

Dom Ben Realty Corp. v Beato
2022 NY Slip Op 33956(U)
November 21, 2022
Supreme Court, Kings County
Docket Number: Index No. 521828/2020
Judge: Ingrid Joseph
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At IAS Part 83 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse located at 360 Adams Street, Brooklyn, New York on the 21st day of November 2022.

P R E S E N T: HON. JUSTICE INGRID JOSEPH, J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

-----X
DOM BEN REALTY CORPORATION,

Index No.: 521828/2020

Plaintiff,

-against-

ULISES BEATO,

Defendant,

GERARD BARON, "JOHN DOE" AND
"JANE DOE"

Defendants, Undertenants

-----X

The following e-filed papers considered herein:
Notice of Motion/Affidavit/Affirmations/Exhibits _____
Opposing Affidavit/Affirmation _____
Reply _____

Papers Numbered
8 - 10
14 - 21
23 - 24

In this matter, defendant, Ulises Beato ("defendant"), moves by Notice of Motion (Motion Sequence 1) for an order staying the instant action pursuant to the COVID -19 Emergency Eviction and Foreclosure Prevention Act of 2020 ("CEEPPA"), until May 1, 2021, or, alternatively, an order dismissing the matter pursuant to CPLR § 3211 (a)(7) for failure to state a cause of action.

Motion #1

Plaintiff, Dom Ben Realty Corp. (“plaintiff”) commenced this matter against defendant-tenant, Ulises Beato, and defendant-undertenants, Gerard Baron, John Doe and Jane Doe, by the filing of a Summons with Verified Complaint on November 5, 2020, seeking a writ of ejectment, declaratory relief, and a money judgment, inclusive of attorneys fees, for use and occupancy of the premises known as 135 Plymouth Street, Brooklyn, New York.

Defendant requests an order staying the instant matter pursuant to CEEFPA. Alternatively, or, after the stay expires, defendant seeks dismissal of the instant matter on the ground that plaintiff failed to serve the requisite predicate notice upon defendant. Defendant contends that he is entitled to a six-month notice of termination, rather than a thirty-day notice of termination, based upon his status as a rent-stabilized tenant. Defendant asserts that such status qualifies as an indefinite tenancy, which requires a six-month notice to quit before a tenant can be removed. Defendant contends that the same notice requirement applies to an ejectment action. Additionally, defendant contends that the predicate notice (Notice of Termination) utilized by plaintiff before initiating the instant matter is defective, since it fails to clearly set forth the grounds for eviction, or clearly reference one of the enumerated grounds for termination of his tenancy under the Rent Stabilization Code. Defendant maintains that these deficiencies warrant dismissal.

Plaintiff argues that it correctly served upon the defendant a thirty-day notice of termination instead of a sixty-day notice to quit. Plaintiff asserts that a thirty-day notice is all that is required under Section 2524.4(c) of the Rent Stabilization Code (“RSC”) when the housing accommodation is not occupied by the tenant. Plaintiff also contends that the defendant is not entitled to a six-month notice to quit, because the defendant is not a month-to-month tenant who stayed past the end of a lease but rather, the defendant is a statutory tenant under Article 7-C of

the Loft Law. Plaintiff explains that it filed a registration application with the New York City Loft Board for purposes of registering the building as an interim multiple dwelling pursuant to Section 281(6) of the Multiple Dwelling Law (“Loft Law”). Plaintiff adds that such registration includes defendant as the protected occupant of his unit, which has the dual effect of protecting the defendant as a “statutory tenant” under the Loft Law, for whom only a thirty-day notice of termination is required.

Further, plaintiff maintains that the defendant illegally sublet his apartment to co-defendant, Gerard Brown, without first obtaining permission from plaintiff. Plaintiff alleges that the defendant illegally profited by charging more rent, through the sublet arrangement, than the amount the defendant is obligated to pay on a monthly basis. Plaintiff contends that the defendant also divided his apartment unit into two separate and distinct spaces, each having its own bathroom, kitchen and entrance. Plaintiff argues that such information is specifically referenced in the Notice of Termination that was served on the defendant.

As an initial matter, the court denies that branch defendant’s motion for a stay. The court is cognizant that the defendant completed a COVID-19 Hardship Declaration form contemporaneous with the filing of the instant motion. Among other things, the hardship declaration form requires the declarant affirm compliance with the lawful terms of his tenancy. Though this matter concerns ejectment for unlawful use of his unit, the defendant’s sworn affidavit fails to specifically address plaintiff’s allegations that he illegally sublet the unit. Moreover, the defendant’s request is moot, since CEEFPA expired on January 15, 2022.

On a motion to dismiss, the court must afford the pleadings a liberal construction, accept all facts as alleged in the pleading as true, and accord the plaintiff the benefit of every possible inference. The court must determine only whether the facts as alleged fit within a cognizable

legal theory. Relevant here is the well settled principle that an inadequate predicate notice renders a proceeding fatally defective and thus, subject to dismissal for failure to state a cause of action (*156-158 Second Ave., LLC v. Delfino*, 18 Misc.3d 1144(A)[Civ Ct, NY County 2008] quoting *40 East 68th St. Co v. Habbas*, 17 Misc.3d 1101[A][Civ Ct, NY County 2007]).

Here, relevant law and the underlying facts do not support the defendant's argument that he is entitled to a six-month, rather than the 30-day Notice of Termination. The defendant is registered as the statutorily protected occupant of his unit under the Loft Law. Under Section 2524.4 9 (c) of the Rent Stabilization Code 2524.4, an owner, or lessor, is permitted to provide a tenant with a thirty day notice when the housing accommodation in issue is not the tenant's primary residence. It is alleged that the defendant illegally divided and sublet his unit, without consent of the owner and further, that the defendant has profiteered by requiring his sub-tenants to remit rental payments that exceed his monthly rent obligation. This court makes no finding as to whether the defendant has utilized his housing accommodation as his primary residence, or whether the defendant sublet same without consent and for a larger sum than he is required to pay. However, if the defendant has done so, a 30-day notice, as opposed to a six month notice, is appropriate. Consequently, the court finds that the defendant has failed to establish that dismissal is appropriate based on plaintiff's failure to provide a notice with the requisite amount of time.

Additionally, the court finds that the defendant has failed to establish that the Notice of Termination did not apprise him of the legal grounds and facts on which his tenancy is being terminated. The notice provides, inter alia, that the defendant's "tenancy [was] being terminated as of October 31, 2020 on the ground that [he] violated and continues to violate Multiple Dwelling Law ("MDL") § 286 (11), the Real Property Law ("RPL") and Title 29 of the Rules of


the City of New York (29 RCNY) §§ 2-08.1 and 2-09(c)(4)(ii)(A). It clearly informs the defendant that he is being evicted for illegally subletting the apartment, as follows:

1. You have illegally sublet the Apartment without the express written consent of the Landlord; and
2. You have intentionally and in bad faith incurably profiteered by charging your subtenant(s) more than the rent being paid by you, in violation of the MDL, RPL and 29 RCNY 2-09(c)(4)(ii)(A).

The notice also asserts that the defendant's tenancy is being terminated because he divided his unit into two separate units, and it identifies "Gerard Baron" as one of the occupants. The notice also asserts, upon information and belief, that the defendant was collecting rent of \$1,790 each month from Gerard Baron but accumulated rent arrears of \$15,000, since January 2020. This information is consistent with the plaintiff's allegations in the Verified Complaint, which also asserts that the defendant violated MDL 286.11, RPL 226-b, RSC 2525.6, and 29 RCNY 2-09 (c)(4)(I), all of which pertain to the illegal subletting of his unit. The notice that was served in this case apprises the defendant of the legal grounds and facts on which the instant ejectment action is being pursued.

Accordingly, the defendant's motion to dismiss (Motion Sequence 1) is denied.

ENTER


HON. INGRID JOSEPH, J.S.C.

**Hon. Ingrid Joseph
Supreme Court Justice**