298 E. Vil. Owner LLC v Stewart
2026 NY Slip Op 30350(U)
January 29, 2026
Supreme Court, New York County
Docket Number: Index No. 160933/2024
Judge: Gerald Lebovits
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. GERALD LEBOVITS** **PART** **07**

Justice

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298 EAST VILLAGE OWNER LLC,

Plaintiff,

- v -

ROXANNE STEWART, JOHN AND JANE DOES, THE TRUE NAMES OF SAID DEFENDANTS BEING UNKNOWN TO PLAINTIFF,

Defendants.

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INDEX NO. 160933/2024

MOTION DATE N/A

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42

were read on this motion for PARTIAL SUMMARY JUDGMENT.

Romer Debbas LLP, New York, NY (Steven N. Kirkpatrick and Patricia L. Feldman of counsel), for plaintiff.
David Rozenholc & Associates, New York, NY (Michael B. Terk of counsel), for defendant.

Gerald Lebovits, J.:

This action arises from a lease for a Manhattan apartment. Plaintiff, 298 East Village Owner LLC, is the landlord of the premises. Defendant, Roxanne Stewart, rented the apartment from plaintiff.

Defendant's first lease with plaintiff spanned from August 2022 through July 2023. The parties then extended that lease. In May 2024, the parties entered into a renewal lease, that was set to span from August 2024 through July 2025. (*See* NYSCEF No. 16 at 1 [pdf pagination] [renewal lease].)

In August 2024, plaintiff sent defendant a 120-day termination notice. In that notice, plaintiff asserted that it signed a contract to sell defendant's apartment to nonparty Grizzly II LLC and was therefore invoking its right to cancel defendant's lease, effective December 31, 2024. (*See* NYSCEF No. 17 at 3 [pdf pagination].)

In November 2024, plaintiff brought this action for (1) a declaration that defendants' lease and right to use and occupy the apartment are terminated effective December 31, 2024; (2) a judgment of ejectment restoring legal and actual possession of the Premises once the lease

terminates on December 21, 2024; (3) use and occupancy incurred starting from January 1, 2025; and (3) attorney fees and costs. Defendant later vacated the premises in June 2025.

Defendant asserts numerous affirmative defenses. She also asserts counterclaims for (1) a declaration that the termination notice is void and that the lease had not been terminated early; (2) permanent injunction; (3) fraudulent misrepresentation; (4) breach of contract; (5) tenant harassment; and (6) attorney fees and costs.

Plaintiff now moves for summary judgment on its declaratory-judgment and ejectment claims and to dismiss defendant's affirmative defenses and counterclaims. The motion is granted in part and denied in part.

Defendant cross-moves under CPLR 3211 (a) (7) and CPLR 3212 to dismiss the complaint. The cross-motion is denied.

DISCUSSION

I. Branch of Plaintiff's Motion for Summary Judgment and Branch of Defendant's Cross-Motion to Dismiss the Complaint

Plaintiff moves for summary judgment on her declaratory-judgment (first cause of action) and ejectment (second cause of action) claims. To start, plaintiff's ejectment claim is academic, because defendant vacated the premises in June 2025. This court thus asked the parties to discuss whether the branch of plaintiff's motion for summary judgment on its declaratory-judgment claim is also academic.

Plaintiff argues that its request for declaratory relief is not academic. According to plaintiff, a judiciable controversy remains about the effectiveness of the termination notice. Plaintiff further argues that the declaratory-judgment claim will be important to plaintiff's claim for holdover damages—on which plaintiff does not seek summary judgment.

Defendant argues that plaintiff's declaratory-judgment claim is duplicative of its ejectment claim. Defendant contends that a judiciable controversy arises over whether defendant surrendered the premises on time but that the controversy can be resolved when this court resolves plaintiff's claim for holdover damages.[1]

This court concludes that it may resolve plaintiff's request for summary-judgment on its declaratory-judgment claim now. Whether the notice of termination was effective is a separate, though predicate, question to whether defendant owes holdover damages. Additionally, the parties have fully briefed the issue of whether the termination notice was effective. Accordingly, the court resolves plaintiff's request for summary judgment on its declaratory-judgment claim here.

[1] Defendant further argues that plaintiff prematurely commenced its claim for ejectment. But the ejectment claim is academic. And although plaintiff filed this action in November 2024—before the December 31, 2024, termination date—the validity of the notice was arguably called into question once it was mailed and deemed received in August 2024. (*See* NYSCEF No. 15 at ¶ 25.)

A. Plaintiff's Prima Facie Case for Declaratory Judgment

Plaintiff seeks a declaration that that defendant's right to use and occupy the premises ended on December 31, 2024. In support of its motion, plaintiff submits the parties' initial lease, which spanned from August 2022 through July 2023 (*see* NYSCEF No. 15), and the parties' renewal lease, which renewed the lease from August 2024 through July 2025 (*see* NYSCEF No. 16.) Plaintiff asserts that the initial lease gave plaintiff an option to purchase the apartment but that the renewal lease deleted that option. (*See* NYSCEF No. 9 at 5; NYSCEF No. 15 at 23 [pdf pagination]; NYSCEF No. 16 at ¶ 6 [G].) Plaintiff also asserts that the lease renewal allows landlord to cancel the lease with 120-days' notice to tenant if landlord enters into a contract of sale with a prospective purchaser. (*See* NYSCEF No. 16 at ¶ 6 [H].)

Plaintiff argues that it properly exercised its lease-termination option by serving a notice of termination (dated August 9, 2024) on defendant. Plaintiff attaches receipts reflecting that it mailed the notice to defendant on August 15, 2024. (*See* NYSCEF No. 17 at 2 [pdf pagination].) In that notice, plaintiff informed defendant that her lease would be cancelled effective December 31, 2024, because plaintiff sold the apartment to Grizzly II LLC. (*See id.* at 3 [pdf pagination].)

Based on the foregoing, this court concludes that plaintiff has made out a prima facie case for summary judgment on its declaratory-judgment claim.

B. Defendant's Opposition

1. Service of Termination Notice

Defendant contends that the termination notice was not served in the manner required by the lease. (NYSCEF No. 34 at 11.) Plaintiff served the termination notice by certified mail. (*See* NYSCEF No. 17 at 2 [pdf pagination].) According to defendant, however, the lease requires landlord to serve a termination notice by email. This court disagrees.

The renewal lease provides that "[l]andlord shall be permitted to cancel this Lease upon one hundred and twenty (120) days written notice to Tenant which *may* be delivered via email." (NYSCEF No. 16 at ¶ 6 [H] [emphasis added].) That provision provides no requirement for email service; email service is merely permissive. Moreover, the renewal lease maintained the initial lease's requirement that landlord's notices to tenant be served by registered or certified mail, return receipt requested, or by overnight mail. (*See* NYSCEF No. 15 at ¶ 25; NYSCEF No. 16 at ¶ 6 [C].)

Defendant also argues that she checks her mailbox daily and never received the termination-notice mailing. (NYSSCEF No. 28 at ¶ 13.) According to defendant, the notice could have been "left on the exterior entrance door to the Building or on the Building exterior, and either fell off or was removed before [she] saw it." (NYSCEF No. 28 at ¶ 15.) She represents that "[o]n numerous occasions over the last couple of years, [she saw] notices of certified mailings from the U.S. Postal Service, addressed to other Building residents, that were left on the Building's outer entrance door or the exterior of the Building." (*Id.*) Defendant also says that "[i]t appears that the mail carrier is not provided by the Landlord with full access to the Building

and that, at least on some days, the mail carrier is not able to access the Building to deliver such certified mail notices or other mail to individual mailboxes." (*Id.*)

But plaintiff provides the United States Postal Service tracking record for the termination-notice mailing. (*See* NYSCEF No. 18.) The tracking record reflects that a notice of attempted delivery was left at plaintiff's address and that the mailing was returned as "unclaimed." (*See* NYSCEF Nos. 18, 19.) Moreover, the parties' lease deems service of a notice complete three days after plaintiff mails the certified mail. (NYSCEF No. 16 at ¶ 25 [lease] ["Notices shall be deemed received the next business day if by overnight carrier, the date of delivery if by personal delivery, or three (3) business days after being mailed if by registered or certified mail."].) And defendant does not provide evidence refuting that plaintiff mailed the notice in the first place.

2. Termination Notice and Public Policy

Defendant also argues that the termination notice was ineffective because it is an attempt to enforce an illegal cancellation-for-sale provision on a residential tenant contrary to public policy. (NYSCEF No. 34 at 9.) This court disagrees.

The lease renewal provides that

> "In the event Landlord, as seller, enters into a contract of sale with a prospective purchaser to purchase the Apartment during the Renewal Term, Landlord shall be permitted to cancel this Lease upon one hundred and twenty (120) days written notice to Tenant which may be delivered via email. After the expiration of such one hundred and twenty (120) day period, Tenant will vacate the Unit or (i) be subject to the all remedies available to Landlord at law and equity, including, but not limited to, the remedies provided in Article 17 and Article 18 of this Lease; (ii) and Tenant shall be subject to holdover provisions of Article 29 of this Lease." (NYSCEF No. 16 at ¶ 6 [H].)

This provision is a conditional limitation. A conditional limitation is "[a] provision in a lease that the term of the lease shall continue only until the occurrence of a specific event is a conditional limitation." (2 Robert F. Dolan, Rasch's Landlord and Tenant, Including Summary Proceedings § 23:21 [5th ed, May 2025 update].) There are three types of conditional limitations: (1) a "provision for the expiration of the lease upon the happening of a specified or objective contingency, which contingency is not controlled neither by the landlord nor the tenant"; (2) a provision "where the occurrence of the contingency is set in motion by the landlord"; and (3) a provision "for the early expiration of a lease upon the happening of a specified contingency; to wit, the lapse of time fixed in a notice which is set in motion by a landlord based on a *prior breach* of the lease by the tenant." (*South Street Seaport Ltd. Partnership v Jade Sea Rest.*, 151 Misc 2d 725, 727-728 [Civ Ct, NY County 1991] [emphasis in original].) The lease provision

here belongs to the second category of conditional limitations; it provides that the lease expires—on its own—120 days after landlord provides notice of the sale.[2]

Questions about whether a conditional-limitation provision comports with public policy tend to fall within the third category of conditional limitations. For instance, the First Department has held that a conditional limitation triggered by one instance of a residential tenant's default on rent violates public policy when tenant has no right to cure the default. (*See 61 E. 72nd St. Corp. v Zimberg*, 161 AD2d 542, 542 [1st Dept 1990] ["In the case of a residential tenancy, such a contractual provision would be against public policy if it denied the right to cure. . . ."]; *cf. Goldcrest Realty Company v 61 Bronx Riv. Rd. Owners, Inc.*, 83 AD3d 129, 134 [2d Dept 2011] ["There is also no authority for the plaintiff's contention that a conditional limitation in a proprietary lease providing for forfeiture of the tenancy upon the nonpayment of rent is void as against public policy."].) In a similar vein, courts have held that a default on rent stemming from landlord's breach of the warranty of habitability may not set the conditional limitation in motion as a matter of public policy. (*See e.g. Windy Acres Farm, Inc. v Penepent*, 40 Misc 3d 63, 66 [App Term, 2d Dept, 9th & 10th Jud Dists 2013].)

But the conditional limitation here is not triggered by tenant's default—rather by landlord's sale of the premises. (*See 401 W. 14th St. Fee LLC v Mer Du Nord Noordzee, LLC*, 34 AD3d 294, 295 [1st Dept 2006] [discussing provision giving "the landlord an option to terminate the lease early if, inter alia, it determines that it must reoccupy said premises in preparation or furtherance of a bona fide sale or redevelopment of the entire property into residential use"] [internal quotations marks and emphasis omitted]; *Nordica Soho LLC v Emilia*, Inc., 44 Misc 3d 76, 77 [App Term, 1st Dept 2014] [holding that lease provision "authorizing petitioner-landlord, as a successor owner, to 'terminate' the governing commercial lease agreement upon 90 days' notice in the event it 'plans to develop a new building,' constitutes a conditional limitation"].)

Here, the parties stipulated that the lease would expire upon the occurrence of a sale. (*See Miller v Levi*, 44 NY 489, 491 [1871] ["One of the express terms of the lease, [gave landlord] the right to sell the demised premises, and to limit [tenant's] term therein to the expiration of sixty days after notice of the sale. The sale and notice, as specified in the lease, were thus made the condition by which [tenant's] term in the premises was limited to the lapse of sixty days from the sale and notice."]; *see* Rasch, *supra*, at § 23:27 [noting that such a lease "expires independently of the landlord's volition" and "The only part the landlord's volition plays in this situation is to start the stipulated contingency going which will limit the term to a premature expiration"].) And defendant cites no authority to support that a conditional limitation based on the sale of a residential premises is contrary to public policy.

[2] Plaintiff contends that the lease provision is not a conditional limitation because it "does not state how the Lease will terminate after the 120-day period" and "simply terminates on the specified date." (NYSCEF No. 36 at para 46.) But the lease does provide how it will expire: *automatically* 120 days after notice of the sale.

3. Good Faith

Defendant also argues that there are disputes of fact about landlord's good faith in exercising the cancellation option and in the legitimacy of the purchase contract. (NYSCEF No. 34 at 15.) Defendant argues that landlord cannot satisfy its burden of showing good faith "by a statement in the Termination Notice and in a supporting affirmation that Landlord has entered into a contract of sale, accompanied by a copy of a purported contract of sale with essential information—such as the purchaser's identity, the estimated closing date, and the purchase price—redacted." (*Id.* at 17.) Defendant also contends that "Grizzly II LLC" does not exist or is not authorized to conduct business in New York." (*Id.*)

Plaintiff argues that the validity of the termination notice is not contingent on proof the sale. (NYSCEF No. 36 at 20.) Plaintiff also argues that Grizzly is a Delaware corporation and that no bar exists to prevent a Delaware corporation from buying property in New York. (*Id.* at 21-22.)

This court agrees with plaintiff. The authorities to which defendant cites stand for the proposition that when a lease cancellation is based on landlord's intent to demolish or rebuild the premises, landlord must provide evidence that it has begun that process. (*See e.g. Barbes Restaurant Inc. v ASRR Suzer 218, LLC*, 140 AD3d 430, 431 [1st Dept 2016] [holding that defendant had no bona fide intent to demolish premises when "defendant had not filed a demolition application with the Department of Buildings, and, although it had retained architectural and engineering firms to prepare architectural drawings, and had conducted geological and structural tests, its plans were still in the early stages and it was still evaluating different redevelopment options"].)

Here, however, the question is what, if anything, plaintiff must give defendant to show that plaintiff has sold the premises. This court concludes that plaintiff's termination notice and the accompanying sale contract were sufficient to show that plaintiff sold the premises.

A termination notice is "not defective for lack of accompanying proof showing that the contract was bona fide" where, as here, "the validity of the termination notice was not conditioned on the submission of such proof." (*401 W. 14th St. Fee*, 34 AD3d at 295.) The parties' lease provides only that "[i]n the event Landlord, as seller, enters into a contract of sale with a prospective purchaser to purchase the Apartment during the Renewal Term, Landlord shall be permitted to cancel this Lease upon one hu[n]dred and twenty (120) days written notice to Tenant which may be delivered via email." (NYSCEF No. 16 at ¶ 6 [H].) Moreover, although purchase-agreement parties' names are redacted, defendant provides no evidence that plaintiff and Grizzly *were not the parties* who contracted for sale of the premises. And the termination-notice page and an exhibit attached to the sale agreement both identify the purchaser as Grizzly.[3] (NYSCEF No. 17 at 3, 27 [pdf pagination].)

[3] It is still unclear to this court why the sale-contract parties' names were redacted in the first place.

As for defendant's contention that Grizzly does not exist, plaintiff provides evidence that Grizzly is a Delaware entity. (*See* NYSCEF No. 42.) This court is unpersuaded that Grizzly's status as a Delaware LLC renders it a non-bona fide buyer. (*See Muzio v Alfano-Hardy*, 202 AD3d 1093, 1095 [2d Dept 2022] ["[T]he failure of such a limited liability company to obtain a certificate of authority to do business in New York 'does not impair the validity of any contract or act of the foreign limited liability company. . . .'"], quoting Limited Liability Law § 808 [b].)

II. Branch of Plaintiff's Motion to Dismiss Defendant's Affirmative Defenses

Plaintiff moves to dismiss defendant's affirmative defenses as unmeritorious and conclusory. (NYSCEF No. 9 at 9-15.) Defendant does not oppose this branch of plaintiff's motion. The branch of plaintiff's motion to dismiss defendant's affirmative defense is granted.

III. Branch of Plaintiff's Motion to Dismiss Defendant's Counterclaims

Defendant asserts six counterclaims. The first is for a declaration that the termination notice and the termination itself have had no effect. The second is for an injunction preventing plaintiff from selling the apartment without first offering to sell the apartment to defendant. The third is for fraudulent inducement—inducing defendant to rent the apartment "by representing to Defendant that Defendant would be permitted the right to purchase the Apartment at any time during the term of the Lease and that the Apartment would not be offered for sale to any other purchaser without Defendant having the opportunity to purchase on the same terms." (NYSCEF No. 3 at ¶ 58.) The fourth is for breach of lease and breach of the covenant of good faith and fair dealing. The fifth is that plaintiff committed tenant harassment by bringing this action to induce defendant to vacate the apartment. The sixth is for reasonable attorney fees and costs incurred in defending against this action.

Plaintiff argues that defendant may assert no counterclaims because the lease has a counterclaim-waiver provision. (NYSCEF No. 9 at 9.) Defendant contends, however, that her counterclaims are permissible because they "are precisely the type of inextricably intertwined counterclaims that are permitted notwithstanding a no-counterclaim provision." (NYSCEF No. 34 at 19.)

Even assuming that defendant may raise counterclaims in this action, her counterclaims must be dismissed. The first and fourth counterclaims are dismissed for the reasons that plaintiff is entitled to summary-judgment on its declaratory-judgment claim. The second and third counterclaims are also dismissed. To the extent that plaintiff allegedly represented that defendant has the right to purchase the apartment, that right was rescinded when the parties signed the renewal lease. Additionally, defendant has pointed to no lease provision affording her a right of first refusal.

The fifth counterclaim—for tenant harassment—must be dismissed. Defendant's allegation is that plaintiff impermissibly commenced this action to compel defendant to vacate the apartment. The New York City Administrative Code, however, considers only the commencement of baseless or frivolous actions as tenant harassment. (*See* Administrative Code

§ 27-2004 [d], [d-1].) Given that plaintiff has succeeded so far in this action, plaintiff's action is neither baseless nor frivolous.

Finally, because defendants' other counterclaims are unmeritorious, her sixth counterclaim for attorney fees and costs is dismissed.

Accordingly, it is

ORDERED that the branch of plaintiff's motion for summary judgment on its declaratory-judgment claim is granted; and it is further

ORDERED, ADJUDGED, and DECLARED that defendant's lease for apartment unit six and her right to use and occupy the apartment terminated effective December 31, 2024, and defendant has no right to use or occupy the apartment after December 31, 2024; and it is further

ORDERED that the branch of plaintiff's motion for summary judgment on its ejectment claim is denied as academic; and it is further

ORDERED that the branch of plaintiff's motion to dismiss defendant's affirmative defenses is granted; and it is further

ORDERED that the branch of plaintiff's motion to dismiss defendant's counterclaims is granted; and it is further

ORDERED that defendant's cross-motion to dismiss plaintiff's complaint is denied; and it is further

ORDERED that plaintiff's remaining claims for use and occupancy and attorney fees are severed and shall continue.

1/29/2026
DATE

HON. GERALD LEBOVITS
J.S.C.

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