

Columbus Manor LLC v Weisselberg

2022 NY Slip Op 33890(U)

November 17, 2022

Supreme Court, New York County

Docket Number: Index No. 154828/2021

Judge: David B. Cohen

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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. DAVID B. COHEN

PART 58

Justice

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INDEX NO. 154828/2021

COLUMBUS MANOR LLC,

Plaintiff,

MOTION SEQ. NO. 002

- v -

JENNIFER WEISSELBERG,

**DECISION, ORDER AND
JUDGMENT**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 38, 39

were read on this motion to/for

REARGUMENT/RECONSIDERATION.

In this holdover/ejectment action, plaintiff/landlord Columbus Manor LLC moves, pursuant to CPLR 2221(d), for an order granting reargument of its motion for a default judgment, pursuant to CPLR 3215, as against defendant/tenant Jennifer Weisselberg. After consideration of plaintiff's contentions, as well as the relevant statutes and case law, the motion is decided as follows.

FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff is the owner of a residential building located at 70 West 93rd Street in Manhattan ("the building" or "the premises"). Doc. 1 at par. 3; Doc. 10. Pursuant to a lease dated February 5, 2020, defendant took possession of apartment 3G at the building ("the apartment") at a monthly rent of \$6,050.00. Doc. 1 at par. 4; Doc. 11. Although the lease expired on April 30, 2021, defendant has remained in possession of the apartment. Doc. 1 at pars. 5, 14; Doc. 11.

On May 18, 2021, plaintiff commenced the captioned action against defendant seeking an order of ejectment (first cause of action), payment of monthly use and occupancy for the

apartment at a rate of \$6,050.00 from May 1, 2021 until the present (second cause of action), and attorneys' fees in an amount of at least \$5,000.00 (third cause of action). Doc. 1 at pars. 9-20.

Plaintiff thereafter served defendant by substituted service on May 25, 2021. Doc. 2. The affidavit of service, filed June 1, 2021, reflects that defendant was served with the summons and verified complaint, notice of electronic filing, and a declaration of hardship. Doc. 2.

Pursuant to stipulation filed June 11, 2021, plaintiff agreed to extend defendant's time to answer or move against the complaint until July 8, 2021. Doc. 3. In the stipulation, defendant's counsel specifically acknowledged that defendant had been served with the summons and complaint and that defendant waived any defenses related to personal jurisdiction and improper service or venue. Doc. 3. Despite obtaining an extension of time, defendant has failed to answer or otherwise move against the complaint.

On July 29, 2021, plaintiff moved for a default judgment against defendant. Docs. 5-15. The motion sought an immediate judgment of ejectment/possession and issuance of a writ of eviction, as well as the severance of plaintiff's claims for use and occupancy and attorneys' fees so that they could be set down for an inquest. Doc. 5. In support of the motion, plaintiff submitted the affidavit of Arianit Jakupaj, the building's property manager, who attested, inter alia, that plaintiff did not receive a hardship declaration from defendant. Doc. 7. The motion was unopposed.

In an order entered October 27, 2021, this Court held, inter alia, that:

plaintiff has established defendant's consent to jurisdiction, ownership, a holding over after the expiration of the lease, and default in responding to this action. However, plaintiff has failed to demonstrate that it served the defendant with the "Notice to Tenant" containing the form "Tenant's Declaration of Hardship During the COVID-19 Pandemic" ("Hardship Notice") and the required affidavit as required under the current eviction moratorium in effect (See L. 2021, c. 417, Part C, Subpart A, sec. 1[4], 2, 3, 6[c]). Thus, plaintiff cannot be awarded a judgment of ejectment as sought in its first cause of action.

Accordingly, it is hereby:

ORDERED that plaintiff's motion for a judgment of ejectment is denied without prejudice to renew upon (1) a proper showing that the Hardship Notice was previously served upon the defendant and that no Hardship Declaration was received, or (2) upon service of the Hardship Notice made within thirty (30) days of the date of this order by regular and certified mail to defendant's last known address, and the elapsing of twenty (20) days after the mailings are made and no Hardship Declaration having been received from the defendant.

Doc. 17.

Plaintiff thereafter moved to reargue its default motion on the ground that this Court overlooked the fact that the affidavit of service reflected that defendant was served with a hardship declaration and that the affidavit of Jakupaj established that defendant did not return the same to plaintiff. Doc. 19 at par. 19. The motion is unopposed.

LEGAL CONCLUSIONS

A motion to reargue "shall be based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion..." (CPLR 2221 [d] [2]). Here, this Court overlooked the fact that the affidavit of service reflected that defendant was served with the hardship declaration. Further, the affidavit of Jakupaj established that plaintiff never received a hardship declaration from defendant.

Accordingly, it is hereby:

ORDERED that the motion to reargue by plaintiff Columbus Manor LLC is granted pursuant to CPLR 2221(d); and it is further

ORDERED that, upon reargument, the motion by plaintiff Columbus Manor LLC seeking a default judgment against defendant Jennifer Weisselberg pursuant to CPLR 3215 is granted and, therefore, plaintiff is granted judgment on the first cause of action asserted in the complaint (ejectment/possession); and it is further

ADJUDGED that plaintiff is entitled to possession of 70 West 93rd Street, apartment 3G, New York, New York 10025, as against defendant Jennifer Weisselberg, 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 70 West 93rd Street, apartment 3G, New York, New York 10025, including entry thereto, as against defendant Jennifer Weisselberg; and it is further

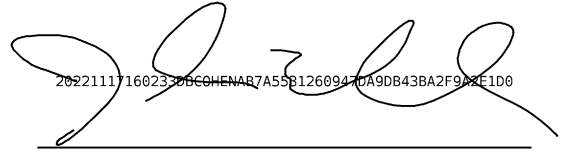
ORDERED that the issue of the quantum of money damages, including use and occupancy beginning May 1, 2021 until the present, at the monthly rate of \$6,050.00, plus interest thereon from that date (second cause of action), and plaintiff's reasonable attorneys' fees incurred in this action (third cause of action), are severed and shall be determined by a Judicial Hearing Officer ("JHO") or Special Referee; and it is further

ORDERED that a JHO or Special Referee shall be designated to determine the amount of plaintiff's damages, as set forth herein, which are hereby submitted to the JHO/Special Referee for such purpose; and it is further

ORDERED that the powers of the JHO/Special Referee shall not be limited beyond the limitations set forth in the CPLR; and it is further

ORDERED that this matter is hereby referred to the Special Referee Clerk (Room 119, 646-386-3028 or spref@nycourts.gov) for placement at the earliest possible date upon the calendar of the Special Referees Part (Part SRP), which, in accordance with the Rules of that Part

(which are posted on the website of this court at www.nycourts.gov/supctmanh at the "References" link), shall assign this matter at the initial appearance to an available JHO/Special Referee to determine as specified above.



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11/17/2022

DATE

DAVID B. COHEN, 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