

George Units LLC v Stephenson

2020 NY Slip Op 32302(U)

July 13, 2020

Supreme Court, New York County

Docket Number: 151637/2018

Judge: Debra A. James

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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. DEBRA A. JAMES PART IAS MOTION 59EFM

Justice

-----X

THE GEORGE UNITS LLC,

Plaintiff,

INDEX NO. 151637/2018
MOTION DATE 01/14/2020
MOTION SEQ. NO. 002

- v -

MICHELLE STEPHENSON and JACELYN STEPHENSON,

Defendants.

**DECISION + ORDER ON
MOTION**

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 31

were read on this motion to/for JUDGMENT - SUMMARY

The following e-filed documents, listed by NYSCEF document number (Motion 003) 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47

were read on this motion to/for DISMISS

ORDER

Upon the foregoing documents, it is

ORDERED that this court, sua sponte, and in the interest of justice, pursuant to CPLR 5019(a), resettles and vacates its Order dated December 13, 2019 that deemed defendants' opposition and motion to dismiss (motion sequence number 003) withdrawn, and denied dismissal, without prejudice, for want of working copies, and such Order is hereby rescinded and of no further force and effect, and such motion is determined on its merits; and it is further

ORDERED that the motion of defendants, designated as a cross-motion, to dismiss the complaint (motion sequence number

003) is granted as to the third cause of action to "void ab initio, the renewal lease", and such cause of action shall be dismissed in its entirety; and it is further

ORDERED that the motion of defendants to dismiss the first and second causes of action is granted only as to defendant Jacelyn Stephenson, and the complaint against defendant Jacelyn Stephenson shall be dismissed in its entirety; and it is further

ORDERED that plaintiff's motion for summary judgment on its first cause of action for unjust enrichment and second cause of action for quantum meruit (motion sequence number 002) is granted as against defendant Michelle Stephenson only; and it is further

ORDERED and ADJUDGED that the Clerk of the Court is directed to enter judgment dismissing the third cause of action in its entirety and the first and second causes of action against defendant Jacelyn Stephenson and, granting judgment in favor of plaintiff and against defendant Michelle Stephenson in the sum of \$ 32,964.20, plus interest at the statutory rate from the date of this decision, together with costs and disbursements as taxed by the Clerk upon submission of an appropriate bill of costs.

DECISION

Plaintiff, The George Units, LLC (landlord) moves for summary judgment pursuant to CPLR 3212 on its first and second

causes of action, sounding in unjust enrichment and quantum meruit, respectively, and an award of damages for use and occupation in the amount of \$32,964.20 (motion sequence number 002) against both defendants, Michelle Stephenson and Jacelyn Stephenson.

Defendants, Michelle Stephenson and Jacelyn Stephenson, oppose plaintiff's motion for summary judgment and (cross) move for summary dismissal of the complaint (motion sequence number. 003).

Background

This case arises out of the lease of a rent-stabilized apartment (the subject apartment), which is located at 1365 St. Nicholas Avenue in Manhattan.

Before May 1, 2017, the now late Jocelyn Stephenson was the rent-stabilized tenant of record for the subject apartment (Tenant of Record).

Defendant Michelle Stephenson is the daughter of the Tenant of Record. Defendant Jacelyn Stephenson is the granddaughter of the Tenant of Record and the daughter of defendant Michelle Stephenson.

In November 2015, landlord commenced a nonprimary residence proceeding in Civil Court against the Tenant of Record, arguing that the Tenant of Record did not maintain the subject apartment as her primary residence from October 1, 2013 through September

30, 2015. Though no copy of any Civil Court answer is before this court, plaintiff asserts, and defendants do not deny, that in their respective answers to the Civil Court nonprimary residence hold-over proceeding, each asserted that the Tenant of Record remained in possession, or alternatively that each had rights to succeed the Tenant of Record. With the commencement of the hold-over proceeding, landlord stopped accepting rent payments for the subject apartment.

After being notified that the Tenant of Record was in a nursing home and hearing the representation of the appointed Guardian Ad Litem for the Tenant of Record to the Civil Court that the Tenant of Record intended to return to the subject apartment in late 2016, landlord discontinued the nonprimary residence proceeding.

Landlord then commenced a nonpayment proceeding in Civil Court against the Tenant of Record and defendants. Defendant Michelle Stephenson answered the nonpayment petition, continuing to assert her claim that she was entitled to succeed her mother, the Tenant of Record, under the lease for the subject apartment. There is no evidence in the record that defendant Jacelyn Stephenson answered the nonpayment petition.

In January 2017, defendants advised the Civil Court that the Tenant of Record had passed away. Landlord withdrew the nonpayment proceeding and commenced a licensee proceeding

against defendants in Civil Court. The record reflects that defendant Michelle Stephenson answered the petition, continuing to claim that she was entitled to succeed the lease for the subject apartment. Defendant Jacelyn Stephenson defaulted and never appeared in such holdover summary proceeding.

In May 2017, landlord offered, and defendant Michelle Stephenson accepted and signed, a two-year renewal lease (succession lease) for the subject apartment at the monthly rent of \$1,714.79, which stipulation was so-ordered by the judge presiding over the holdover proceeding. There was no dispute that, except for the last four months of 2016 that were paid by the Tenant of Record, since April 2015, no rent payments for the subject apartment under the lease issued to the Tenant of Record were made.

In September 2017, the licensee proceeding was sent out for trial as to the issue of whether defendants should pay use and occupancy dating back to April 2015. Defendants failed to appear at the scheduled trial date and an inquest was held at which time landlord was awarded a money judgment in the amount of \$8,573.95 and judgment of possession against defendant Michelle Stephenson, and a judgment of possession but no money judgment against defendant Jacelyn Stephenson. The money judgment award against defendant Michelle Stephenson only was

comprised of all rent then due and owing to landlord pursuant to Michelle Stephenson's renewal lease for the subject apartment, covering the time period beginning May 2017 and continuing through September 2017. Landlord's claim for use and occupancy that accrued before the renewal succession lease was severed, without prejudice to landlord commencing a plenary action. It is undisputed that defendant Michelle Stephenson paid the money judgment awarded by the Civil Court in the licensee proceeding.

In February 2018, landlord commenced the instant action seeking \$32,964.20 from defendants, for use and occupancy representing the unpaid rental amounts due to landlord under the lease with the Tenant of Record for the period beginning April 2015 and continuing through April 2017, excluding the four payments of monthly rent made at the end of 2016.

Motion Practice

From a procedural standpoint, the record reflects that the instant motion for summary judgment (Motion Sequence 002) was served and filed on September 23, 2019, with the submission by plaintiff landlord of its Notice of Motion and Exhibits, Affidavit in Support, and Memorandum of Law in Support of the Motion (see NYSCEF Doc. Nos. 19-29), with a return date of October 8, 2019.

On October 23, 2019, the parties entered into a stipulation adjourning the return date of the motion to November 13, 2019,

and providing that defendants would file opposition papers on or before October 30, 2019.

On October 30, 2019, defendants filed Motion Sequence Number 003, seeking dismissal of plaintiff landlord's complaint. Submitted with Motion Sequence 003 was a combined memorandum of law in opposition to Motion Sequence 002 and in support of the relief sought in Motion Sequence 003 (NYSCEF Doc. No. 40). On December 13, 2019, the court denied Motion Sequence 003 without prejudice, and deemed the papers for Motion Sequence 003 (NYCEF Doc. Nos. 32-46) withdrawn due to the failure of the plaintiff to submit working copies as then required pursuant to New York County Procedure for Electronically Filed Cases Protocol Section D.5(a).

Sua sponte and in the interest of justice, notwithstanding that the defense counsel has never re-filed Motion Sequence Number 003 with working copies, this court shall vacate such denial and determine defendants' motion to dismiss on its merits. The court does so in light of the fact that all supporting, responsive and reply papers were timely submitted electronically on such motion, and plaintiff, therefore, is in no way prejudiced by the failure of the defendants to submit working (hard) copies of the submitted papers (see CPLR 5019[a]). Given the Administrative Order of the Chief Administrative Judge of the Courts Number 87/20 issued on May 1,

2020, which dispensed with the filing of any and all working copies of papers in any civil action or proceeding of this court, it would be patently unfair and unjust for this court to deny the motion of defendants to dismiss on procedural and hyper-technical grounds, which have been rendered anachronistic with the exigencies arising since the advent of the global COVID19 pandemic.

Discussion

It is well understood that a motion for summary judgment limits the Court's role to finding issues, as opposed to resolving them. Success on the motion thus requires the movant to provide the court with admissible evidence sufficient to demonstrate the absence of any triable issues of fact, establishing the movant's entitlement to judgment as a matter of law (Sillman v Twentieth Century-Fox Film Corp., 3 NY2d 395 [1957]; Winegrad v New York Univ. Med. Ctr., 64 NY2d 851 [1985]). Equally well established is that the party opposing summary judgment bears the burden of producing evidentiary proof in admissible form that is sufficient to establish the existence of material issues of fact requiring trial. Mere conclusions, expressions of hope, or unsubstantiated allegations are insufficient for this purpose, and if there is any doubt that triable issues of fact exist, summary judgment will not be granted (Zuckerman v City of New York, 49 NY2d 557 [1980]).

Plaintiff landlord's first cause of action for unjust enrichment "lies as a quasi-contract claim and contemplates an obligation imposed by equity to prevent injustice, in the absence of an actual agreement" (Georgia Malone & Co. v Reider, 19 NY3d 511 [2012] [internal quotation marks and citations omitted]). To prevail on this cause of action, plaintiff-landlord must show that defendants were enriched, at the plaintiff landlord's expense, and that it is "against equity and good conscience" to permit defendants to retain what the plaintiff landlord seeks to recover (id.; GFRE, Inc. v U.S. Bank, NA, 130 AD3d 569 [2d Dept 2015]).

Plaintiff's second cause of action, which seeks an award of use and occupancy, is derived from Real Property Law (RPL) § 220, which gives a landlord the right to recover reasonable compensation, grounded upon the theory of quantum meruit, for the use and occupancy of "real property, by any person, under an agreement, not made by deed" (RPL §220; Carlyle, LLC v Beekman Garage LLC, 133 AD3d 510 [1st Dept 2015]; Eighteen Assoc. LLC v Nanjim Leasing Corp., 257 AD2d 559 [2d Dept 1999]). To prevail on a cause of action for use and occupancy thus requires plaintiff landlord to establish (1) ownership or other superior right in the subject premises; (2) that defendants entered the premises with acquiescence of the landlord; (3) continuous use and occupancy by defendants after entry into the premises; (4)

proof or agreement as to the value of the reasonable use and occupancy; and (5) proof that plaintiff landlord demanded the payment and defendants refused to pay the sum demanded (New York State Teacher's Retirement Sys. v Huberty, 48 AD2d 741 [3d Dept 1975])).

Plaintiff's third cause of action seeks a declaration that the renewal lease is void ab initio "as the civil court improperly forced Plaintiff to issue a renewal lease without also granting plaintiff a money judgment for arrears due and owing for the period May 2015 through and including April 2017". As it would be improper for another coordinate trial judge to disturb, overrule or vacate the order issued by the first trial judge, so long as the first judge remains in office, where no appeal is taken from such order, the third cause of action in its entirety must be dismissed¹ (see Public Service Mut. Ins. Co. v McGrath, 56 AD3d 312 [1st Dept. 1977])).

As for the first and second causes of action, it is undisputed that the Tenant of Record occupied the subject

¹In Strand Hill Associates v Gassenbauer, 41 Misc3d 53 (App Term, 2nd, 11th, and 13th Judicial Districts, 2013), the appeals court held that "Because a successor in interest is not a tenant until he becomes a party to a lease or rental agreement. . . , and because tenant did not become a party to the lease until after the arrears sought had accrued, a nonpayment proceeding does not lie to recover these arrears. Thus, we affirm the order dismissing the petition without prejudice to landlord's commencement, if landlord be so advised, of a plenary action to recover the arrears."

apartment pursuant to a valid lease issued by plaintiff landlord. At her deposition, defendant Michelle Stephenson, daughter of the Tenant of Record, testified that she moved into the subject apartment in 1970 and never left. She also stated that by January 2015, she was living in the subject apartment with her daughter, defendant Jacelyn Stephenson, her son Jonathan, and two grandchildren, Michael and Peyton (NYSCEF Document Number 22, tr at 18-19).

Prior to January 2015, when the Tenant of Record cohabitated the subject apartment with her daughter and grandchildren, defendant Michelle Stephenson never paid the rent, which includes electric and cable, for the subject apartment. She agreed that none of her children, including defendant Jacelyn Stephenson, ever assisted with rent for the subject apartment prior to 2015 (id. at 21-22).

When Michelle Stephenson's mother, the Tenant of Record, suffered from health conditions in early 2015 requiring extensive hospitalization and rehabilitative services, defendant Michelle Stephenson admits to residing in the apartment during this time period, and that no rent payments were made for the subject apartment until the last four months of 2016 (id., tr at 22-32). Defendant Michelle Stephenson also admitted that at the time she signed the succession lease offered to her by plaintiff

landlord, there was outstanding rent due on the subject apartment under her mother's lease (id. at 43).

The record reflects that plaintiff landlord demanded payment of the unpaid amounts due under the Tenant of Record's lease during the various Civil Court proceedings and when demands failed, sought an award of use and occupancy. Plaintiff landlord's claim for use and occupancy was ultimately severed by the Civil Court, without prejudice, to the commencement of this plenary action (NYSCEF Document Number 25).

Having considered the pertinent evidence in the record, this court finds that, as a matter of law, there are no triable issues of fact as to defendant Michelle Stephenson's liability, and that summary judgment in favor of plaintiff landlord on both the first and second causes of action set forth in the complaint against such defendant is warranted (see Carlyle, LLC, supra, at 511-512).

It is undisputed that defendant Michelle Stephenson lived continuously in the subject apartment for 20 of the 24 months between April 2015 and April 2017, and claimed succession rights as of November 2015, which rights the landlord recognized by issuing a renewal succession lease, in her name only, in May 2017. Thus, the use and occupancy owed by defendant Michelle Stephenson to the landlord must be calculated based on the monthly amount due under the now expired lease and deducting the

four payments made in September, October, November, and December 2016 (NYSCEF Document Number 22) (see 217 E. 82nd St. Co. v Perko, 10 Misc3d 146[A], 2006 NY Slip Op 50157[U] [Appellate Term, 1st Dept 2006]; Eli Haddad Corp. v Redmond Studio, 102 AD2d 730, 731 [1st Dept. 1984]; Mushlam, Inc. v Nazor, 80 AD3d 471, 472[1st Dept 2011] ("the rent reserved under the lease, while not necessarily conclusive, is probative" of the reasonable value of the use and occupation of the premises); MMB Associates v Dayan, 169 AD2d 422 [1st Dept 1991]). This amount, which landlord is awarded against defendant Michele Stephenson only, is \$32,964.20.

Inasmuch as the award of use and occupancy is equitable in nature, an award of interest is discretionary pursuant to CPLR 5001 (CPLR 5001; Precision Found. v Ives, 4 AD3d 589 [3d Dept 2004]). Having considered the procedural history of this case and noting that plaintiff landlord's claim for use and occupancy was severed from their claims in the Civil Court action immediately preceding this action, interest is limited to accrue from the date of this decision.

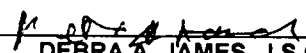
However, with respect to defendant Jacelyn Stephenson, landlord has not met its burden of demonstrating that such defendant continuously used and occupied the subject apartment, since her entrance with her mother, apparently upon her birth. The deposition testimony of defendant Jacelyn Stephenson that she

left the subject apartment, in August 2014, when she went away to college to earn a four-year undergraduate program degree, and thereafter remained and obtained employment out-of-state, is unrefuted. Such testimony is buttressed by the documentary evidence in the form of the Howard University, Office of Financial Services, Statement of Account addressed to her and dated February 3, 2016 (NYSCEF Document Number 37).

It is true that defendant Jacelyn Stephenson's admitted at her deposition that in defense of the November 2015 nonprimary residence hold-over proceeding, she pled defenses in the alternative in her Answer that the Tenant of Record remained a primary resident, or that defendant Jacelyn Stephenson had succession rights. The court notes that such succession rights defense was never adjudicated, or any succession renewal lease ever issued in her name or signed by her. Moreover, on September 6, 2017, the Civil Court judge in licensee holdover proceeding issued a money judgment for rent as against her mother, defendant Michelle Stephenson only.

This court disagrees with plaintiff that defendant Jacelyn Stephenson's succession rights defense to the nonprimary residence holdover proceeding in November 2015 is inconsistent with her position at bar. Rather, having left for college in August 2014, as of November 2015, defendant Jacelyn Stephenson clearly had a meritorious defense of succession rights, which at the current

time, she no longer asserts, having remained and ultimately moved out of state. Plaintiff has not come forward to prima facie evidence of defendant Jacelyn Stephenson's continuous use and occupancy. On the contrary, defendant Jacelyn Stephenson has come forward with evidence by her sworn, unrefuted deposition testimony that she did not continuously live in, but removed herself from the subject apartment, at the age of 18 years old, in August 2014, to attend college, and thereafter, though not continually, matriculated in college, returning to the subject apartment only intermittently (in part, to visit her ailing grandmother/Tenant of Record), and ultimately obtaining employment out of state, where she has resided and currently resides (see Hughes v Lenox Hill Hosp., 226 AD2d 4 [1st Dept. 1996]).

7/13/2020 DATE	 DEBRA A. JAMES, J.S.C.			
CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
APPLICATION:	<input type="checkbox"/>	GRANTED	<input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	<input type="checkbox"/> OTHER
	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	<input type="checkbox"/> REFERENCE
			<input checked="" type="checkbox"/>	<input type="checkbox"/>
			SUBMIT ORDER	
			FIDUCIARY APPOINTMENT	