

Komi Corp. v Lugo

2023 NY Slip Op 30591(U)

February 28, 2023

Supreme Court, New York County

Docket Number: Index No. 154942/2022

Judge: Paul A. Goetz

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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. PAUL A. GOETZ PART 47

Justice

-----X

KOMI CORP.,

Plaintiff,

- v -

JESSICA LUGO, NEW YORK CITY DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT

Defendants.

-----X

INDEX NO. 154942/2022

MOTION DATE N/A, N/A

MOTION SEQ. NO. 003 004

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 003) 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60

were read on this motion to/for VACATE STAY

The following e-filed documents, listed by NYSCEF document number (Motion 004) 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84

were read on this motion to/for VACATE - DECISION/ORDER/JUDGMENT/AWARD.

This case arises out of the termination of a tenancy by plaintiff-landlord Komi Corp. (Komi) due to the defendant-tenant Jessica Lugo's alleged nuisance conduct. Plaintiff moves to vacate any statutory stay associated with plaintiff's submission of an application through the Covid-19 Emergency Rental Assistance Program of 2021 (ERAP) and/or declare that tenant's ERAP application does not stay this action or tenant's ejectment (mot. seq. no. 003). Defendant moves to vacate the November 7, 2022 default judgment of ejectment (mot. seq. no. 004).

BACKGROUND

Komi, the owner and landlord of the building located at 1133 First Avenue, New York, New York 10065 (building), entered into a written, residential lease with Lugo for Apartment #1 on March 24, 2021 for a term that commenced on April 1, 2021 and expired on March 31, 2022 (Pavlakos Aff, ¶ 4, NYSCEF Doc No 42). During the course of her tenancy, plaintiff claims that

defendant has engaged in the “trading or . . . sale of controlled substances and/or stolen goods, has permitted individuals to access the [b]uilding for such illegal activity, and permitted such individuals to ingest illegal substances in the hallway outside the [p]remises” (*id.* at ¶ 11). Plaintiff claims defendant also “st[ole] mail, packages, and other belongings from other tenants in the [b]uilding and/or permit[ed] her guests and/or invitees to do so” (*id.* at ¶ 12). Additional nuisance conduct alleged by plaintiff includes defendant “stor[ing] bulky personal items in the vestibule outside of her [a]partment door, which items obstruct egress and ingress, and promote a fire hazard,” “permit[ing] a steady stream of others under her control, guests, or invitees to enter the [b]uilding at all hours of the night, which individuals congregate[] in the lobby, hallway and vestibule, engaged in loud, boisterous behavior, knock[ing] on other tenants’ doors, and r[inging] other tenant’s buzzers,” and “tamper[ing] with the front door of the [b]uilding and/or us[ing] objects to prop the [b]uilding’s front door open” (*id.* at ¶¶ 13-16).

Plaintiff served a Notice of Termination dated May 4, 2022 on defendant terminating her tenancy effective May 16, 2022 due to her alleged “illegal, objectionable and nuisance conduct” (*id.* at ¶ 5). After defendant failed to vacate pursuant to the Notice of Termination, plaintiff commenced this action to recover the premises (*id.* at ¶ 6).

Tenant failed to appear or respond to the pleadings or default motion. By order dated November 4, 2022, plaintiff’s motion for a default judgment of ejectment against defendant was granted (Rosenbaum Affirm, ¶ 7, NYSCEF Doc No 41). On November 16, 2022, plaintiff received an email indicating defendant applied for ERAP relief on that date (*id.* at ¶ 8).

DISCUSSION

ERAP is intended to help tenants remain in their homes by assisting them with their financial obligation and provides for a stay of proceedings upon an application for ERAP relief.

It states in pertinent part that “[e]xcept as provided in section 9-a of this act, in any pending eviction proceeding. . . against a household who has applied. . . for benefits under this program. . . to cover all or part of the arrears claimed by the petitioner, all proceedings shall be stayed pending a determination of eligibility” (L 2021, ch 56, Part BB, Subpart A, § 8, as amended). Section 9-a contains a nuisance exception in which no stay applies when the tenant “intentionally causes significant damage to the property or is persistently and unreasonably engaging in behavior that substantially infringes on the use and enjoyment of other tenants or occupants or causes a substantial safety hazard to others” (L 2021, ch 56, Part BB, Subpart A, § 9-a, as amended). Importantly, ERAP “is not a measure designed to protect litigants where rent is not the basis for seeking possession. A stay under the ERAP statute is appropriate only when the benefit provided could potentially resolve litigation” (*Papandrea-Zavaglia v Arroyave*, 75 Misc 3d 541, 545-46, 2022 NY Slip Op 22109 [Civ Ct, Kings County 2022]). Because plaintiff seeks ejectment due to defendant’s alleged nuisance and does not assert a cause of action for nonpayment of rent or utilities, the ERAP stay does not apply here. Therefore, since no statutory stay was ever in place plaintiff’s motion must be granted.

As to defendant’s motion, a party seeking to vacate a default judgment must demonstrate both a reasonable excuse for the default and a meritorious defense (*Benson Park Assoc., LLC v Herman*, 73 AD3d 464, 465 [1st Dept 2010]). Defendant’s conclusory claim that she “was never properly served” contradicts her allegation that her co-tenant tore up the papers (*see Lugo Aff*, ¶ 2, NYSCEF Doc No 62). Nevertheless, “[d]efendant’s mere denial of service is insufficient to rebut the presumption of proper service created by an affidavit of service reflecting service” (*Hyman v 400 W. 152nd St. Hous. Dev. Fund Corp.*, 159 AD3d 606, 607 [1st Dept 2018]). Plaintiff submits time-stamped photographs with GPS coordinates from the process server

confirming service was made at the premises along with an affidavit of service from the process server (*see* NYSCEF Doc Nos 70-73). Therefore, defendant does not allege a reasonable excuse for her default.

Defendant also does not assert a meritorious defense. To the extent her argument suggests that plaintiff is wrongfully attempting to evict her in contravention of the automatic stay triggered by her ERAP application, as set forth above, the automatic ERAP stay was never in place since plaintiff is seeking to eject defendant based on alleged nuisance behavior (L 2021, ch 56, Part BB, Subpart A, § 9-a, as amended; *see also River Park Residences L.P. v Williams*, 76 Misc 3d 1211[A] [Civ Ct, NY County 2022] [tenant could be evicted notwithstanding tenant's ERAP filing because ERAP does not apply where the lease is rendered void due to illegal conduct]).

Defendant additionally asserts unavailing defenses that plaintiff breached the warranty of habitability by: (1) refusing to make the apartment habitable and make repairs and (2) blocking the apartment with garbage (NYSCEF Doc No 62, ¶ 2). Common defenses in actions for abatement of nuisance are priority of occupation, acquiescence or estoppel, res judicata and collateral estoppel, laches, prescription, and contributory negligence (81 NY Jur 2d, Nuisances §§ 56-61). An alleged breach of the warranty of habitability is not a defense to a nuisance action or proceeding because it does not address the allegations of the landlord (*see Excel Assocs. v Morales*, 114 Misc 2d 279, 280-81 [Long Beach City Ct 1982] [“landlord’s purported non-compliance with some aspect of the warranty of habitability does not justify tenant’s creating a nuisance or engaging in objectionable conduct that might jeopardize the wellbeing of other tenants”]). Additionally, the proper measure of damages for breach of the warranty of habitability is either damages or abatement of rent—neither of which defendant requests here

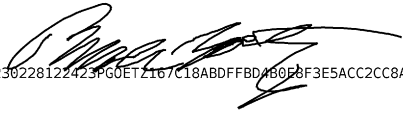
(74 NY Jur 2d, Landlord & Tenant § 204) and in any event even if she had would still leave plaintiff's allegations of nuisance unaddressed. Instead, the proper remedy for defendant to pursue her breach of the warranty of habitability claim is to commence a plenary action under Real Property Law § 235-b (*Excel Assocs.*, 114 Misc 2d at 281), commence a Housing Part (HP) proceeding in Housing Court (NYC Admin Code § 27-2115[h][i]; NYC Civ Ct Act § 110 [a]), or assert it as a counterclaim in this action. Moreover, plaintiff submits sufficient evidence to rebut defendant's conclusory claims. Plaintiff moved for an order permitting access to defendant's apartment after defendant allegedly refused access (*see* NYSCEF Doc Nos 2-12) and submitted photographs showing defendant's own furniture and assorted items filling the hallway and obstructing access (*see* NYSCEF Doc No 81).

Notably, defendant does not deny the allegations in the complaint alleging nuisance behavior on her part (*see ADM Mgmt. Corp. v Mathews*, 64 Misc 3d 128[A], *1 [App Term 2019] ["Tenant's affidavit of merit, which contained only conclusory assertions and denials that she '[has] never been a nuisance tenant' and that such accusations were 'false,' was insufficient to establish a possible meritorious defense."]). Therefore, defendant does not assert a meritorious defense against plaintiff's nuisance claim. Accordingly, it is hereby

ORDERED that plaintiff's motion to vacate any stay associated with defendant's submission of an ERAP application (mot. seq. no. 003) is granted and to the extent a stay was in effect it is vacated; and it is further

ORDERED that defendant's motion to vacate the November 7, 2022 default judgment of

ejectment (mot. seq. no. 004) is denied.


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2/28/2023
DATE

PAUL A. GOETZ, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

DENIED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: