

244 E. 86th St. LLC v Reiff

2020 NY Slip Op 33385(U)

October 16, 2020

Supreme Court, New York County

Docket Number: 157575/2019

Judge: Laurence L. Love

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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. LAURENCE L. LOVE PART IAS MOTION 63M

Justice

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244 EAST 86TH STREET LLC,
Plaintiff,

- v -

RANDY REIFF,
Defendant.

-----X

INDEX NO. 157575/2019
MOTION DATE 09/17/2020
MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49 were read on this motion to/for REARGUMENT/RECONSIDERATION.

Upon the foregoing documents, the motion is decided as follows:

Defendant's motion seeks leave to reargue pursuant to CPLR R. 2221(d) and upon rearguement seeks an Order denying plaintiff's cross-motion for summary judgment and granting proposed intervenor's motion for leave to intervene and amend the caption.

Plaintiff commenced an action on or about August 2, 2019 seeking a money judgment for unpaid rent of \$39,314.67. Defendant-guarantor sought leave to add tenant, Candace Jarkow ("Jarkow") to the caption as a party defendant. Plaintiff cross-moved for summary judgment on the unpaid rent. On February 26, 2020 the Court granted plaintiff's cross-motion for summary judgment and denied defendant's motion in its entirety. Defendant now seeks leave to reargue, the February 26, 2020 Order.

Pursuant to CPLR R 2221(d)(2),

A motion for leave to reargue: shall be based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion, but shall not include any matters of fact not offered on the prior motion.

Defendant argues that the Court overlooked or misapprehended that 1) “New York law holds that a guarantor cannot be liable under a guaranty if the principal is no longer liable for the debt, there is a clear difference between finding a debt is owed under a note and mortgage as compared to a contractual obligation of a lease” 2) “Reiff did not waive any rights under the guaranty to assert defenses to the payment of rent if the underlying lease is unenforceable” and 3) Jarkow must be granted leave to intervene as a defendant. “Jarkow has a real interest in this litigation as she was the tenant who resided at the property and was not legally required to pay rent because plaintiff breached the warranty of habitability and caused Jarkow to be constructively evicted and vacate the property on February 7, 2019.”

On June 16, 2018, plaintiff-owner executed a lease with Jarkow for a property described as 244 East 86th Street, Apartment 21, New York, New York 10028. The lease commenced on July 1, 2018 and terminated on July 31, 2019. Jarkow was required to pay \$6,400.00 per month and tender \$7,900.00 upon lease signing. Defendant Randy Reiff guaranteed the lease.

The underlying order was issued following oral argument on February 26, 2020 before prior Judge assigned to this part. The court cited *Chase v. Tri-Line Contracting Corp.*, 2011 Slip Op 33879(U) (Sup. Ct. N.Y. Cnty. 2011) and *City of N.Y. v. Clarose Cinema Corp.*, 256 A.D.2d 69, 71, 681 N.Y.S.2d 251 (1st Dept. 1998). However, *Chase* and *Clarose* are distinguishable from this action as they involve a guarantee on a mortgage and not a residential lease. Neither involves a guaranty of a lease and the liability of the guarantor if the landlord breaches the warranty of habitability resulting in the constructive eviction of a tenant. While a mortgage and note have a clear debt due and owing, calculated from the terms from the face of the note and mortgage itself, a tenant’s only obligation is to pay monthly rent to the landlord pursuant to a written lease provided the landlord complies with their obligations under the lease. A guarantor only agrees to pay what

the tenant owes. If the tenant's obligation to pay rent is suspended because of a breach of warranty of habitability and constructive eviction, no rent is due, and a guarantor cannot be liable for the payment.

New York case law contains an abundance of precedence that a tenant's obligation to pay rent under the terms of a lease is terminated once the subject property becomes uninhabitable. The obligation of the tenant to pay rent is dependent on whether the landlord maintains the property in a habitable condition (see *Park West Mgmt. Corp. v. Mitchell*, 47 N.Y.2d 316, 327 [1979]; *Shackman v. 400 E. 85th St. Realty Corp.* 64 Misc.3d 1218(1) [Sup. Ct. N.Y. Cnty. June 26, 2019] (Under the warranty of habitability, the obligation of a tenant to pay rent (or maintenance) is dependent upon a landlord's satisfactory maintenance of the premises in a habitable condition); *12-14 East 64th Owners Corp. v. Hixon*, 130 A.D.3d 425 [1st Dept. 2015] (Defendant tenant was not liable to pay rent because defendant tenant established the landlord failed to maintain the property in a habitable condition)) (see). Further, Real Property Law 235-b places an unqualified obligation on the landlord to keep the premises habitable.

New York case law also relieves a tenant's obligation to pay the amount of rent due when the tenant has been actually or constructively evicted. Tenant was no longer obligated to pay rent because tenant was constructively evicted due to repeated flooding of the subject premises substantially and materially depriving the tenant of the beneficial use and enjoyment of the premises, and the plaintiff failed to take any steps to correct the condition (see *Joylaine Realty Co., LLC v. Samuel*, 100 A.D.3d 706, 706-707 [2d Dept 2012]). Tenant was not required to pay rent because the tenant lost heat and water, which substantially and materially deprived the tenant of the beneficial use and enjoyment of the premises resulting in constructive eviction (see *Johnson v. Cabrera*, 246 A.D.2d 578, 578-579 [2d Dept 1998]). It is well established that a party who has

been constructively evicted is relieved of its obligation to pay rent (see *Johnson v. Cabrera*, 246 A.D.2d 578 [2d Dept 1998]).

Defendant Randy Reiff executed a Guarantor Letter on June 19, 2019 an absolute and unconditional guaranty of the lease to and in favor of plaintiff dated June 19, 2019 (see verified complaint par. 5)

The guarantor agreement places responsibilities on the parties (see NYSCEF Doc. No. 9).

GUARANTY the undersigned Guarantor guarantees to Owner the strict performance of and observance by Tenant of all the agreements, provisions and rules in the attached Lease. Guarantor agrees to be equally liable with Tenant so the Owner may sue guarantor directly without first suing Tenant. The Guarantor further agrees that his guaranty shall remain in full effect even if the Lease is renewed, changed or extended in any way and even if Owner has to make a claim against Guarantor.

The Court of Appeals has held when a creditor fails to perform its obligations under a contract or lease, a guarantor cannot be liable if the principal is no longer bound to perform.

There can be no doubt that a guarantor, when sued alone by the creditor, can successfully resist by showing that the creditor, on his part, totally failed to perform his obligations to the principal...because the guarantor is not liable unless the principal is bound (see *Walcutt v. Clevite Corp.*, 13 N.Y.2d 48, 56 [1963]).

The First Department has held, a landlord who itself breached a lease that would relieve a tenant from payment of rent may not recover against a guarantor (see *ZCWK Associated L.P. v. Spedaro*, 233 A.D.2d 126 [1st Dept. 1996]).

Plaintiff states, “Jarkow’s motion to reargue should be denied since ... the law is clear that a tenant is barred from intervening in actions against a guarantor (see *Affin. Opp.* p.2).

However, it is clear from the documents and arguments presented that in the case at bar a significant question of fact exists between tenant Jarkow and plaintiff landlord as to which party breached the underlying lease agreement in question. Jarkow was the tenant at the premises and

hence has a real and substantial interest in this action. No party can adequately represent Jarkow's interests in this litigation.

ORDERED that defendant's motion seeking leave to reargue is GRANTED and upon reargument it is hereby

ORDERED that defendant Jarkow's motion to intervene is GRANTED, and the caption is to be amended.

ORDERED that the plaintiff's motion for summary judgment is DENIED in its entirety; and it is further

ORDERED that the action shall bear the following caption:

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244 EAST 86TH STREET LLC,

Plaintiff,

- v -

RANDY REIFF,

Defendant.

CANDACE JARKOW

Intervenor-Defendant

-----X

And it is further

ORDERED that counsel for the moving party shall serve a copy of this order with notice of entry upon the County Clerk (60 Centre Street, Room 141B) and the Clerk of the General Clerk's Office (60 Centre Street, Room 119), who are directed to mark the court's records to reflect the parties being added pursuant hereto; and it is further

ORDERED that such service upon the County Clerk and the Clerk of the General Clerk’s Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the “E-Filing” page on the court’s website at the address (ww.nycourts.gov/supctmanh)].

10/16/2020
DATE


LAURENCE L. LOVE, J.S.C.

CHECK ONE:

<input type="checkbox"/>	CASE DISPOSED	
<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/> DENIED

<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/> OTHER

APPLICATION:

<input type="checkbox"/>	SETTLE ORDER
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN

<input type="checkbox"/>	SUBMIT ORDER
<input type="checkbox"/>	FIDUCIARY APPOINTMENT
<input type="checkbox"/>	REFERENCE

CHECK IF APPROPRIATE: