

Soho Lofts NYC, LLC v Ferrer
2022 NY Slip Op 33505(U)
October 11, 2022
Supreme Court, New York County
Docket Number: Index No. 652305/2020
Judge: Dakota D. Ramseur
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. DAKOTA D. RAMSEUR
Justice

PART 34M

SOHO LOFTS NYC, LLC,
Plaintiff,

INDEX NO. 652305/2020

MOTION DATE 06/27/2022

MOTION SEQ. NO. 007

- v -

MICHELLE FERRER,
Defendant.

DECISION + ORDER ON MOTION

MICHELLE FERRER
Plaintiff,

Third-Party
Index No. 595599/2020

-against-

APT212, INC., HOON ON CO., INC.
Defendants.

The following e-filed documents, listed by NYSCEF document number (Motion 007) 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167

were read on this motion to/for JUDGMENT - DEFAULT

In this action for breach of a residential lease in the building located at 50 Delancey Street, Apartment 204, New York, New York (premises), defendant/third-party plaintiff, Michelle Ferrer (Ferrer), now moves pursuant to CPLR 3215 for a default judgment against third-party defendant, Apt212, Inc. (Apt212), for harassment pursuant to NYC Administrative Code § 27-2004(48), illegal eviction under NYC Administrative Code § 26-521 and the Real Property Actions and Proceedings Law (RPAPL) §§ 768 and 853, and for attorney's fees pursuant to RPAPL § 853. The motion is unopposed. For the following reasons, the motion is granted.

CPLR 3215(f) requires a movant seeking default judgment to submit the following proofs: (1) proof of service of the summons and complaint or summons with notice; (2) an affidavit of the facts constituting the claim; and (3) an affidavit showing the default in answering or appearing.

Under the Housing and Maintenance Code, harassment is defined as, "any act or omission by or on behalf of an owner that (i) causes or is intended to cause any person lawfully

entitled to occupancy of a dwelling unit to vacate such dwelling unit or to surrender or waive any rights in relation to such occupancy, and (ii) includes one or more” of an enumerated list of acts or omissions (NYC Administrative Code § 27-2004[48]). Those acts include using force against, making threats, misstating the regulatory status of the apartment, interrupting essential services, removing possessions from an apartment, and impeding access to an apartment (*id.*).

RPAPL § 768 provides that “[i]t shall be unlawful for any person to evict or attempt to evict an occupant of a dwelling unit who has lawfully occupied the dwelling unit for thirty consecutive days or longer or who has entered into a lease with respect to such dwelling[.]”

Under RPAPL § 853, “[i]t shall be unlawful for any person to evict or attempt to evict an occupant of a dwelling unit who has lawfully occupied the dwelling unit for thirty consecutive days or longer or who has entered into a lease with respect to such dwelling[.]” RPAPL § 853 further allows for the recovery of treble damages for an illegal eviction.

Here, Ferrer demonstrates her entitlement to a default judgment pursuant to CPLR 3215. Specifically, Ferrer demonstrates that she served the summons and third-party compliant upon the defaulting defendant. Ferrer also demonstrates Apt212’s default, as pursuant to the June 14, 2022 order, the Court imposed sanctions in the form of striking Apt212’s answer and giving Ferrer 60 days to move for a default judgment (NYSCEF doc. no. 133). As discussed below, Ferrer also demonstrates the meritorious nature of her claims.

According to Ferrer’s affidavit of merit, Ferrer entered into a lease with Apt212 to rent the premises for a period running from November 29, 2019 through December 28, 2019 at a monthly rent of \$1,690.00. According to Ferrer, the apartment consisted of four separate rooms, each of which is or was individually rented by Soho Lofts NYC LLC (Soho), the counterclaim-defendant, and/or Apt212 (collectively, the brokers).

Ferrer states that on November 29, 2019, she paid Apt212 the first month’s rent, a security deposit, and a broker’s fee in the amount of \$2,575.00. According to Ferrer, there were already people living in other rooms in the apartment at the time she moved in. Ferrer states that the other occupants were not roommates, but rather each had separate lease agreements with the brokers. Ferrer further states that the main entrance door of the apartment was locked with a combination code, allowing the brokers to both access the apartment and change the code at any time.

Ferrer states that after she moved in, she was harassed by the principal of Apt212 in an effort to illegally evict plaintiff from the premises. For instance, Ferrer was without an operable bathroom, and that although there were two bathrooms in the premises, both had plumbing issues and neither toilet would flush. According to Ferrer, she was offered a bathroom in another unit, but “[g]iven the freezing temperatures at the time and my fear of COVID-19, I often had no alternative but to use the bathroom in a cup” (NYSCEF doc. no. 15, aff at ¶ 15). Apt212 was aware of the plumbing issues, which Ferrer states existed at the time she moved in, but Apt212 failed to make any repairs.

Beginning in February or March 2020, Ferrer states that she began withholding rent in part due to the conditions in the apartment. As a result, Ferrer states, the brokers began a campaign of harassment. On April 25, 2020, Ferrer states that she received a phone call from the brokers' agent, Yoav Blat (Blat), stating that Ferrer needed to pack all of her belongings and vacate the apartment that day because the brokers were going to fix the bathroom and would be shutting off the water throughout the apartment for several weeks. Ferrer called the superintendent and building manager, and they said that they were not shutting anything off.

Then, on April 27, 2020, the brokers' agents, including Blat, entered the apartment unannounced and started packing-up the furniture and items in the common spaces of the apartment. The apartment came pre-furnished, which was promised in the lease agreement. However, they proceeded to remove items such as the couch, television, rugs, and all personal belongings in the bathroom and kitchen.

According to plaintiff, on April 29, 2020, the brokers' agents, including Blat, returned to pack the rest of the items in the common areas of the apartment. Plaintiff states that: "As a result, I called the police. Just as the police were climbing the stairs to the apartment, Blat pushed me, causing me to hit my side on the wall, which was about three to four feet behind me. This caused severe pain to my elbow and shoulder" (*id.* at ¶ 21).

In May 2020, Ferrer filed an emergency HP proceeding, Index No. HP-555/2020-NY, against Blat. Ferrer states that harassment by the brokers continued after the filing of HP Proceeding. For instance, on May 7, 2020, prior to the first hearing in the HP Proceeding, Blat and three of the brokers' agents came into the apartment unannounced and removed the refrigerator. According to plaintiff, "[w]hen I asked [] Blat what exactly he was doing, he told me that he was taking the refrigerator because it was 'his and he had the right to take it.' I was then left with no means of storing food, and of course, I had lost the food that was left in the fridge" (*id.* at ¶ 22).

Ferrer states that on May 8, 2020, she left the apartment and when she returned, the brokers' agents changed the combination to the main entrance door of the apartment and did not provide plaintiff with the new code, effectively locking Ferrer out illegally. The brokers later provided Ferrer with the new entrance door code. On May 11, 2020, at or around 9:45 a.m., Ferrer states that she was awoken by a loud banging on her bedroom door. The loud banging was then proceeded by an agent of the brokers angrily yelling, "Hello, hello." According to Ferrer, the court issued an Order prohibiting Blat from harassing her on May 14, 2020.

On June 23, 2020, Ferrer states that she left the apartment to visit family in Florida. Ferrer states that she learned that the brokers had moved several men into the apartment from the local Bowery Mission shelter. Because the shared or common areas of the apartment were small, renting to many residents made social distancing in the shared areas impossible. Ferrer states that her belongings had been removed and taken from the premises. Ferrer states that on August 26, 2020, she received a call from her boyfriend that her bedroom door had been forced open and her remaining belongings had been removed from the premises. Ferrer states that in October 2021 she formally surrendered her tenancy at the apartment to Hoon on Co, Inc., the third-party defendant who, upon information and belief, owns the building.

In light of the above, Ferrer submits sufficient proof to demonstrate the merit of her claims and is thus entitled to a default judgment pursuant to CPLR 3215.

Accordingly, it is hereby

ORDERED that defendant/third-party plaintiff Michelle Ferrer's motion pursuant to CPLR 3215 for a default judgment against third-party defendant, Apt212, Inc. (Apt212), for harassment pursuant to NYC Administrative Code § 27-2004(48), illegal eviction under NYC Administrative Code § 26-521 and RPAPL §§ 768 and 853, and for attorney's fees pursuant to RPAPL § 853, is granted. Plaintiff shall file the note of issue within twenty (20) days of entry, and thereafter this matter shall be set down for an inquest as to damages, costs, and disbursements; and it is further; and it is further

ORDERED that defendant/third-party plaintiff Michelle Ferrer shall serve a copy of this order upon all parties, with notice of entry, within ten (10) days of entry.

This constitutes the decision and order of the Court.

10/11/2022

DATE

DAKOTA D. RAMSEUR, 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