

River Park Residences, LP v Boyd

2024 NY Slip Op 32680(U)

July 25, 2024

Civil Court of the City of New York, Bronx County

Docket Number: L&T Index No. 319304-22/BX

Judge: Diane E. Lutwak

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This opinion is uncorrected and not selected for official publication.

CIVIL COURT OF THE CITY OF NEW YORK
BRONX COUNTY: HOUSING PART C

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L&T Index # 319304-22/BX

RIVER PARK RESIDENCES, LP
Petitioner

-against-

DECISION & ORDER

JOY BOYD, JAYLA EDWARDS, TYECIA BAYNARD
Respondents.

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Hon. Diane E. Lutwak, HCJ:

Recitation, as required by CPLR Rule 2219(A), of the papers considered in the review of Respondent Joy Boyd’s two Orders to Show Cause to vacate default judgment (m seq ## 1 & 2), consolidated herein for disposition:

<u>Papers</u>	<u>NYSCEF DOC #</u>
Respondent’s Order to Show Cause & Supporting (m seq #1)	12
Respondent’s Order to Show Cause by Counsel (m seq #2)	22/32
Respondent’s Attorney’s Affirmation in Support	23
Respondent’s Affirmation in Support/Exhibit A	24
Respondent’s Exhibits B-H in Support	25-31

PROCEDURAL HISTORY

This nonpayment proceeding was commenced by notice of petition and petition filed July 1, 2022 alleging a monthly rent of \$1559 and seeking rent arrears of \$3686.50, comprised of a balance of \$568.50 for January 2022 and \$1559/month for February and March 2022. The predicate rent demand, annexed to the petition, seeks essentially the same arrears, and refers to an attached rent ledger. The rent ledger reflects Petitioner’s receipt on September 15, 2021 of “ERAP” (Emergency Rent Assistance Program) funds of \$22,050, and an attached ERAP notice dated October 8, 2021 explains that the ERAP funds were comprised of a monthly rent of \$1470 for the 15-month period of September 2020 through November 2021.

Upon Respondents’ failure to answer, the court entered a default possessory judgment and issued a warrant of eviction to City Marshal Grossman on February 8, 2023. On February 27, 2023 Respondent Joy Boyd (Respondent) *pro se* filed an Order to Show Cause (OSC), using the court’s forms, seeking an order vacating the judgment based on the failure to answer, permitting the filing of an answer, placing the case on the calendar and granting such other and further relief as may be just. In her supporting affidavit Respondent asserted that she was improperly served and that she had, “Received Marshal Notice Never Received Updated Petition”. The court signed Respondent’s OSC and made it returnable March 17, 2023. No

opposition was filed. After several adjournments, Respondent retained counsel who filed a notice of appearance on June 21, 2023. After several adjournments on consent for various reasons, including time for Respondent to subpoena Section 8 subsidy documents from "CVR", eventually, by two-attorney Stipulation dated March 24, 2024, Respondent's OSC was adjourned to May 7, 2024 with a briefing schedule for supplemental and opposition papers.

Respondent's attorney then filed a second OSC, seeking to withdraw or supplement Respondent's first OSC, vacate the default judgment, interpose an answer and any other appropriate relief as required by justice or the court's exercise of its discretion. In a supporting affirmation, Respondent explains that she first learned about this proceeding when she received a Marshal's Notice, she never received the notice of petition and petition, and at the time those papers allegedly were served on "Jane Doe" on July 27, 2022 there was no one living in the apartment who met the process server's description of such "Jane Doe". Respondent further explains that Petitioner received ERAP funds in September 2021 when her monthly rent was \$1470 and then raised her monthly rent to \$1559 as of October 2021. Respondent describes various rent payments she and agencies on her behalf have made to Petitioner since this proceeding was commenced, including her own payment of \$4162 on June 13, 2023, a "one-shot deal" from HRA and a CVR credit. Attached as Exhibits D and E to Respondent's second OSC by counsel are copies of an email from CVR stating that a payment of \$8952 would be made to Petitioner on August 1, 2023 and a notice from HRA dated December 19, 2023 confirming payment to Petitioner of \$25,243.50 on November 7, 2023. Exhibit F is Petitioner's rent ledger showing receipt of Respondent's payment of \$4162 on June 13, 2023, the \$25,243.50 from HRA and a CVR credit of \$3489 on August 1, 2023.

In a supporting affirmation, Respondent's attorney argues that the CPLR R 5015(a)(1) standard for vacating a default judgment has been met, as Respondent has demonstrated a reasonable excuse for her default and a number of meritorious defenses, including that the rent was improperly increased within one year of receipt of ERAP in violation of the ERAP statute, resulting in a defective rent demand and petition.

On May 7, 2024 Respondent's OSCs were adjourned by two-attorney stipulation to July 24, 2024 with a further briefing schedule. Petitioner filed no opposition papers and the matter was marked submitted, decision reserved.

DISCUSSION

In her affidavits supporting her two OSCs, as supplemented by her attorney's affirmation and the proposed verified answer to the petition, Respondent has made a sufficient showing of both an excuse for her default and meritorious defenses warranting vacatur of the judgment entered on default under CPLR R 5015(a)(1). *Picinic v Seatrain Lines, Inc* (117 AD2d 504 [1st Dep't 1986]); *Goldman v Cotter* (10 AD3d 289, 781 NYS2d 28 [1st Dep't 2004]). An application for relief from a default judgment is to be liberally construed, *Myzal v Mecca* (28 AD2d 283 NYS2d 785 [3rd Dep't 1967]), courts do not look favorably upon the forfeiture of

leases, *Sharp v Norwood* (223 AD2d 6, 11, 643 NYS2d 39, 43 [1st Dep't 1996]), and there is a preference in this State for cases to be determined on their merits rather than on default, *Fromartz v. Bodner* (266 AD2d 122, 698 NYS2d 142 [1st Dep't 1999]); *Pricher v City of New York* (251 AD2d 242, 674 NYS2d 674 [1st Dep't 1998]).

Respondent's sworn statements of having first learned of this proceeding by receiving a Marshal's Notice, and that there was no one in her household meeting the process server's description of the "Jane Doe" who was allegedly served with the notice of petition and petition on July 27, 2022, demonstrate a reasonable excuse for her non-appearance.

It is evident from Petitioner's own rent ledger, rent demand and court papers that it raised Respondent's rent from \$1470/month to \$1559/month as of October 2021, the month after receiving ERAP funds, and continued to charge this amount thereafter. This violates the ERAP Law, which precludes a landlord from raising the rent during the twelve-month period following acceptance of "the first rental assistance payment". L. 2021, c. 56, Part BB, Subpart A, § 9(2)(d)(iii) and (iv), as amended by L. 2021, c. 417, Part A, § 5. As discussed in greater detail below, demanding rent at a monthly rate that is \$89 in excess of the legal rent renders the rent demand defective, which constitutes a meritorious defense to this proceeding.

Accordingly, the judgment and warrant entered on default are vacated, and Respondent's proposed verified answer to the petition is deemed duly served and filed.

Under CPLR § 409(b), in a "special proceeding" such as this summary nonpayment proceeding pursuant to RPAPL § 711(2), the court is required to review the "pleadings, papers and admissions to the extent that no triable issues of fact are raised" and "make a summary determination" where appropriate. CPLR § 409(b) gives the Court "power to dismiss the complaint upon a search of the record, as on a motion for summary judgment". *New 110 Cipriani Units, LLV v Bd of Managers of 110 E 42nd St Condo* (166 AD3d 550, 551, 87 NYS3d 3, 4 [1st Dep't 2018]). *See also, e.g., Sukaj Grp LLC v Mallia* (66 Misc3d 1223[A], 121 NYS3d 847 [Civ Ct Bx Co 2020]).

Here, after vacating the default judgment, deeming the proposed answer duly served and filed and reviewing the "pleadings, papers and admissions", it is evident that there is a fatal, unamendable defect in Petitioner's papers that cannot be disregarded and which warrants a summary determination of dismissal under CPLR § 409(b). To maintain a cause of action for nonpayment of rent, the petition must state the facts upon which the proceeding is based. *RPAPL § 741(4)*. A proper rent demand is a condition precedent to a nonpayment proceeding which the petitioner must plead and prove along with the other elements of its case. *RPAPL § 711(2)*. One of the purposes of the rent demand requirement is to give the tenant an opportunity to avoid litigation by paying the amount due. *2229 Creston Partners LLC v Ramos* (31 Misc3d 1221[A], 930 NYS2d 177 [Civ Ct Bx Co 2011]), *citing 542 Holding Corp v Prince Fashions, Inc* (46 AD3d 309, 848 NYS2d 37 [1st Dep't 2007]). To this end, the predicate rent demand required by *RPAPL § 711(2)* must "clearly inform the tenant of the particular

period for which a rent payment is allegedly in default and the approximate good faith sum of rent assertedly due for each such period." *Schwartz v Weiss-Newell* (87 Misc2d 558, 561, 386 NYS2d 191 [Civ Ct NY Co 1976]), *quoted in 542 Holding Corp v Prince Fashions, Inc, supra*. See, e.g., *JDM Washington St, LLC v 90 Washington Rest Assoc, LLC* (36 Misc3d 769, 950 NYS2d 647 [Civ Ct NY Co 2012]); *Zenila Realty Corp v Masterandrea* (123 Misc2d 1, 472 NYS2d 980 [Civ Ct NY Co 1984]). A defective predicate rent demand cannot be amended *nunc pro tunc*. *Chinatown Apts v Chu Cho Lam* (51 NY2d 786, 787, 412 NE2d 1312, 433 NYS2d 86 [1980]); *Vartarian v Brady* (184 Misc2d 333, 707 NYS2d 285 [Civ Ct NY Co 1999]); *Parkchester Apts Co v Walker* (1995 NY Misc LEXIS 738, 213 NYLJ 123 [Civ Ct Bx Co 1995]).

It is undisputed that this nonpayment eviction proceeding is based on a rent demand which seeks to collect an incorrect amount of rent: Whereas Respondent's rent was \$1470/month in September 2021 when Petitioner received the ERAP payment, Petitioner raised Respondent's rent effective October 2021 by \$89 to \$1559/month, and demanded this payment in its predicate rent demand, in violation of the ERAP Law which, as noted above, precludes a landlord from raising the rent during the twelve-month period following acceptance of "the first rental assistance payment". L. 2021, c. 56, Part BB, Subpart A, § 9(2)(d)(iii) and (iv), as amended by L. 2021, c. 417, Part A, § 5. As Petitioner failed to make a proper demand for the rent, a condition precedent to maintaining this proceeding under RPAPL § 711(2), the proceeding must be dismissed, without prejudice.

CONCLUSION

Based on the foregoing, it is hereby ORDERED that Respondent's OSCs, consolidated herein for disposition, are granted, the judgment and warrant are vacated, the proposed verified answer is deemed duly served and filed, and this proceeding is dismissed, without prejudice to any post-Petition arrears. This constitutes the Decision and Order of the court, which is being uploaded to NYSCEF.



Hon. Diane E. Lutwak, HCJ

Dated: Bronx, New York
July 25, 2024

APPROVED
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