

Mocal Enters. Inc. v Wall
2022 NY Slip Op 33012(U)
September 7, 2022
Supreme Court, New York County
Docket Number: Index No. 152624/2021
Judge: Lori S. Sattler
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 02TR-----X
MOCAL ENTERPRISES INC.,INDEX NO. 152624/2021

Plaintiff,

MOTION DATE 12/23/2021

- v -

MOTION SEQ. NO. 003COURTNEY CHANNING WALL, AGNIESZKA LINELL,
INDUSTRY MONARCH INTERNATIONALE, INC., GILDED
CAPITAL GROUP LLC, ALISTER INCORPORATED

Defendant.

**DECISION + ORDER ON
MOTION**-----X
HON. LORI S. SATTLER:

The following e-filed documents, listed by NYSCEF document number (Motion 003) 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 79, 80, 81 were read on this motion to/for SUMMARY JUDGMENT(AFTER JOINDER.

In this action seeking to eject Defendants from a residential rental unit owned by Plaintiff on the grounds that they are holding over beyond their lease term and seeking damages for Defendants' use and occupation and alleged nuisance, Plaintiff moves for partial summary judgment on its first cause of action for ejectment and seeks a final judgment of possession and the issuance and execution of an order of ejectment. Defendants oppose the motion.

Plaintiff owns a residential rental building located at 1182 Broadway in Manhattan. Neither the building nor the rental unit at issue in this action is subject to any rent stabilization or rent control laws. On January 3, 2019, Defendants Courtney Channing Wall and Agnieszka Linell signed an agreement ("Lease") to lease Apartment #7B ("Apartment") in Plaintiff's building. The Lease provided for a term of approximately one year, from January 15, 2019 to January 31, 2020 and a monthly rent of \$6,300. On December 18, 2019, Plaintiff notified Defendants that it would not be renewing the Lease, and that Defendants were required to vacate the Apartment on or before its expiration on January 31, 2020. It is undisputed that Defendants

152624/2021 MOCAL ENTERPRISES INC. vs. WALL, COURTNEY CHANNING
Motion No. 003

Page 1 of 6

continue to occupy the Apartment, failed to pay the full rent due in January 2020, and have not paid anything toward their continuing use and occupation of the Apartment.

Plaintiff commenced this action on March 16, 2021 by filing a Summons and Complaint against Defendants Wall and Linell seeking damages for breach of contract, quantum meruit, use and occupation pursuant to Real Property Law § 220, and private nuisance; a private injunction restraining Defendants from engaging in the alleged unlawful nuisance behavior; and for fees, costs, and disbursements. Contemporaneously, Plaintiff filed an Order to Show Cause seeking a preliminary injunction restraining Defendants from “causing excessive noise to emanate from” the Apartment and/or common areas and from harassing or “attempting to intimidate” Plaintiff, its agents, and/or building staff, residents, and occupants. The annexed affidavit of the building manager states Plaintiff received numerous complaints of domestic disputes, verbal altercations, loud music, and partying late into the night, along with reports that Defendants were watching people through the Apartment’s peephole and threatening residents who complained about Defendants’ behavior (NYSCEF Doc No. 8, 3-5). Plaintiff claimed Defendants caused multiple tenants in the adjacent apartment to move out before the end of their leases (*id.*). Plaintiff’s Order to Show Cause also sought an order directing Defendants to pay unpaid rent from January 2020 and use and occupation through March 2021, which at the time totaled \$93,350, and going forward. Defendants did not answer the Complaint or respond to the motion.

On April 5, 2021, the Court granted Plaintiff’s motion in its entirety. In addition to being ordered to adhere to the preliminary injunction, Defendants were directed to pay \$93,350 and \$12,600 in use and occupation going forward for each month they remained in the Apartment (NYSCEF Doc No. 21 [Jaffe, J.]). Upon Plaintiff’s subsequent motion, also submitted on default, on August 23, 2021 the Court directed the entry of a money judgment in the sum of

\$118,500 plus statutory interest from May 10, 2021 (NYSCEF Doc No. 38 [Jaffe, J.]). It is undisputed that Defendants have failed to make any payments toward this obligation.

Plaintiff filed an Amended Complaint on October 18, 2021. The Amended Complaint added three defendants, Industry Monarch Internationale, LLC, of which Wall is allegedly the founder, CEO, and Operating President; Gilded Capital Group LLC, of which Linell is allegedly the principal, founder and sole owner; and Alister Incorporated, of which Linell is allegedly the founder and by whom Wall is allegedly employed (Amended Complaint, ¶ 3-5). The Amended Complaint also added causes of action for a final judgment of possession and for fraud in the inducement.

Defendants appeared and answered the Amended Complaint. In the Answer, Defendants admit that Wall and Linell continue to reside in the Apartment (Answer, ¶ 3). They further interpose six affirmative defenses. Plaintiff now moves for summary judgment on its first cause of action seeking ejectment and a final judgment of possession, which Defendants oppose.

A party seeking summary judgment pursuant to CPLR 3212(b) “must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact” (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986], citing *Winegrad v New York Univ. Med. Center*, 64 NY2d 851, 853 [1985], *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980], *Sillman v Twentieth Century-Fox Film Corp.*, 3 NY2d 395, 404 [1957]). If such showing is made, 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” (*Alvarez*, 68 NY2d at 324; *Zuckerman*, 49 NY2d, at 562).

In order to maintain a cause of action to recover possession of real property, a plaintiff must be the owner of the tangible real property with a present or immediate right to possession thereof, from which the plaintiff has been unlawfully dispossessed by the defendant, and of which the defendant is in present possession (*Merkos L'Inyonei Chinuch, Inc. v Sharf*, 59 AD3d 408, 410 [2d Dept 2009]; *Jannace v Nelson, L.P.*, 256 AD2d 385, 385-86 [2d Dept 1998]; see also *Donnelly v Neumann*, 170 AD3d 597, 598 [1st Dept 2019]). Plaintiff presents documentary proof establishing that it is the owner of the building, that Defendants' Lease has expired, and that Plaintiff provided notice to Defendants that the Lease was not being renewed. It is undisputed that Defendants remain in possession of the Apartment (Amended Complaint, ¶ 2; Answer, ¶ 3). Plaintiff has therefore demonstrated a prima facie entitlement to summary judgment on its first cause of action for ejectment.

In opposition, Defendants contend summary judgment cannot be granted because Wall signed a Tenant's Declaration of Hardship During the Covid-19 Pandemic form ("Hardship Declaration") on February 24, 2021. In its moving papers, Plaintiff contended that no Hardship Declaration was filed in this action, only in an earlier proceeding in the New York City Housing Court which was discontinued. Plaintiff further argued that in any event, the Covid-19 Emergency Eviction and Foreclosure Prevention Act of 2020 created an exception to the stay of eviction proceedings when certain nuisance allegations were also made. These questions of fact are irrelevant to the Court's determination as the State's stay on eviction proceedings expired on January 15, 2022 (L 2021, ch 417, § 11; see also *Cenpark Realty, LLC v Gurin*, 204 AD3d 436, 437 [1st Dept 2022]).

Defendants further argue that issues of fact exist with respect to Plaintiff's nuisance allegations, however those are immaterial to the instant motion which only seeks summary judgment on the ejectment cause of action.

Finally, Defendants' argument that the motion must be denied because it refers to the original Complaint rather than the Amended Complaint is meritless. The Order to Show Cause refers to the complaint dated October 18, 2021, the date the Amended Complaint was filed; the Amended Complaint is annexed as an exhibit; and the papers clearly refer to the Amended Complaint throughout. The fact that the Order to Show Cause refers to the pleading as the "Verified Complaint" dated October 18, 2021 rather than the "Amended Complaint" dated October 18, 2021 is not a basis for denial of the motion.

Accordingly, for the reasons set forth herein, it is hereby

ORDERED that the motion of Plaintiff for summary judgment on the first cause of action for ejectment is granted; and it is further

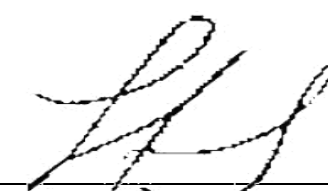
ADJUDGED that Plaintiff is entitled to possession of 1182 Broadway #7B, New York, New York as against Defendants Courtney Channing Wall and Agnieszka Linell, and the Sheriff of the City of New York, County of New York, upon receipt of a certified copy of this Order and Judgment and payment of proper fees, is directed to place Plaintiff in possession accordingly; and it is further

ADJUDGED that immediately upon entry of this Order and Judgment, Plaintiff may exercise all acts of ownership and possession of 1182 Broadway #7B, New York, New York, including entry thereto, as against Defendants Courtney Channing Wall and Agnieszka Linell; and it is further

ORDERED that the balance of the above-entitled action relating to recovery of damages is severed and continued; and it is further

ORDERED that counsel are directed to appear for a Preliminary Conference on October 25, 2022, at 12:00PM.

This constitutes the Decision and Order of the Court.

<u>9/7/2022</u>			
DATE		LORI S. SATTLER, J.S.C.	
CHECK ONE:	☐ CASE DISPOSED	☒ NON-FINAL DISPOSITION	
	☒ GRANTED ☐ DENIED	☐ GRANTED IN PART	☐ OTHER
APPLICATION:	☐ SETTLE ORDER	☐ SUBMIT ORDER	
CHECK IF APPROPRIATE:	☐ INCLUDES TRANSFER/REASSIGN	☐ FIDUCIARY APPOINTMENT	☐ REFERENCE