

Levin v Brust

2023 NY Slip Op 33760(U)

January 25, 2023

Civil Court of the City of New York, New York County

Docket Number: Index No. 300202-20

Judge: Karen May Bacdayan

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This opinion is uncorrected and not selected for official publication.

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK: HOUSING PART F

JOEL LEVIN AS SUCCESSOR TRUSTEE FOR
ARNOLD GOLDSTEIN F/B/O SHARI LYNN
GOLDSTEIN AND SAMSON MANAGEMENT
LLC, AS AGENT

Index No. 300202-20

Petitioner,

DECISION/ORDER

-against-

Motion Sequence Nos. 3 and 4

MARILYN BRUST

Respondent.

HON KAREN MAY BACDAYAN, JHC

Law offices of Jordan M. Hyman, PLLC, for the petitioner
Charles Herbert Small, Esq., for the respondent

Recitation, as required by CPLR 2219 (a) of the papers considered in review of this motion by
NYSCEF Doc No:

BACKGROUND AND PROCEDURAL HISTORY

This is a nonprimary residence holdover against Marilyn Brust (“respondent”), the long-term rent stabilized tenant of record. (NYSCEF Doc No. 1, petition and notice of nonrenewal.)

The following facts are not disputed: A rent stabilized renewal lease date December 16, 2022 was mailed to respondent on December 19, 2022. (NYSCEF Doc No. 14, petitioner’s exhibit J, transmittal sheet.) Petitioner then served Respondent with a notice of nonrenewal (known colloquially as a “Golub notice”), dated December 23, 2019 (NYSCEF Doc No. 1 at 7-9), and mailed on December 26, 2019. (*Id.* at 12-13.) Twenty-three days after the date on the renewal lease offer, on January 8, 2022, respondent signed the renewal lease by choosing a two-year term commencing April 1, 2020 and expiring March 31, 2021. (NYSCEF Doc No. 7, Brust affidavit ¶¶ 6-8; NYSCEF Doc No. 10 at 3, respondent’s exhibit B, signed renewal lease.) By letter dated March 25, 2020, petitioner’s attorney wrote to respondent’s former lawyer indicating that it would not withdraw the Golub notice, and further informing the former attorney that the renewal lease offer was a nullity as the entity that appeared on the renewal lease offer, 16 Park

Ave, “is not and never was the owner and holder of the shares of cooperative corporation stock allocable to the subject premises, a cooperative apartment.” (NYSCEF Doc No. 17 at 2.)

Thereafter, petitioner caused service of the petition which was completed on August 18, 2020. (NYSCEF Doc No. 5, affidavit of service.) On October 22, 2020, respondent filed a pre-answer motion to dismiss pursuant to CPLR 3211 (a) (1) on the basis respondent signed and returned the renewal lease offer which is binding upon the landlord, and this “operates as a waiver of the Golub notice.” (NYSCEF Doc No. 8, respondent’s attorney’s affirmation ¶ 5.)

On October 6, 2023, this court denied respondents motion in its entirety. (NYSCEF Doc No. 31, decision and order.) The court ordered respondent to serve and file an answer within two weeks. The parties were to appear again before the court on November 7, 2023. On November 7, 2023, the parties entered into a briefing schedule. A motion by petitioner for discovery and use and occupancy was filed on November 7, 2022. (NYSCEF Doc No. 34, notice of motion [sequence 3].) On December 11, 2022, respondent filed a cross-motion for summary judgment. (NYSCEF Doc No. 41, notice of motion [sequence 4].) Respondent specifically did not oppose petitioner’s motion for discovery or for use and occupancy *pendente lite*. (NYSCEF Doc No. 64, respondent’s attorney’s affirmation in reply ¶ 4 [“If the Court denies respondents’ Cross-Motion, tenant has no objection to discovery or payment of ongoing use and occupancy pursuant to RPAPL § 745.”

The court will first address respondent’s cross-motion.

DISCUSSION

Petitioner argues that this summary judgment motion is, in actuality, an untimely motion to reargue or a motion to renew in disguise, and not specifically delineated as such as required by the statute.¹ (CPLR 2221 [a motion to reargue or to renew “shall be identified specifically as such”].) The court agrees.

Respondent argues that she is entitled to summary judgment because a lease which was not previously submitted for this court’s consideration entitled her to summary judgment as a matter of law based on the equitable doctrine of estoppel. (NYSCEF Doc No. 43, Brust affidavit ¶ 13; NYSCEF Doc No. 47, December 20, 2017 renewal lease.) Respondent did not argue estoppel in the previously decided motion, and scarcely argues this point now. As such, it does

¹ While petitioner incorrectly argues that the time to file a motion to reargue has passed, the court deems this a timely filed motion to reargue as notice of entry was never served, but, nevertheless, denies same.

not warrant consideration. The court did not overlook or misapprehend any matters of fact or law in determining the prior motion. (CPLR 2221 [d] [2].) Moreover, neither respondent nor her attorney provide any “reasonable justification for the failure to present such facts on the prior motion.” (CPLR 2221 [e] [3].)

CONCLUSION

Accordingly, it is

ORDERED that respondent’s motion for summary judgment is DENIED as without merit; and it is further

ORDERED that, to the extent the court views this instant motion as a CPLR 3212 motion masquerading as a motion to reargue or renew pursuant to CPLR 2221, it is DENIED for the reasons stated above; and it is further

ORDERED that petitioner’s motion for use and occupancy in the amount of the last signed rent stabilized lease is GRANTED as unopposed, and respondent shall pay to petitioner said use and occupancy by the first day of each month commencing February 1, 2023 in the amount \$2,861.61; and it is further

ORDERED that petitioner’s motion to conduct discovery is GRANTED as unopposed, and petitioner shall serve respondent with narrowly tailored discovery demands and interrogatories (which were not annexed to petitioner’s motion as stated by petitioner) within 10 days of this order; and it is further

ORDERED that respondent shall respond to said demands within 45 days of receipt thereof, and submit to a deposition within two weeks of responding to the document demand and interrogatories at a date and time to be determined between the parties; and it is further

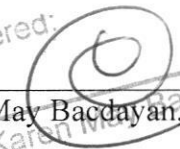
ORDERED that discovery shall proceed pursuant to Article 31 of the CPLR; and it is further

ORDERED that the parties shall make all good faith efforts to settle any discovery disputes between themselves without involving the court and be able to demonstrate same.

The proceeding is marked off calendar for the completion of discovery. Either side may restore to the trial calendar by 8 days’ notice of motion.

This constitutes the decision and order of the court.

DATED: January 25, 2023
New York, NY

So Ordered:


Karen May Bacdayan, JHC
Hon. Karen May Bacdayan