

COD, LLC v Ljulldjuraj
2022 NY Slip Op 35135(U)
June 3, 2022
Civil Court of the City of New York, Kings County
Docket Number: Index No. LT-308455-21/NY
Judge: Tracy Ferdinand
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CIVIL COURT CITY OF NEW YORK
COUNTY OF KINGS: HOUSING PART D
COD, LLC,

Index No.: LT-308455-21/NY

Petitioner-Landlord Motion Seq. No.: 002
-against- **DECISION/ORDER**

MIRAS LJULJDJURAJ,

Respondents – Tenants,

“JOHN DOE” & “JANE DOE”,

Respondents-Undertenants.

Recitation, pursuant to CPLR § 2219(a), of the papers considered in review of this Motion for leave to conduct discovery

PAPERS	NUMBERED
Notice of Motion, Affidavit/Affirmation & Exhibits Annexed	1 [NYSCEF ##34-37]
Order to Show Cause and Affirmation Annexed	
Answering Affidavits/Affirmation & Exhibits Annexed	2 [NYSCEF #38]
Replying Affidavit/Affirmation	3 [NYSCEF #39]
Other:	

FERDINAND. J.:

Upon the foregoing cited papers, the Decision/Order on this Motion is as follows:

This summary holdover proceeding was commenced seeking possession of the premises known as apartment 9A (the “Apartment”) in the building located at 151 East 80th Street, New York, New York (the “Building”) on the grounds that respondent took possession as an incident to employment which employment was terminated.

Respondents, represented by counsel, interposed an answer alleging that he is a tenant, irrespective of his employment status, pursuant to a written five (5) year lease.

By Decision and Order dated March 21, 2022, this Court denied respondent's Motion for summary judgment finding issues of fact warranting a trial. Respondent now moves for leave to conduct discovery pursuant to CPLR §408. Petitioner opposes.

Respondent seeks limited discovery by way of document demands and leave to conduct a deposition of Joshua Goldfarb, a managing agent for the petitioner. Specifically, respondent seeks the following documents:

1. All documents and/or communications concerning: a. the Lease; and/or b. Petitioner's employment of Respondent MIRAS LJULJDJURAJj (sic.); c. and/or Respondents' tenancy in the Apartment.
2. All leases for apartments Petitioner has rented to other superintendents and/or employees from January 1, 2017, to the present.
3. The "rent roll" for the building, comprised of the annual DHCR registrations for all the units in the Building from January 1, 2017, to the present.

Petitioner opposes on the grounds that respondent has failed to establish the requisite elements necessary to warrant discovery and cites the prejudice that a further delay of this proceeding will cause.

Discovery by leave of Court is available in summary proceedings provided the moving party demonstrates ample need. (*See*, CPLR §403, *NY Univ. v Farkas*, 121 Misc 2d 643 [Civ Ct, New York County 1983]). The Court weighs the various factors set forth in *Farkas* in determining whether the movant has met their burden.

In this proceeding the central dispute is the "Employment Lease Agreement" dated January 18, 2021 (the "Agreement"). Respondent maintains that this document entitles him to remain in the Apartment even after his employment was

terminated. Petitioner flatly refutes this assertion and maintains that the document was offered merely as an accommodation and does not grant respondent a continued possessory interest in the Apartment. It is reasonable that any information that petitioner may have in their possession regarding the Agreement and/or respondent's occupancy of the Apartment would serve to clarify the central issue in dispute.

The Court is mindful of petitioner's desire to avoid delay, but the integrity of the litigation process should not be sacrificed for the sake of speed. Further, respondent's requests are not extensive and can be resolved in relatively short order. Additionally, the parties have, stipulated to the payment of use and occupancy *pendente lite*, which will aid to preserve the status quo and mitigate any perceived prospective financial burden.

Respondent's demands, however, will be limited to those related to the Agreement and his occupancy of the Apartment and not to the entirety of his employment relationship with the petitioner. Further, the leases of other superintendents/employees of Petitioner and the rent roll for the Building are not sufficiently related to respondent's defense so as to warrant disclosure.

Accordingly, it is:

ORDERED that respondent's motion is granted to the extent of modifying the proposed document demand number 1b. to reflect only documents concerning "petitioner's employment of respondent Miras Ljuldjuraj, as it relates to the Employment Apartment Lease Agreement"; and striking demand numbers 2 and 3. Said demand will be deemed served and filed upon service and filing of a copy of this Decision/Order with Notice of Entry upon petitioner; and it is further

ORDERED petitioner is to provide all documents within its possession or that may be reasonably attained. If no responsive documents exist or cannot be reasonably obtained, petitioner shall provide an affidavit or affirmation attesting to the non-existence of such documents or, if they cannot be obtained, their last known whereabouts; and it is further

ORDERED that respondent's request for leave to serve an appropriate deposition subpoena is granted to the extent that such examination be limited to questions relevant to respondent's First Affirmative Defense, that there is an enforceable lease between the parties. Document production required by the subpoena is similarly limited to those documents relevant to the defense and as specified in respondent's written document request as modified by the Court. A

deposition is to be scheduled and held within 14 days of completion of document production.

The matter is marked off the calendar pending completion of discovery and may be restored by stipulation or Notice of Motion.

This constitutes the Decision and Order of this Court.

Dated: New York, New York
June 3, 2022

A handwritten signature in black ink, consisting of a stylized 'T' and 'F' enclosed within a circle.

TRACY FERDINAND, J.H.C.