SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 14

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P&J BRAUN LLC,

Plaintiff,

- v -

JHRV LLC, JULIE ALKIRE,

Defendants.

INDEX NO. 652926/2020

MOTION DATE N/A

MOTION SEQ. NO. 004

DECISION + ORDER ON MOTION

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HON. ARLENE P. BLUTH:

The following e-filed documents, listed by NYSCEF document number (Motion 004) 117, 118, 119, 120, 121, 122, 123, 125, 126, 127, 128

were read on this motion to/for RENEWAL.

Defendant Julie Alkire's motion to renew is denied.

Background

In this action to recover rental arrears, plaintiff accuses defendants, the tenants, of owing it unpaid rent up until the time plaintiff sold the premises to a buyer (this new owner is not a party to this case). Defendants, a corporate entity and an individual, were both named tenants. Because the corporate defendant is not represented by an attorney, the Court can only consider the arguments advanced by the individual defendant in her individual capacity. While defendant Alkire may represent herself, she is not an attorney and may not appear on behalf of the corporate defendant (*see* CPLR 321).

This Court previously granted plaintiff's motion for summary judgment on the ground that it established that rent was due and defendants failed to raise a material issue of fact (NYSCEF Doc. No. 113). In other words, defendants did not adequately dispute that they owed

rent. Although defendant Alkire alleged issues pertaining to the warranty of habitability, she did not offer any substantive evidence to support this allegation.

Defendant Alkire now moves to renew the motion and insists that there is new evidence that should change the Court's prior determination. Specifically, she claims she obtained an assignment of the leases for the building from the current owner and that this agreement transferred all of plaintiff's rights to the seller. In other words, Ms. Alkire contends that this assignment agreement prevents plaintiff from seeking unpaid rent accrued prior to the time it sold the building. Defendant argues that because she never saw or received this document, it qualifies as new evidence.

In opposition, plaintiff argues that the purchase agreement provides that plaintiff (as seller) is entitled to all the rents due until the date of sale and the buyer is entitled to the rents due after the sale. It also insists that defendant did not raise a reasonable excuse for why she did not include this document in the prior motion. Plaintiff stresses that the underlying contract specifically mentions this assignment agreement which means that defendant had actual notice of the existence of this document for many years. Finally, plaintiff maintains that JHRV, LLC is unrepresented and cannot participate in this litigation.

In reply, defendant contends that she did not know about the rules on corporate representation or that filing the note of issue meant that discovery was complete. Defendant argues that she relied on a different document titled "Assignment of Leases and Rents" that was allegedly produced to her and did not mention that the new owner's interest in unpaid rent. Defendant asserts that she later realized the correct document was not in her possession and alleges that plaintiff withheld it during the discovery process. Defendant argues that as an unrepresented party, she did not know that she could move to vacate a note of issue if discovery

was incomplete. Moreover, defendant contends that because the buyer waived all previously unpaid rent, there is nothing for plaintiff to collect. Defendant maintains that her previous counsel informed her that she did not need to submit any evidence of a breach of the warranty of habitability until trial.

Discussion

"An application for leave to renew must be based upon additional material facts which existed at the time the prior motion was made but were not then known to the party seeking leave to renew, and, therefore, not made known to the court. Renewal should be denied where the party fails to offer a valid excuse for not submitting the additional facts upon the original application" (*Foley v Roche*, 68 AD2d 558, 568, 68 AD2d 558 [1st Dept 1979]).

The motion is denied. As an initial matter, JHRV, LLC is a corporate entity and defendant Alkire (who is not an attorney) cannot raise arguments on behalf of this entity. That defendant Alkire was unaware of this rule is not a basis upon which this Court can overlook this statute. This Court must apply the relevant law, regardless of whether a party is self-represented or represented by counsel.

In the assignment agreement Alkire submits in this motion, the contracting parties (plaintiff and the buyer) agreed to the following: "Seller hereby sells, assigns, transfers and conveys to Assignee all of Seller's right, title and interest as landlord in, to and under all rental agreements, leases and other agreements in effect as of the date of this Agreement. . . together with any and all unapplied refundable tenant security and other unapplied refundable deposits in Seller's possession with respect to the Leases as of the date of the Agreement," (NYSCEF Doc. No. 119 at 3).

However, this assignment must be read in connection with the purchase and sale agreement which contains a specific and unambiguous provision that plaintiff retained the right to sue for rent due prior to the sale of the building. This document states that "Notwithstanding the foregoing Seller [plaintiff] shall have the right to collect rents, if any, which are unpaid or delinquent as of Closing" (NYSCEF Doc. No. 123, ¶ 4.4[b][9]). This contract unequivocally demonstrates that plaintiff is entitled to recover the unpaid rent from defendants.

In fact, this is the routine procedure when a building occupied by residential tenants is sold. The new owner accepts all the rights and obligations of the landlord as of the date of taking ownership and the old owner transfers any assets of the tenants (remaining security deposits, etc.). Understandably, a new owner does not want to have to bring a lawsuit to recover unpaid rent immediately after taking over a building and the prior owner does not want to give up the right to seek what it is owed.

Alkire reads into this "new" document (the assignment) that the seller of the building (plaintiff) relinquished its right to unpaid rents. That interpretation is not viable. Even if there was some conflict between the assignment and the overall purchase and sale agreement, the latter includes an integration clause stating that "[t]his Agreement, including the Schedules, contains the entire agreement between the parties pertaining to the subject matter hereof and fully supersede all prior written or oral agreements and understandings between the parties pertaining to such subject matter," (*id*. ¶ 11.8). The assignment of leases is included as one of the schedules referenced in the purchase agreement (*id*. at 66 para. 11.15). Therefore, the purchase agreement's provisions are the final word (*see Patrolmen's Benevolent Asso. v New York*, 27 NY2d 410, 318 NYS2d 477 [1971] [finding that an integrated contract is the final express agreement between the parties]). There is simply no basis for this Court to modify its prior decision.

Accordingly, it is hereby

ORDERED that defendant Alkire's motion to renew is denied.

8/27/2024
DATE

ARLENE P. BLUTH, J.S.C.

CHECK ONE:	[X]	**CASE DISPOSED**		[ ]	**NON-FINAL DISPOSITION**		
	[ ]	**GRANTED**	[X] **DENIED**	[ ]	**GRANTED IN PART**	[ ]	**OTHER**
APPLICATION:	[ ]	**SETTLE ORDER**		[ ]	**SUBMIT ORDER**		
CHECK IF APPROPRIATE:	[ ]	**INCLUDES TRANSFER/REASSIGN**		[ ]	**FIDUCIARY APPOINTMENT**	[ ]	**REFERENCE**