

509 Throop Partners, LLC v Vages

2025 NY Slip Op 31431(U)

April 18, 2025

Supreme Court, Kings County

Docket Number: Index No. 511565/2024

Judge: Anne J. Swern

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 Trial Term, Part 75 of the Supreme Court of the State of New York, Kings County, at the Courthouse located at 360 Adams Street, Brooklyn, New York on the 18th day of April 2025

P R E S E N T: HON. ANNE J. SWERN, J.S.C.

509 Throop Partners, LLC,

Plaintiff(s),

-against-

Beth Vages a/k/a Beth Vages Carean, James Carean, "JOHN DOE 1", "JOHN DOE 2", "JOHN DOE 3", "JOHN DOE 4", "JANE DOE 1", "JANE DOE 2", "JANE DOE 3", "JANE DOE 4" the defendants named in quotation marks being intended to designate tenants or occupants in possession of the herein described premises or portions thereof, if any there be, said names being fictitious, their true name being unknown to plaintiff,

Defendant(s).

DECISION & ORDER

Index No.: 511565/2024

Calendar No.: 1

Motion Seq.: 001

Return Date: 2/20/25

Recitation of the following papers as required by CPLR 2219(a):

**Papers
Numbered**

Notice of Motion, Affirmation,	
Affidavits and Exhibits (NYSCEF 11-17)	1, 2
Affirmations in Opposition (NYSCEF 18-19).....	3
Reply Affirmation with Exhibits (NYSCEF 20-22)	4

Upon the foregoing papers and after oral argument, the decision and order of the Court is as follows:

This ejectment action seeks to recover possession of 509 Throop Avenue, Apartment 3 in Brooklyn, New York based on an alleged month-to-month tenancy. Plaintiff has moved for an order (a) pursuant to CPLR § 3212 granting summary judgment and striking defendant’s answer with affirmative defenses and counterclaim; (b) directing the Sheriff of Kings County to remove defendants from the premises located at 509 Throop Avenue, Apartment 3, Brooklyn, New York;

(d) awarding damages against defendants for the wrongful withholding of possession pursuant to RPAPL §601; and (e) awarding plaintiff the costs of this motion.

In support of the motion, plaintiff/landlord's affidavit states that he seeks to recover possession of the premises because the apartment has been withdrawn from the rental market to convert the building to condominium apartments. By a notice dated 12/18/2023, plaintiff notified defendant that it was allegedly terminating a "month-to-month" tenancy that commenced on 11/1/2023. The notice did not provide a reason for the termination. Plaintiff did not submit proof that before the expiration of the prior lease, that the current lease would not be renewed or that the building was being taken off the rental market due to the alleged conversion to condominiums.

In opposition, defendant states in her affidavit that during the term of her lease, she was required to submit twelve (12) postdated checks to cover the yearly rent. After consulting with an attorney, she stopped remitting postdated checks. It was not until plaintiff did remit such checks that she received a termination notice and was requested to vacate the building. Defendant continued to remit the monthly rent to defendant up to including the rent for March 2024. The checks were accepted and cashed by plaintiff. The April 2024 rent check was not cashed. Before the commencement of this action, defendant was never informed that the building would be converted to condominiums. Therefore, defendant argues that plaintiff's motion must be denied because plaintiff has not complied with The Good Cause Eviction Law that took effect in New York City on 4/20/2024. In reply, plaintiff argues that the law did take effect until 8/18/2024.

Summary judgment may be granted only when no triable issue of fact exists (*Alvarez v Prospect Hospital*, 68 NY2d 320, [1986]). "A party moving for summary judgment must make a

prima facie showing of entitlement to judgment as a matter of law, producing sufficient evidence to demonstrate the absence of any material issue of fact. However, a failure to demonstrate a *prima facie* entitlement to summary judgment motion, requires a denial of the motion regardless of the adequacy of the opposing papers” (*Ayotte v Gervasio*, 81 NY2d 1062, 1063 [1993], citing *Alvarez v Prospect Hospital*, 68 NY2d 324). “Once this showing has been made, the burden shifts to the nonmoving party to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact that require a trial for resolution” (*Giuffrida v Citibank*, 100 NY2d 72, 81 [2003] and *Alvarez v. Prospect Hospital*, 68 NY2d 324).

The Court’s only role upon a motion for summary judgment is to identify the existence of triable issues, and not to determine the merits of any such issues (*Vega v Restani Construction Corp.*, 18 NY3d 499, 505 [2012]) or the credibility of the movant’s version of events (see *Xiang Fu He v Troon Management, Inc.*, 34 NY3d 167, 175 [2019] [internal citations omitted]). The Court must view the evidence in the light most favorable to the nonmoving party, affording them the benefit of all reasonable inferences that can be drawn from the evidence (see *Negri v Shop & Stop, Inc.*, 65 NY2d 625, 626 [1985]). The motion should be denied where the facts are in dispute, where different inferences may be drawn from the evidence, or where the credibility of the witnesses is in question (see *Cameron v City of Long Beach*, 297 AD2d 773, 774 [2d Dept. 2002]).

The requirement that initial or renewal leases must contain notices pursuant to Article 6A of the Real Property Law did not take effect until 8/18/2024 (Article 7 of the Real Property Law, § 231-c). However, Article 6-A, the Good Cause Eviction Law, took effect on 4/20/24 in New York City and applies to all actions commenced on or after that date (RPL §§ 210 and 212; Senate Bill 2024 N.Y SB 8306, §7). Article 6-A applies to units within a housing

accommodation owned as condominium or cooperative (RPL § 214 [7]). This Article defines a landlord as “any fee owner, lessor... or any other person or entity receiving or entitled to receive rent for the occupancy of any housing accommodation” in any residential or mixed-use residential premises (RPL § 211 [1] and [2]). Section 211 [4] states that a tenant is broadly defined as “a tenant, sub-tenant, lessee, sublessee, or any other person entitled to the lawful possession, use or occupancy of any housing accommodation.” Rent is defined as “any consideration... demanded or received for or in connection with the possession, use or occupancy of housing accommodations or the execution or transfer of a lease for such housing accommodations” (RPL §211 [5]). Section 216 enumerates multiple grounds constituting “Good Cause” to remove tenants, including but not limited to when, “The landlord seeks in good faith to withdraw a housing accommodation from the housing rental market” (RPL § 216 [i]).

Based on the conflicting affidavits (*Cameron v. City of Long Beach*, 297 AD2d 774) and plaintiff’s failure to come forward with documentary proof of good cause to remove defendants’ apartment from the rental market (RPL § 216 [i]) or provide defendants with notice of “good cause” for their eviction, the motion for summary judgment must be denied. The motion may be renewed upon the completion of discovery. Other than affirmations and affidavits that “an offering plan” has been drafted, no such documentary proof has been submitted to this Court. The Court cannot assess the credibility of witnesses, including attorneys, upon a motion for summary judgment (*Xiang Fu He v Troon Management, Inc.*, 34 NY3d 175).¹

Article 6 of the Good Cause Eviction Law applies to this action commenced after 4/20/2024. Otherwise, landlords would be free to improperly convert leases to month-to-month tenancies and then commence an ejectment proceeding instead of a holdover proceeding when a

¹ In support of the motion, plaintiff submits an attorney affirmation that the attorney was “retained to assist with the conversion of the property [] to a condominium” (NYSCEF 14).

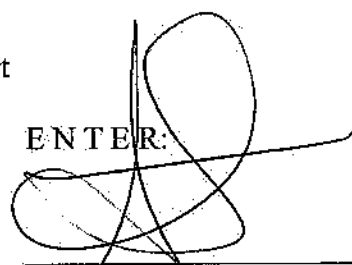
tenant does not timely vacate the premises to avoid a landlord-tenant proceeding and compliance with Article 6A of the Real Property Law. The Good Cause Eviction Law on its face applies to ejection actions to remedy this very situation, *i.e.*, where a landlord seeks to evict or remove from a premises any person "entitled to the lawful possession, use or occupancy of any housing accommodation" (RPL § 211 [4]).

The Court has considered the parties' remaining arguments and finds same to be without merit.

Accordingly, it is hereby

ORDERED that plaintiff's motion for summary judgment pursuant to CPLR § 3212 is denied in its entirety.

This constitutes the decision and order of the Court

ENTER:


Hon. Anne J. Swern, J.S.C.
Dated: 4/18/2025

For Clerks use only:
MG _____
MD _____ X
Motion seq. # _____ 1