

Nanyang Realty Corp. v Vincent
2020 NY Slip Op 31394(U)
April 15, 2020
Supreme Court, Kings County
Docket Number: 513411/2016
Judge: Carl J. Landicino
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At an IAS Term, Part 81 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 15th day of April, 2020.

P R E S E N T:

HON. CARL J. LANDICINO, JSC.

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NANYANG REALTY CORP.,

Index No.: 513411/2016

Plaintiff,

- against -

DECISION AND ORDER

FELICIA VINCENT and SANDRA WICKHAM,

MOTION SEQUENCE #9

Defendant(s).

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Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion:

	Papers Numbered
Notice of Motion/Cross Motion and	
Affidavits (Affirmations) Annexed.....	1/2.
Opposing Affidavits (Affirmations).....	3.
Reply Affidavits (Affirmations).....	4.

After oral argument and upon review of the papers in this matter, the Court finds as follows:

Plaintiff Nanyang Realty Corp., (hereinafter “the Plaintiff”) now moves (motion sequence #9) for an order pursuant to CPLR 3212, granting partial summary judgment against Defendants Felicia Vincent (hereinafter “Defendant Vincent”) and Sandra Wickham (hereinafter “the Defendant Wickham” or collectively “the Defendants”) on its first, third and fourth causes of action. The Plaintiff is purportedly the fee owner of the real property at issue, 200 Sterling Place, Brooklyn, New York (hereinafter “the Premises”).

The Plaintiff alleges that Defendant Vincent, who was a rent stabilized tenant of apartment 1A in the Premises (the “Apartment”), was involved in a fraudulent scheme to vacate the Apartment, continue to claim tenancy of the Apartment, and then assist her daughter, Defendant Wickman with obtaining succession rights to the Apartment. The Plaintiff’s first cause of action seeks a judicial declaration that Defendant Vincent actually vacated the

Apartment in or about 1991 and that Defendant Wickham cannot succeed to Defendant Vincent's rent stabilized tenancy. The Plaintiff's second cause of action seeks a judgment of possession against both Defendants and the fourth cause of action seeks a money judgment for not less than \$130,000.00.

The Defendants oppose the motion and argue that it should be denied. Specifically, the Defendants contend that Defendant Wickham is entitled to succeed to her mother's rent stabilized tenancy at the Premises because she lived with her mother, Defendant Vincent, in the apartment for the two year period before her mother vacated the Apartment in 2011 and continues to reside in the Apartment. The Defendants also contend that summary judgment should be denied as there are issues of fact regarding whether the Apartment was Defendant Wickham's primary residence, and the resolution of these issues depends on a credibility finding as to the parties, a matter that should be decided at trial.

It has long been established that "[s]ummary judgment is a drastic remedy that deprives a litigant of his or her day in court, and it 'should only be employed when there is no doubt as to the absence of triable issues of material fact.'" *Kolivas v. Kirchoff*, 14 A.D. 3d 493 [2nd Dept 2005], citing *Andre v. Pomeroy*, 35 N.Y.2d 361, 364, 362 N.Y.S.2d 131, 320 N.E.2d 853 [1974]. The proponent for the summary judgment must make a *prima facie* showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate absence of any material issues of fact. See *Sheppard-Mobley v. King*, 10 A.D. 3d 70, 74 [2nd Dept 2004], citing *Alvarez v. Prospect Hospital*, 68 N.Y.2d 320, 324, 508 N.Y.S.2d 923, 501 N.E.2d 572 [1986]; *Winegrad v. New York Univ. Med. Ctr.*, 64 N.Y.2d 851, 853, 487 N.Y.S.2d 316, 476 N.E.2d 642 [1985].

Once a moving party has made a *prima facie* showing of its entitlement to summary judgment, "the burden shifts to the opposing party to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the

action” *Garnham & Han Real Estate Brokers v Oppenheimer*, 148 A.D. 2d 493 [2nd Dept 1989]. Failure to make such a showing requires denial of the motion, regardless of the sufficiency of the opposing papers. *See Demshick v. Cmty. Hous. Mgmt. Corp.*, 34 A.D.3d 518, 520, 824 N.Y.S.2d 166, 168 [2nd Dept 2006]; *see Menzel v. Plotnick*, 202 A.D.2d 558, 558–559, 610 N.Y.S.2d 50 [2nd Dept 1994].

In general, “Rent Stabilization Code (9 NYCRR) § 2523.5(b)(1) provides in pertinent part that

(b)(1) Unless otherwise prohibited by occupancy restrictions based upon income limitations pursuant to federal, state or local law, regulations or other requirements of governmental agencies, if an offer is made to the tenant pursuant to the provisions of subdivision (a) of this section and such tenant has permanently vacated the housing accommodation, any member of such tenant's family, as defined in section 2520.6(o) of this Title, who has resided with the tenant in the housing accommodation as a primary residence for a period of no less than two years, or where such person is a “senior citizen,” or a “disabled person” as defined in paragraph (4) of this subdivision, for a period of no less than one year, immediately prior to the permanent vacating of the housing accommodation by the tenant, or from the inception of the tenancy or commencement of the relationship, if for less than such periods, shall be entitled to be named as a tenant on the renewal lease.

In addressing this section, the Court of Appeals has held that “[t]he designation of classes of individuals to whom DHCR has extended non-eviction protection—persons deemed by the agency to be threatened with loss of their homes, and therefore in need of such protection—is a matter that falls within the agency's expertise.” *Rent Stabilization Ass'n of New York City, Inc. v. Higgins*, 83 N.Y.2d 156, 174, 630 N.E.2d 626, 634 [1993]. The Court of Appeals later held in a matter involving succession to a Mitchell-Lama apartment that it served “the important remedial purpose of preventing dislocation of long-term residents due to the vacatur of the head of household.”

Murphy v. New York State Div. of Hous. & Cmty. Renewal, 21 N.Y.3d 649, 653, 999 N.E.2d 524, 526 [2013]. Most recently, the Court in *Jourdain* held that succession rights should not be denied “to a family member who had been residing in a unit for a long period of time merely because there was a period of time when the named tenant no longer resided there but still maintained some connection to the property.” *Jourdain v. New York State Div. of Hous. & Cmty. Renewal*, 159 A.D.3d 41, 47, 70 N.Y.S.3d 239, 244 [2nd Dept 2018].

Turning to the merits of the Plaintiff’s motion, the Court finds that the Plaintiff has failed to meet its *prima facie* burden. The Plaintiff contends that Defendant Vincent has resided at 128-01 142nd Street, Jamaica, New York since 1991 and therefore did not reside at the Premises during the relevant 2009-2011 period. The Plaintiff relies on the deposition testimony of the Defendants and other evidence including mortgage documents and tax returns. While the Plaintiff claims that the deposition testimony of Defendant Vincent establishes that she vacated the Premises in 1991, the Defendants dispute this and Vincent testified that she did not vacate the premises in 1991. Specifically, the Plaintiff contends that the Defendant Vincent relocated in 1991 to 128-01 142nd Street Jamaica, New York. Further, the Plaintiff argues that the Court should determine this as a matter of law based upon the mortgage documents and tax returns completed by Defendant Vincent. However, in both her affidavit and deposition Defendant Vincent testifies that she did not vacate the Premises and it was not her intention to make the Queens County property her primary residence. The Court may not grant summary judgment based upon a determination of a party’s credibility. *See Gaither v. Saga Corp.*, 203 A.D.2d 239, 240, 609 N.Y.S.2d 654, 655 [2nd Dept 1994]. Generally, the evidence must be viewed in the light most favorable to the opponent of the motion, “and all reasonable inferences must be resolved in [his] favor.” *Boyd v. Rome Realty Leasing Ltd. P’ship*, 21 A.D.3d 920, 921, 801 N.Y.S.2d 340, 341 [2nd Dept 2005].

What is more, the evidence provided by the Plaintiff in relation to Defendant Wickham is insufficient for the Plaintiff to meet its *prima facie* burden. The Plaintiff contends that the tax and

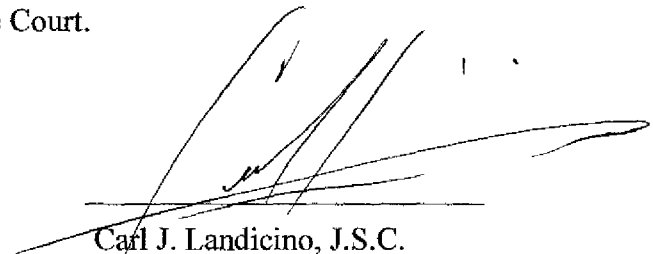
mortgage documents presented as part of the summary judgment application establish as a matter of law that Defendant Wickham cannot claim the Premises as her residence and therefore cannot claim succession rights. However, as discussed above in relation to the deposition testimony of Defendant Vincent, the Court finds that this evidence is not conclusive. What is more, the case law cited by the Plaintiff in support of its application, namely *Jols Realty Corp. v. Nunez*, 43 Misc. 3d 129(A), 990 N.Y.S.2d 437 [App. Term, 2nd Dept 2014] is inapplicable to the instant matter. *Jols* was a determination made after trial/hearing, wherein the party claiming succession had the burden. Further, the more recent holding in *Jourdain v. New York State Div. of Hous. & Cmty. Renewal* does not support Plaintiff's position. In *Jourdain*, the Court held that "[t]he execution of one renewal lease after having moved out of the apartment does not necessarily indicate an attempt to deceive the landlord." *Jourdain v. New York State Div. of Hous. & Cmty. Renewal*, 159 A.D.3d 41, 48, 70 N.Y.S.3d 239, 245 [2nd Dept 2018]. Similarly, it cannot be said that the mortgage and tax documents signed by Defendant Wickham necessarily indicate an attempt to deceive the landlord or that she did not reside in the Apartment, as a matter of law. As with the testimony of Defendant Vincent, such credibility determinations are best left to the trier of fact, and the documents at issue do not preclude Defendant Wickham from claiming that she considered the Premises to be her residence. *See Hospodar-Anikin v. City of New York*, 12 A.D.3d 405, 406, 786 N.Y.S.2d 530, 532 [2nd Dept 2004].

Based on the foregoing, it is hereby ORDERED as follows:

The Plaintiff's motion (motion sequence #9) is denied.

This constitutes the Decision and Order of the Court.

ENTER:


Carl J. Landicino, J.S.C.