

219-229 W. 144 St. Hous. Dev. Fund Corp. v Grant

2023 NY Slip Op 31169(U)

April 13, 2023

Supreme Court, New York County

Docket Number: Index No. 161172/2021

Judge: Mary V. Rosado

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. MARY V. ROSADO **PART** **33M**

Justice

-----X

INDEX NO. 161172/2021

219-229 WEST 144 STREET HOUSING DEVELOPMENT
FUND CORPORATION

MOTION DATE 09/30/2022

Plaintiff,

MOTION SEQ. NO. 001

- v -

SANDERS GRANT,

**DECISION + ORDER ON
MOTION**

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 32, 33

were read on this motion to/for

JUDGMENT - SUMMARY

Upon the foregoing documents, and after oral argument, which took place on January 24, 2023, where Gregory Wong, Esq. appeared for the Plaintiff 219-229 West 144 Street Housing Development Fund Corporation’s (“Plaintiff”) and Defendant Sanders Grant (“Defendant”) appeared *pro se*, Plaintiff’s motion for summary judgment is denied without prejudice.

Plaintiff alleges that it entered a lease with Defendant on August 1, 2019, with a term that was to end on July 31, 2021 (the “Lease”) (*id.* at ¶ 8). Plaintiff alleges that Defendant was the former superintendent for the Building (*id.* at ¶ 9). In March 2020, Plaintiff terminated Defendant’s employment (*id.* at ¶ 12). However, Defendant remained in the Apartment (*id.* at ¶¶ 21-22).

Plaintiff alleges that Defendant is “a highly erratic and belligerent individual” (*id.* at ¶1). Plaintiff alleges Defendant has been erratic and belligerent towards other residents since the beginning of his employment and tenancy (*id.* at ¶ 10). Plaintiff alleges that Defendant filed complaints with New York City agencies about violations in the Apartment but has prevented Plaintiff from accessing the Apartment to inspect and address the alleged violations (*id.* at ¶¶ 24-

25). Plaintiff has also allegedly threatened and verbally abused contractors who attempt to assess the alleged violations (*id.* at ¶¶ 26-30). Plaintiff allegedly has also harassed Plaintiff's president and her family (*id.* at ¶ 31). Defendant has also allegedly tried to slam the door into Plaintiff's president's bicycle as she was entering the Building (*id.* at ¶ 34). Plaintiff also alleges that Defendant has accused Plaintiff's managing agent of stealing his rent, when allegedly Defendant was reading his statement incorrectly (*id.* at ¶ 33).

In its Complaint, Plaintiff alleges seven causes of action: (1) ejectment; (2) nuisance; (3) a permanent injunction enjoining Defendant from: (a) permitting the alleged ongoing nuisance at the building; (b) threatening and harassing Plaintiff's contractors and representatives; and (c) interfering with Plaintiff's removal of personal property Defendant left in the Building's basement; (4) declaratory judgment stating Plaintiff is entitled to possession of the Apartment; (5) breach of contract; (6) a permanent injunction enjoining Defendant from accessing the Building's basement, and (7) appointment of a guardian¹.

Defendant filed a handwritten Answer on January 12, 2022 which was e-filed with the help of this Court's *pro se* help center (NYSCEF Doc. 3). Defendant asserted a variety of statements styled as affirmative defenses (*id.*). Specifically, Defendant claims his "monthly rent is up to date" and that he filed hardship forms. However, the form he attached as evidence that his rent is up to date shows that he has a balance due of \$1,506.48. There also was no hardship form filled out and attached as Defendant states in his Answer. Defendant disputes ever encountering any contractor. Defendant also counterclaims alleging he should be entitled to repairs in his apartment because he

¹ Pursuant to Defendant's appearance before this Court at oral argument, and the Court's prior experience in guardianship, the Court believes there may be some merit to Plaintiff's allegations in its seventh "cause of action", and that upon further documentation, Defendant may require a guardian. Despite including this "cause of action", it appears Plaintiff has made no effort to contact Adult Protective Services. Nor has Plaintiff moved this Court to appoint a guardian. Rather, Defendant has only moved for monetary and injunctive relief to recover the apartment and rental arrears in the amount of \$11,712.81.

is asthmatic and has numerous pests in his apartment. Defendant also asserts that his lease was not renewed in retaliation for making complaints about repairs.

On August 31, 2022, Plaintiff filed this motion for summary judgment (NYSCEF Doc. 5). Plaintiff seeks (1) an order and judgment of ejectment on its first cause of action; (2) declaratory judgment on its fourth cause of action; (3) a money judgment in the amount of \$11,712.81 on its fifth cause of action; (4) a permanent injunction on its sixth cause of action enjoining Defendant from using or interfering with the use of the basement, and (5) a hearing scheduled for attorneys' fees.

The Court finds that as Plaintiff has put Defendant's capacity at issue by alleging he requires help from APS, and there is no documentation from APS showing Defendant has capacity to defend himself, *pro se*, the Court is unable to grant summary judgment at this juncture.²

At the very least, this action should be stayed pending an evaluation by Adult Protective Services (*See Padilla v Martinez*, 300 AD2d 96 [1st Dept 2002] [prior to terminating the tenancy of a tenant who is suspected of being mentally disabled, the tenant must be referred to Adult Protective Services to determine whether that tenant is eligible for protective services or the appointment of a guardian ad litem]; *see also 140 West End Avenue Owners Corp. v Dinah L.*, 66 Misc.3d 555 [Civ. Ct., New York Co. 2019] [unconditional stay of eviction of disabled tenant,

² Even if the Court could move forward in its analysis of the evidence presented, summary judgment would have to be denied. Plaintiff failed to attach the Lease as an exhibit. While NYSCEF Doc. 9 purports to be the Lease, it is just a series of e-mails. This omission was repeated in the courtesy copies delivered to the Court, where exhibit B to the affirmation of Massimo F. D'Angelo, Esq., which is supposed to be the Lease, is a series of e-mails. While Plaintiff argues that "Defendant concedes that the Lease has expired" it ignores that Defendant pleaded that the lease non-renewal was retaliation for his complaints about the condition of the Apartment. Without the lease provided to the Court, the Court cannot determine the amount of rental arrears owed, or whether the lease non-renewal was proper pursuant to the terms of the lease. Moreover, Plaintiff seeks injunctive relief but submits one conclusory paragraph in support of its motion for a permanent injunction. (*See* NYSCEF Doc. 6 at ¶ 20). The relief of an injunction is a drastic remedy granted only in a clear case, reasonably free from doubt (*Standard Realty Associates, Inc. v Chelsea Gardens Corp.*, 105 AD3d 510 [1st Dept 2013]).

who was adjudicated to be in need of guardian, was warranted so as to ensure guardian could find tenant secure and safe housing] *Ryerson Towers v Jackson*, 173 Misc2d 914 [Civ. Ct., Kings Co. 1997]).

Plaintiff, as Defendant's Landlord and former employer, is best situated to observe Defendant's conduct and potential need for a guardian and has indeed alleged that Defendant needs a guardian. Therefore, Plaintiff should have referred Defendant to Adult Protective Services prior to moving for summary judgment. As it did not, nor has it provided the Lease upon which it seeks to evict Defendant, nor has it submitted sufficient evidence to warrant a permanent injunction, this motion must be denied.³

Accordingly, it is hereby,

ORDERED that Plaintiff's motion is denied in its entirety, without prejudice; and it is further

ORDERED that in connection with the allegations in Plaintiff's seventh cause of action, Plaintiff is directed to refer Defendant for an intake screening with Adult Protective Services immediately, but no later than April 21, 2023. A referral to APS can be made at this link: www.nyc.gov/site/hra/help/adult-protective-services.page; and it is further

ORDERED that this action is stayed in its entirety pending documentation from Adult Protective Services stating that Defendant does not need a guardian, or in the alternative, until Plaintiff or Department of Social Services moves for the appointment of a guardian; and it is further

³ While the Court orders Plaintiff to take action based on its seventh cause of action alleging Defendant is in need of help from Adult Protective Services, rather than wait for Plaintiff, who has already proven to be dilatory, the Court will also refer Defendant for intake with Adult Protective Services and the Department of Social Services.

ORDERED that within ten days of entry, counsel for Plaintiff is directed to serve a copy of this Decision and Order, with notice of entry; and it is further

ORDERED that the Clerk of the Court is directed to enter judgment accordingly.

This constitutes the Decision and Order of the Court.

4/13/2023
DATE

Mary V. Rosado
HON. MARY V. ROSADO, 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