temporary agreement, Ruffin and Ruth acknowledged, *inter alia*, (i) they were not guaranteed occupancy of the original apartment, (ii) they had unconditionally surrendered possession of the original apartment and (iii) they agreed to hold the ECDO defendants harmless from any liability or action resulting from the temporary agreement. In paragraph 8 of the temporary agreement Ruth and Ruffin covenanted to apply for Section 8 assistance, but in paragraph 9, the ECDO Defendants agreed that

"[i]n the event that [they] did not receive Section 8, or [were] determined to be ineligible, the base rent for the apartment shall be $2,565.00 and [Ruffin and Walton] shall be responsible to pay the total rent." Paragraph 14 of the temporary agreement states that it is the entire agreement between the parties, superseding all prior agreement and understandings, written or oral, and may not be altered or modified except by a writing signed by all parties." The temporary agreement was signed by both Ruffin and Ruth, but neither the owner of the apartment nor any of its agents was a party thereto. Ruffin and the plaintiffs began living in the new apartment since November 2008.

On July 30, 2010, the ECDO defendants and Ruffin executed a Permanent Relocation Agreement between plaintiff Ruth Walton and Ruffin (the permanent agreement). While the permanent agreement purports to bind both Ruffin and Ruth, the signature line of the permanent agreement is signed only by Ruffin and not Ruth. Paragraph 1 of the permanent agreement provides that "[Ruffin and Ruth have] been offered to temporarily relocate but [have] chosen to permanently relocate instead." Paragraph 3 of the permanent Agreement provides that Ruffin and Walton willfully consented to permanently relocate to the new apartment. In paragraph 4 [Ruffin and Ruth] purported to obligate themselves to pay rent for the new apartment on the effective date of the

lease. In paragraph 5, [Ruth and Ruffin] purported to forever surrender any rights of possession in and to the original apartment and any rights thereto and hold HPD and the ECDO defendants "harmless from any liability or action resulting from this Agreement." Paragraph 6 of the permanent agreement explicitly discloses that the rent for the new apartment will be $2,565.00 and, like the temporary agreement, paragraph 7 requires the plaintiffs to apply for Section 8 rental assistance. Like the temporary agreement, (i) nothing in the agreement obligated the ECDO defendants to pay any of the rent in the event that Ruth fails to obtain Section 8 rental assistance and (ii) the owner of the apartment and its agents were not parties. Finally, paragraph 12 of the permanent agreement contains an integration clause that sets forth that it is the "entire agreement between the parties, superseding all prior agreement and understandings, written or oral, and may not be altered or modified except by a writing signed by all parties." Notwithstanding the fact that Ruffin signed the permanent agreement on her behalf, according to Ruth's sworn statement, she avers that she called EDCO and spoke with an employee named Shaquana Dinkins and absolutely refused to sign the permanent agreement.

In or about August 2010, despite Ruth's apparent refusal to sign the permanent agreement, the ECDO defendants then attempted

to have the lease for the new apartment assigned to Ruffin and Ruth. The ECDO defendants requested that Broadway Portfolio I Owner LLC (BPI), the landlord of the new apartment consent to the assignment of the lease for the new apartment to Ruth and Ruffin. However, BPI's management company, Vantage Management Services, refused to accept the assignment on the grounds that Ruffin and Ruth failed to meet the income requirements associated with renting the apartment.

On November 2, 2010, Ruth received a letter from the ECDO defendants that she could not return to the original apartment. Instead the ECDO defendants offered her two two-bedroom apartments on different floors in the building that were not wheelchair accessible. Ruth declined to accept the offer because she wanted to return to the original apartment where she had lived for 30 years and did not want her family living on two separate floors in a space that did not provide an accommodation for her daughter's disability.

As a result, on September 17, 2012, ECDO commenced the companion action alleging that Ruffin and Ruth were being wrongfully overcharged for the new apartment. ECDO sought a judgment declaring that (i) the new apartment was subject to the Rent Stabilization Law and Code, (ii) the amount sought as rent by the defendants in the companion action was an overcharging

for the new apartment under the rent regulation laws, (iii) the owner of the apartment and its agents could not reject ECDO's request to assign the lease Ruth based on her failure to meet their income requirements because they were allegedly illegal and inflated. On October 23, 2013, Ruth filed an Order to Show Cause seeking to intervene in the companion case.

In her intervenor complaint, Ruth sought a judgment declaring that (i) the new apartment is rent regulated; (ii) the court should fix a rent amount equal to the legally regulated rent; (iii) she was the tenant of record notwithstanding the owner's refusal to accept an assignment of the lease from ECDO; (iv) that the owner register the premises with DHCR; and (v) she be offered a lease for the premises consistent with these declarations.

Ruth submitted an affidavit in the companion case in support of her application to intervene and for a preliminary injunction and temporary restraining order preventing the owner from evicting her during the pendency of the companion action. In her affidavit she averred that she was the tenant in the new apartment. By order dated October 24, 2013, Justice Ellen Coin issued an order granting Ruth's temporary restraining order against the owner or its agents evicting her. By order dated January 6, 2014, Justice Coin granted Ruth leave to intervene as

a plaintiff in the companion action and granted her a preliminary injunction precluding any efforts by the owner or its agent from evicting her pending the disposition of the companion action.

On October 30, 2013, while the companion action was pending, the plaintiffs commenced this action asserting six causes of action against the ECDO defendants. The seventh cause of action was directed at HPD and is not the subject of this motion. HPD was discontinued as a defendant in this action by a stipulation of settlement and discontinuance dated May 19, 2014. In the remaining six causes of action, the plaintiffs seek monetary, injunctive and declaratory relief because the ECDO defendants failed to return the plaintiffs to the original apartment or another wheelchair accessible apartment. The plaintiffs allege that this failure constitutes discrimination under Section 504 of the Federal Rehabilitation Act (first cause of action), the American with Disabilities Act (second cause of action), the New York State Human Rights law (third cause of action), the New York City Human Rights Law (fourth cause of action), a breach of the ECDO defendants' original contract with the plaintiffs (fifth cause of action), and the temporary relocation agreement (sixth cause of action).

On January 17, 2019, the Appellate Division, First Department disposed of the companion action by granting summary judgment to the defendants dismissing ECDO's complaint. See Ecumenical Comm. Dev't Org. v GVS Props. II, LLC, 168 AD3d 522 (1st Dept. 2019). The First Department held that the new apartment is not rent regulated and that the defendants in that case properly withheld their consent to the assignment in light of Ruth's inability to afford the rent. Id. The Appellate Division, First Department also held that that even though the owners of the new apartment knew of Ruth's occupancy, they never affirmatively recognized her as a tenant. Id. As the Appellate Division held, ECDO undisputedly leased the new apartment for Ruth to temporarily relocate her while it was renovating the original apartment but Ruth never paid rent directly to the owners of the new apartment. Id.

III. DISCUSSION

It is well settled that the movant on a summary judgment motion "must make a *prima facie* showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case." Winegrad v New York Univ. Med. Ctr., 64 NY2d 851, 853 (1985). The motion must be supported by evidence in admissible form. See Zuckerman v City of New York, 49 NY2d 557 (1980). The "facts must be

viewed in the light most favorable to the non-moving party." Vega v Restani Constr. Corp., 18 NY3d 499, 503 (2012) (internal quotation marks and citation omitted). Once the movant meets its burden, it is incumbent upon the non-moving party to establish the existence of material issues of fact. See id., *citing* Alvarez v Prospect Hosp., 68 NY2d 320 (1986). In deciding a summary judgment motion, the court must be mindful that "'summary judgment is a drastic remedy, the procedural equivalent of a trial. It should not be granted where there is any doubt about the issue.'" Bronx-Lebanon Hospital Ctr. v Mount Eden Ctr., 161 AD2d 480, 480 (1st Dept. 1990) *quoting* Nesbitt v Nimmich, 34 AD2d 958, 959 (2nd Dept. 1970).

Under Section 504 of the Federal Rehabilitation Act, any federally funded project must make reasonable accommodations necessary to afford persons equal opportunity to use and enjoy a dwelling. See 42 U.S.C.A. § 3604(f)(3)(B); 24 C.F.R. §100.204; see also Starrett City, Inc. v Ada Adamson, No. 92988/94, 1995 WL 17961405 (N.Y. City Civ. Ct. 1995). Likewise, under the ADA, where a "reasonable accommodation" such as a wheelchair accessible ramp is removed, the onus is on the entity that removed it to substitute another one forthwith. See Quad Enterprises Co. LLC v Town of Southhold, 369 Fed App'x 202 (2nd Cir. 2010).

The same obligations to provide disabled residents with reasonable accommodations for their disabilities exists under the New York State and City Human Rights Laws. The New York State Human Rights law provides that it is an unlawful discriminatory practice to "refuse to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford said person with a disability equal opportunity to use and enjoy a dwelling." Executive Law § 296(18)(2). Failure to provide a reasonable accommodation necessary in order for the complainant to use and enjoy his or her apartment qualifies as discrimination under the Human Rights Law. See Matter of One Overlook Ave. Corp. v New York State Div. of Human Rights, 8 AD3d 286 (2nd Dept. 2004). See also Administrative Code § 8-107 (15) (a); see also United Veterans Mut. Hous. No. 2 Corp. v New York City Comm'n of Human Rights, 207 AD2d 551 (2nd Dept. 1994). However, claims for discrimination and rights to reasonable accommodations under these statutes may be waived, just as rights under may be waived under contracts, if the waiver is knowing and voluntary. Jacobsen v New York City Hosp. Corp., 97 AD3d 428 (1st Dept. 2012).

Here, it is undisputed that the rehabilitation project was federally funded. As such, the requirements of providing reasonable accommodations under the FRA and the ADA apply to

disabled individuals, such as Ruth's daughter Mary. Likewise, reasonable accommodations such as the wheelchair accessibility that the plaintiffs had when they lived in the original apartment were obligations of the ECDO Defendants under the regulatory contract and the temporary agreement. Neither Ruth nor did Mary waived any rights to those reasonable accommodations in those agreements.

In the instant action, the defendants assert, in effect, that Ruth knowingly and voluntarily waived hers and her dependent and disabled daughter Mary's statutory and contractual rights to reasonable accommodations by Ruth entering into the permanent agreement under which they claim that Ruth agreed to live in the new apartment permanently and pay the associated rent regardless of whether she received Section 8 housing assistance. However, the defendants' submissions fail to demonstrate, *prima facie*, that Ruth actually waived her or her daughter's claims for discrimination or breach of contract. The permanent agreement was only signed by Ruffin, raising a triable issue of fact as to whether Ruth signed the permanent agreement.

Moreover, even if the defendants had met their *prima facie burden*, Ruth's affidavit in opposition creates numerous triable issues of fact in this regard. Ruth explicitly denies having ever signed the permanent agreement, and further states that Ruffin had no authority to sign it on her behalf and avers that

she personally called ECDO to object to signing it. This issue alone is sufficient to defeat the defendants' summary judgment motion. See Citimortgage, Inc v Caldaro, 145 AD3d 851 (2nd Dept. 2016).

In addition to failing to prove Ruffin's actual authority to bind Ruth to the permanent agreement, the plaintiffs also correctly argue that there is a further triable issue of fact as to whether Ruffin had apparent authority to sign the permanent agreement on her behalf such that the ECDO Defendants could rely on his signature to bind her.

Apparent authority requires words or conduct of the principal communicated to a third party, which gives rise to the appearance and belief that the agent possesses authority to enter into a transaction. See Hadlock v State of New York, 64 NY3d 224 (1984). An agent cannot by his own acts imbue himself with apparent authority. See 1230 Park Assoc., LLC v N. Source, LLC, 48 AD3d 355 (1st Dept. 2008).

Here, as the plaintiff correctly argues, the defendants' submissions do not establish any conduct by Ruth that could have led them to believe that Ruffin had the authority to sign the permanent agreement on her behalf. The record amply reflects that Ruth did not want to sign the permanent agreement because she did not want to give up her or her disabled daughter's

statutory or contractual rights. On the contrary, Ruth's affidavit unequivocally avers that the moment she received the permanent agreement from the ECDO defendants she called them and spoke to their employee Shaquana Dinkins to inform her that she would not be signing the agreement. Further, she expressed to the ECDO Defendants her desire not to live in the new apartment and refused their offer to return to the original building in two separate units that did not have wheelchair accessibility insisting she be returned to the same living conditions she gave up so that the ECDO Defendants could renovate her original apartment. This further demonstrates that the ECDO defendants had no reason to believe that Ruffin had the apparent authority to bind Ruth to the permanent agreement with his signature. 56 E. 87th Units Corp. v Kingsland Group, Inc., 30 AD3d 1134 (1st Dept. 2006).

As there are triable issues of fact as to whether Ruffin had either actual or apparent authority to bind Ruth or Mary to the permanent agreement, the defendants have not established that Ruth and Mary waived their statutory or contractual rights. As such, their claims for discrimination under Section 504 of the FRA, the American with Disabilities Act, the New York State Human Rights law, the New York City Human Rights Law, and for breach of contract cannot be dismissed.

Inasmuch as the branch of the ECDO defendants' motion further seeks to stay this action pending the disposition of the companion action, that branch is denied as moot as the companion action has been disposed by the Appellate Division's January 17, 2019 decision. See Ecumenical Comm. Dev't Org. v GVS Props. II, LLC, supra.

IV. CONCLUSION

Accordingly, it is hereby,

ORDERED that the motion of defendants Ecumenical Community Development Organization, Inc. (ECDO), ECDO Management Corporation (ECDO Management), and Richard Wright Houses, L.P. (RWH) is denied in its entirety, and it is further,

ORDERED that the parties shall contact chambers on or before June 30, 2020 to schedule a settlement conference.

This constitutes the Decision and Order of the court.

Dated: May 13, 2020 ENTER:

NANCY M. BANNON, J.S.C.
HON. NANCY M. BANNON

J.S.C.