

80 Lenox LLC v CAMBA, Inc.

2023 NY Slip Op 33942(U)

October 31, 2023

Supreme Court, Kings County

Docket Number: Index No. 523052/2021

Judge: Francois A. Rivera

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.

At an IAS Term, Part 52 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 31st day of October 2023.

HONORABLE FRANCOIS A. RIVERA

-----X
80 LENOX LLC,

Plaintiff,

- against-

CAMBA, Inc. and CYNTHIA BARNES,

Defendants.

DECISION, ORDER & JUDGMENT

Index No. 523052/2021

Oral Argument Date: 08-07-2023;

Cal. Nos. 8 & 9

Mot. Seq. Nos. 1 & 2

-----X
By notice of motion, under motion sequence one, filed on December 29, 2022, defendant Cynthia Barnes sought an order and judgment: (1) pursuant to CPLR 602, consolidating several civil actions¹ involving common questions of fact and law; and (2) pursuant to CPLR 3211 (a) (7) dismissing plaintiff 80 Lenox LLC claims as asserted against defendant Cynthia Barnes. This motion was opposed by the plaintiff 80 Lenox LLC. NYSCEF document numbers 20 through and including 72 and number 79 were considered on motion sequence one.

By notice of motion, under motion sequence two, filed on December 30, 2022, defendant CAMBA, Inc. sought an order: (1) pursuant to CPLR 602, consolidating a number of civil actions involving common questions of fact and law (*see fn 1*); and (2) pursuant to CPLR 3211 (a) (7) dismissing the complaint of plaintiff 80 Lenox LLC. This motion was opposed by plaintiff 80 Lenox LLC. NYSCEF document numbers 59 through and including 65 and numbers 73 through and including 78 and no. 80 were considered on motion sequence two.

¹ The movant seeks to consolidate the following actions: 55 Lenox LLC v CAMBA Inc. et al., 523050/2021; 80 Lenox LLC v CAMBA Inc. et al., 523051/2021; 80 Lenox LLC v CAMBA Inc. et al., 523052/2021; West Sterling 131 LLC v CAMBA Inc. et al., 523053/2021; West Sterling 131 LLC v CAMBA Inc. et al., 523055/2021; West Sterling 131 LLC v CAMBA Inc. et al., 523056/2021; RP82 LLC v CAMBA Inc. et al., 523057/2021; Rock-Park 94 LLC v CAMBA Inc. et al., 523058/2021; Rock-Park 94 LLC v CAMBA Inc. et al., 523059/2021; and Rock-Park 94 LLC v CAMBA Inc. et al., 523061/2021.

BACKGROUND

80 Lenox LLC (hereinafter plaintiff) filed the instant complaint against CAMBA, Inc. (hereinafter CAMBA) and John Doe on September 9, 2021. CAMBA is a nonprofit that rents an apartment to provide supportive housing. The complaint contained four causes of action: a request for a declaratory judgment that the premises were not rent stabilized; a request for a judgment of ejectment; a request for a judgment for use and occupancy; and a request for a judgment for attorneys' fees against CAMBA.

CAMBA answered the complaint on October 15, 2021. On January 13, 2022, the parties submitted a stipulation to, *inter alia*, amend the caption to include occupant Cynthia Barnes (hereinafter Barnes) as a defendant. Barnes answered the complaint on January 15, 2022.

Plaintiff replied to CAMBA and Barnes's counterclaims on November 4, 2021, and June 17, 2022, respectively.

MOTION PAPERS

In December 2022, defendants each moved to consolidate this action with nine other related actions seeking identical relief against CAMBA and the apartment occupants with respect to nine other apartments and to dismiss each complaint.² The motion filed by CAMBA largely replicated the arguments in the motion filed by Barnes.

² The captions for the ten cases are as follows: *55 Lenox LLC v CAMBA, Inc. and Deydalia Quijada*, 523050/2021; *80 Lenox LLC v CAMBA, Inc. and Towanda Daniels*, 523051/2021; *80 Lenox LLC v CAMBA, Inc. and Cynthia Barnes*, 523052/21; *West Sterling 131 LLC v CAMBA, Inc. and John Doe* 523053/2021; *West Sterling 131 LLC v CAMBA, Inc. and Que Jackson-Munoz*, 523055/2021; *West Sterling 131 LLC v CAMBA, Inc. and Melissa Watts*, 523056/2021; *RP82 LLC v CAMBA, Inc. and Jaclyn Vazquez*, 523057/2021; *Rock-Park 94 LLC v CAMBA, Inc. and John Doe*, 523058/2021; *Rock-Park 94 LLC v CAMBA, Inc. and Jeanna Thelwell*, 523059/2021; and *Rock-Park 94 LLC v CAMBA, Inc. and John Doe*, 523061/2021. The Legal Aid Society appeared as counsel in the seven cases where the occupants were added as defendants and filed motions raising identical arguments on behalf of the occupants in these seven cases. CAMBA also filed identical motions in all ten cases.

Barnes's motion papers include an affirmation of counsel, memoranda of law, and 26 annexed exhibits labeled A through Z and eight annexed exhibits labeled AA through HH, which include the pleadings and notices of termination in each of the ten cases.

Plaintiff's opposition papers to Barnes's motion papers include an affirmation of counsel, a memorandum of law, and four annexed exhibits including a copy of Rent Stabilization Code Section 2520.11, the summons, complaint, and answers filed in the instant action.

CAMBA's motion papers include an affirmation of counsel, memoranda of law, and four annexed exhibits labeled A through D which include the pleadings and notices of termination in each of the ten cases.

Plaintiff's opposition papers to CAMBA's papers include an affirmation of counsel, a memorandum of law, and four annexed exhibits including a copy of Rent Stabilization Code Section 2520.11, the summons, complaint, and answers filed in the instant action.

Defendants Barnes and CAMBA each filed a memorandum of law in reply to the plaintiff's opposition to their respective motions.

At oral argument, the Court indicated that it would reserve decision on that portion of the motions seeking consolidation until after it had rendered decision on the motions to dismiss. The parties assented to this proposal.

LAW AND APPLICATION

Defendants move to dismiss the complaint pursuant to CPLR 3211 (a) (7). "When a party moves to dismiss a complaint pursuant to CPLR 3211 (a) (7), the standard is whether the pleading states a cause of action" (*Bokhour v GTI Retail Holdings, Inc.*, 94 AD3d 682, 682 [2d Dept 2012]). "In considering such a motion, the court must accept the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible favorable inference, and determine only whether the

facts as alleged fit within any cognizable legal theory” (*id.*). “However, bare legal conclusions are not presumed to be true and are not accorded every favorable inference” (*Kupersmith v Winged Foot Golf Club, Inc.*, 38 AD3d 847, 847 [2d Dept 2007], citing *McKenzie v Meridian Capital Group, LLC*, 35 AD3d 676 [2d Dept 2006]).

Apartments in New York City in buildings constructed before 1974 are subject to rent stabilization unless an exemption applies (*see* Rent Stabilization Code [9 NYCRR] § 2520.11). Rent stabilized tenancies may only be terminated by following the procedures set out in the Rent Stabilization Code (*see* 9 NYCRR § 2524.2). The termination notice must state the ground under section 2524.3 or 2524.4 of the Rent Stabilization Code, upon which the owner relies for removal or eviction of the tenant, the facts necessary to establish the existence of such ground, and the date when the tenant is required to surrender possession” (9 NYCRR § 2524.2 [b]). The failure to serve a proper termination notice is a basis for dismissal of the landlord’s claim for possession (*see Matter of Gracecor Realty Co. v Hargrove*, 90 NY2d 350, 354 [1997]; *Commercial Hotel, Inc. v White*, 194 Misc 2d 26 [App Term, 2d Dept 2002]).

The plaintiff has alleged two bases for exemption: RSC § 2520.11 (f) and that CAMBA is a corporation. Neither is a valid basis for exemption. RSC § 2520.11 (f) provides an exemption from rent stabilization as between certain nonprofit institutions and individuals affiliated with the nonprofit. It does not provide an exemption when a nonprofit sign a lease with a for-profit landlord (*2363 ACP Pineapple, LLC v Iris House, Inc.*, 55 Misc 3d 7 [App Term, 1st Dept 2017], citing *520 E. 81st St. Assoc. v Lenox Hill Hosp.*, 38 NY2d 525, 528 [1976]). These cases and others also make clear that a corporation can hold a rent-stabilized tenancy.

The plaintiff argues that there is a factual allegation that prevents dismissal, due to CAMBA’s acknowledgement in the lease that the apartment was exempt from rent stabilization.

The plaintiff's complaint alleges that the subject property is exempt from the rent stabilization law because the subject lease of the property contained language expressing the parties' waiver from the rent stabilization law. Facts admitted by a party's pleadings constitute formal judicial admissions (*Zegarowicz v Ripatti*, 77 AD3d 650, 653 [2d Dept. 2010], citing *Falkowski v. 81 & 3 of Watertown, Inc.*, 288 AD2d 890, 891 [4th Dept. 2001]; Jerome Prince, Richardson on Evidence § 8—215, at 523—524 [Farrell 11th ed. 1995]). Formal judicial admissions are conclusive of the facts admitted in the action in which they are made (*Zegarowicz*, 77 AD3d at 653, citing *Coffin v Grand Rapids Hydraulic Co.*, 136 NY 655 [1893]). It is therefore a conclusive fact, that the plaintiff was relying on a waiver clause in the lease agreement to render the subject property exempt from the rent stabilization law. In other words, there is no issue of fact on the plaintiff's reliance of this lease provision in support of its contention that the rent stabilization law does not apply. However, this waiver language in the subject lease is null and void, as it is contrary to law and public policy to waive rights under rent stabilization (9 NYCRR § 2520.13; *Drucker v Mauro*, 30 AD3d 37, 39 [1st Dept 2006]). The legal conclusion that plaintiff asserts is not entitled to any favorable inference under CPLR 3211 (a) (7).

The plaintiff's claimed exemptions are invalid; the apartment is subject to rent stabilization. Therefore, the plaintiff's claim for ejectment is dismissed because it has failed to serve the notice required by the Rent Stabilization Code before bringing such a claim (*Com. Hotel, Inc. v. White*, 194 Misc. 2d 26, 27 [App. Term 2002]).

Similarly, the plaintiff is not entitled to a declaratory judgment that the apartment is not subject to rent stabilization, because it is subject to rent stabilization. And because the plaintiff's claim for ejectment has been dismissed, it cannot prevail on its claims for use and

occupancy or attorneys' fees, which are ancillary to the claim for ejectment. Therefore, those claims are dismissed as well.

CONCLUSION

The branch of defendant Cynthia Barnes's motion for an order and judgment pursuant to CPLR 3211 (a) (7) dismissing plaintiff 80 Lenox LLC claims as asserted against defendant Cynthia Barnes is granted.

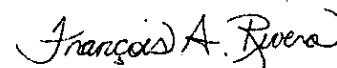
Accordingly, the branch of defendant Cynthia Barnes's motion for an order pursuant to CPLR 602 to consolidate a number of civil actions involving common questions of fact and law is denied as moot.

The branch of defendant CAMBA Inc.'s motion for an order pursuant to CPLR 3211 (a) (7) to dismiss the complaint of plaintiff 80 Lenox LLC is granted.

Accordingly, the branch of defendant CAMBA Inc.'s motion for an order pursuant to CPLR 602 to consolidate a number of civil actions involving common questions of fact and law is denied as moot.

It is the Decision, Order and Judgment of this Court that the action is dismissed.

ENTER:



J.S.C.

HON. FRANCOIS A. RIVERA
J.S.C.