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

Index # **LT-304350-23/NY**

Madison Jackson Corp
Petitioner(s)

-against-

Rachel Hope Lassoff
Respondent(s)

Decision / Order

(Seq. 2)

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion:

Papers	Numbered
Order to show Cause/ Notice of Motion and Affidavits /Affirmations annexed	NYSCEF 19-29
Answering Affidavits/ Affirmations	NYSCEF 30-33
Reply Affidavits/ Affirmations	NYSCEF 34

Upon the foregoing cited papers, the Decision/Order is as follows:

This nonpayment proceeding, commenced on or about March 3, 2023, brought by the Petitioner, Madison Jackson Corp. ("Petitioner"), sought alleged rent arrears for the period November 2022 through January 2023, totaling $11,325.00, from Respondent, Rachel Hope Lassoff ("Respondent"), the rent-stabilized tenant of record of the subject premises, located at 371 Madison Street, Apt. 115, New York, NY 10002 ("Premises"). On or about March 17, 2023, Respondent answered *pro se*, asserting, *inter alia*, improper service of process, rent overcharge, and breach of the implied warranty of habitability (NSYCEF 8). On or about March 30, 2023, Petitioner failed to appear, and the proceeding was dismissed by order of this Court (NYSCEF 9). On or about April 12, 2023, after Respondent had surrendered possession and the lease had expired, Petitioner made a motion (Seq. 1) to vacate their default and restore the case to the Court's calendar (NYSCEF 10-14). Petitioner's motion papers did not inform the Court that the lease had expired, that Respondent had vacated, and that Petitioner had accepted surrender. On or about April 27, 2023, the return date of the motion, Respondent failed to appear, and this Court, without the knowledge of the change in circumstances, granted the restoration of the case and vacated the dismissal (NYSCEF 16). In the interim, Respondent's attorney filed a Notice of Appearance (NYSCEF 15). The parties adjourned the case, by two-attorney stipulations, to try to resolve the matter.

On or about October 3, 2023, Respondent filed this motion (Seq. 2) seeking summary judgment in its favor, and for sanctions against Petitioner (NYSCEF 19-29). Petitioner filed its opposition (NYSCEF 30-33) and Respondent replied (NYSCEF 34).

Arguments

Respondent argues, in support of her motion, that the sequence of events is crucial. She alleges that on March 31, 2023 her lease expired, she vacated on that date, and Petitioner accepted her surrender and recovered possession of the Premises. She contends that because Petitioner recovered physical and legal possession of the Premises, it could not maintain this proceeding solely for a money judgment. Further, she argues that following the dismissal of the case, Petitioner's efforts to restore the proceeding were frivolous and are sanctionable (see Respondent's affidavit in support of her motion, NYSCEF 21).

Petitioner argues that the controlling case law in the First Judicial Department, where this Court sits, allows for a money judgment to be entered following the sequence of events as described above. Petitioner asserts that because it is undisputed that Respondent was in possession at the commencement of the action, and that issue was joined, this Court retains jurisdiction over this case, sufficient to enter a money judgment in Petitioner's favor. The Court notes that although Petitioner's attorney's affirmation specifies that "Petitioner does not dispute that Respondent surrendered possession of the premises" (see NYSCEF 30, paragraph 24), Petitioner's affidavit is not quite as explicit and merely states that "(u)pon information and belief, Respondent vacated the Premises on or about the expiration of the lease in March 2023" (NYSCEF 31, paragraph 10). Additionally, the Court notes that after the case was initially dismissed, due to Petitioner's failure to appear on March 30, 2023 (NYSCEF #9), Petitioner's motion to restore the case and vacate its dismissal, was dated and filed after Respondent vacated the premises, and after her lease expired. However, Petitioner's motion failed to inform the Court of this development and was completely silent as to whether Petitioner accepted surrender or continued to seek possession.

Summary Judgment

CPLR §3212 provides that a motion for summary judgment "shall be granted if, upon all the papers and proof submitted, the cause of action or defense shall be established sufficiently to warrant the court as a matter of law in directing judgment in favor of any party." Summary judgment is a drastic remedy (*Andre v Pomeroy*, 35 N.Y.2d 361, 364 [1974]), appropriate only when there is "a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact" (*Deleon v New*

York City Sanitation Dept., 25 NY3d 1102, 1106 [2015]; *Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320, 324 [1986]). "On a motion for summary judgment, facts must be viewed 'in the light most favorable to the non-moving party'" (*Vega v. Restani Constr. Corp.*, 18 N.Y.3d 499, 503 [2012] quoting *Ortiz v Varsity Holdings, LLC*, 18 NY3d 335, 339 [2011]). The function of summary judgment is issue finding, not issue determination (*Sillman v Twentieth Century Fox Film Corp.*, 3 NY2d 395, 404 [1957]). "A motion for summary judgment should not be granted where the facts are in dispute, where conflicting inferences may be drawn from the evidence, or where there are issues of credibility" (*Ruiz v Griffin*, 71 AD3d 1112, 1115 [2d Dept 2010] internal quotation marks and citation omitted).

Jurisdiction

As frequently noted, a curious feature of Landlord-Tenant Practice in New York City is the possibility of different results, even with the same set of facts, on different sides of the Brooklyn Bridge. While the Appellate Term, Second Department may consistently hold that "a money judgment cannot be awarded in a summary proceeding without a concomitant award of possession" (*Tzifil Realty Corp. v Mazrekaj*, 78 Misc 3d 128[A] [App Term, 2d Dept 2023]), the Appellate Term in the First Department, by which this Court is bound, does not. This would be different if the Appellate Division of any department had ruled squarely on the matter (*Mountain View Coach Lines, Inc. v Storms*, 102 AD2d 663, 664 [2d Dept 1984]), but, as far as this Court is aware, none has. However, even in *Tzifil Realty Corp v Mazrekaj,* 78 Misc 3d 128(A), *supra*, (a case brought pursuant to RPAPL 713(11), where the matter was based upon the allegation that Respondent was a superintendent whose employment had been terminated by Petitioner, and that although Respondent may have vacated, Petitioner sought, and had not yet been granted, possession), the Court noted that "in a summary proceeding, the court retains jurisdiction to award possession even where the occupant vacates after the commencement of the proceeding" (*Tzifil Realty Corp, id*, *citing* to *92 Bergenbrooklyn, LLCv Cisarano,* 50 Misc 3d 21 [App Term, 2d Dept 2015]), and that it was improper for the court to dismiss petitioner's claim for possession.

In this Court, in this county, "jurisdiction is not divested merely because of the removal of the respondent subsequent to the commencement of the proceeding" (*Eastrich No. 80 Corp. v Patrolmen's Benevolent Ass'n of New York City Transit Police Dep't*, 180 Misc. 2d 98, 99 [App

Term, 1st Dept 1999]; *Four Forty-One Holding Corp. v Bloom*, 148 Misc. 565 [App Term, 1st Dept 1933]; *Erik James LLC v Bruna*, 70 Misc 3d 1223[A] [Civ Ct, Bronx County 2021]; and *1998 Alexander Karten Annuity Trust v Stone & Co. Classics Inc*, 2013 NY Slip Op 52298(U) [Civ Ct, NY County 2013]).

However, in this case, after the proceeding was dismissed (March 30), Respondent's lease expired (March 31), she vacated and Petitioner accepted surrender of the subject premises from Respondent (March 31). It was only after such surrender and expiration of the lease, that Petitioner sought to restore the case and vacate its dismissal (April 12). In that motion, Petitioner failed to inform the Court of these new circumstances, merely stating that it was seeking to restore the case due to an inadvertent failure of its attorney to appear.

Sanctions

Pursuant to 22 NYCRR § 130-1.1[a], "The court, in its discretion, may award to any party or attorney in any civil action or proceeding before the court, except where prohibited by law, costs in the form of reimbursement for actual expenses reasonably incurred and reasonable attorney's fees, resulting from frivolous conduct." Conduct can be found frivolous if it meets any of three criteria: "(1) it is completely without merit in law and cannot be supported by a reasonable argument for an extension, modification or reversal of existing law; (2) it is undertaken primarily to delay or prolong the resolution of the litigation, or to harass or maliciously injure another; or (3) it asserts material factual statements that are false" (22 NYCRR § 130-1.1[c]; *see Minister, Elders & Deacons of Reformed Protestant Dutch Church v. 198 Broadway, Inc.*, 76 N.Y.2d 411 [1990]). Sanctions ought to be imposed when arguments are "clearly meritless" (*Bavers v Shepherd*, 189 A.D.3d 606, 610 [1st Dept]). However, as the First Department held, "this Court must be careful to avoid the imposition of sanctions in cases where the [movant] asserts colorable, albeit unpersuasive, arguments in good faith and without an intent to harass or injure" (*Yenom Corp. v. 155 Wooster St., Inc.*, 33 A.D.3d 67, 70 [1st Dept 2006]).

Here, Respondent's reliance on cases out of the Appellate Term, Second Department, as grounds for dismissal, is misplaced. Her arguments for sanctions are, consequently, unavailing. However, after a review of the time-line of this case, it is clear that Petitioner accepted surrender when Respondent vacated, which was also at the conclusion of her tenancy and lease. Such

surrender and lease expiration also came at a time when there was no further case, since the Court had dismissed the matter. Therefore, it cannot be said that Respondent vacated 'during the pendency of the proceeding'. Thereafter, this Court's decision to restore the case and vacate the dismissal was made without the benefit of the facts, to wit: that the Respondent surrendered at the expiration of her lease, that Petitioner accepted the surrender, and that the only remaining issue was plenary.

Accordingly, under these circumstances, that portion of Respondent's motion to dismiss, is granted, and the case is dismissed without prejudice. That portion seeking sanctions, is denied.

This constitutes the decision and order of the Court.

Date: August 12, 2024

Hon. Eleanora Ofshtein
Housing Court Judge

ENTERED
August 12, 2024
New York County
Housing Court