601 W. 136 St. HDFC v Tsiropoulos
2017 NY Slip Op 30482(U)
March 13, 2017
Civil Court of the City of New York, New York County
Docket Number: 56552/2016
Judge: Jack Stoller
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CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK: HOUSING PART N

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601 WEST 136 STREET HDFC,

Petitioner,

Index No. 56552/2016

- against -

DECISION/ORDER

YVETTE M. TSIROPOULOS, et al.,

Respondents.

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Present: Hon. Jack Stoller
Judge, Housing Court

601 West 136 Street HDFC, the petitioner in this proceeding ("Petitioner"), commenced this holdover proceeding against Yvette Tsiropoulos, the respondent in this proceeding ("Respondent"), both in her own capacity and as a voluntary administrator of the estates of William V. Morales and Luz Maria Pierti Morales ("the deceased shareholders"), seeking possession of 601 West 136th Street, Apt. 26, New York, New York ("the subject premises") on the ground that a proprietary tenancy of the deceased shareholders had been terminated after their passing and that Petitioner rejected Respondent application to transfer the deceased shareholders' proprietary lease to her. Respondent interposed an answer, asserting, *inter alia*, a defense that Petitioner unreasonably withheld consent to transfer shares. The Court held a trial of this matter on February 27, 2017.

On its *prima facie* case, Petitioner proved, by the introduction of a certificate of incorporation, that it is a Housing Development Fund Corporation ("HDFC") organized pursuant to Article XI of the Private Housing Finance Law; by a deed, that it is the owner of the building in which the subject premises is located and thus a proper party to commence this proceeding

pursuant to RPAPL §721; by a certified record, that Petitioner is in compliance with the registration requirements of MDL §325; by a lease, that Petitioner had entered into a proprietary lease with the deceased shareholders ("the proprietary lease"); and by certificates of voluntary administration that the deceased shareholders died, on February 10, 2008 and October 21, 2012, and that Respondent is a voluntary administrator for the estates of both of the deceased shareholders.

Paragraph 7.01(b)(v) of the proprietary lease between the parties provides that Petitioner may terminate the lease on five days' notice if the lease passes by operation of law anyone other than a shareholder. A predicate notice annexed to the petition shows that Petitioner terminated the proprietary lease according to the aforementioned section on a timely basis. There is no dispute between that parties that Respondent is in possession of the subject premises and has not surrendered possession, either on her own behalf, or on behalf of the estate of the deceased shareholders. Accordingly, Petitioner has proven its *prima facie* case against Respondent, both in her own capacity and in her capacity as a voluntary administrator of the estates of the deceased shareholders. What remains for the Court to adjudicate is Respondent's affirmative defense.

Respondent is the daughter of the deceased shareholders and Respondent applied with Petitioner to transfer the proprietary lease to her.[1] Petitioner rejected Respondent's application. Paragraph 5.05(b)(ii)(B) of the proprietary lease states that Petitioner may not unreasonably

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[1] A decision on a prior trial between the two parties, reported at 601 W. 135 St. HDFC v. Tsiropoulos, 49 Misc.3d 1210(A) (Civ. Ct. N.Y. Co. 2015), which the Court took judicial notice of, found that Respondent is the daughter of the deceased shareholders. The Court therein dismissed a prior holdover proceeding Petitioner commenced against Respondent on the same ground, as Petitioner had not yet made a decision on Respondent's application to transfer the proprietary lease to her.

withhold consent to assignment of the lease and a transfer of the shares to a financially responsible member of the family of the deceased shareholders. The outcome of this trial thus turns on the question of whether Petitioner's withholding of consent to transfer the proprietary lease to Respondent was reasonable.

Petitioner introduced evidence showing that Respondent, by an attorney, made an application to transfer the proprietary lease to her by a letter dated July 16, 2015. The letter offered to pay $6,600.00 in outstanding maintenance, stated that Respondent earned an additional $500.00 a month as a tutor/translator, and stated that Respondent has not filed taxes since 2008. Respondent also had completed a pre-printed application prepared by Petitioner that stated that Respondent received monthly Social Security income in the amount of $867.00 and contained a list of references. The application form requires proof of citizenship but not proof of income, although the application states that Petitioner reserves the right to request more documentation. Respondent also attached to the application an award letter from the Social Security Administration showing that she receives benefits and the amount of her monthly benefit.

Petitioner introduced into evidence a letter dated December 7, 2015 it sent to Respondent rejecting her application. The letter said that Petitioner rejected Respondent's application because she had no proof of filing income tax returns, she did not verify her income, and because she failed to pay maintenance and utilities for more than twenty-two months.

As an HDFC, Petitioner's mission is to provide affordable housing to eligible applicants. See Private Housing Finance Law §576(1)(b), 546 W. 156th St. HDFC v. Smalls, 43 A.D.3d 7, 13 (1st Dept. 2007)(an important objective of Article XI of the Private Housing Finance Law, which establishes HDFC's, is to provide housing to low income families). Petitioner's certificate of

incorporation, which Petitioner introduced into evidence at trial, states that Petitioner "is organized exclusively for the purpose of developing a housing project ... for persons of low income ...." Thus, the Court credits Petitioner's contention, articulated at trial, that Petitioner must verify applicants' income to assure that they qualify. The current president of Petitioner's Board ("the Board President"), who testified for Petitioner at trial, made much of the fact that Respondent did not file income taxes from 2008 through 2015 as grounds to reject her application, both to the extent that Respondent's apparent ineligibility to file underscored that her income was too low to pay maintenance and to the extent that Petitioner could not verify Respondent's income.

For unmarried individuals, gross income below $22,100.00 in 2015 is not taxable, 26 U.S.C. §1(c), which amounts to a monthly income of $1,841.66.[2] Generally speaking, unmarried individuals not living with children and who are not surviving spouses are not required to file federal income tax returns if their income does not reach the level that would incur tax liability. 26 U.S.C. §6012(a)(1). Also as a general matter, New York residents only must file a state tax return if they must file a federal return. Tax Law §651(a)(1). To the extent that Petitioner appears to require an income tax return of family members seeking to transfer shares to their name, Petitioner would exclude from consideration family members whose income is too low to require that they file an income tax return and who lawfully refrain from doing so.

The Court grants that it is possible that applicants with incomes too low to be required to

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[2] Even though Respondent's main source of income has been Social Security benefits, there are some instances in which those benefits are taxable. 26 U.S.C. §86. Even assuming *arguendo* that Respondent's full amount of Social Security benefits was taxable, Respondent would still not earn enough to incur federal income tax liability.

file federal and state taxes may not be able to pay ongoing maintenance. However, Petitioner introduced into evidence a ledger of maintenance arrears that showed that the monthly maintenance for the subject premises is $275.00, plus an amount for utilities that varies by month. An individual with a monthly income well below $1,841.66, the rough threshold triggering the requirement to file an income tax return, could afford such a monthly maintenance amount. The Court further grants that maintenances may increase, although Social Security benefits can increase, too, upon an increase in the Consumer Price Index. 42 U.S.C. §415(i)(5). Accordingly, the Court does not find it reasonable to require that a family member applying to be a shareholder to file a federal income tax return in order to prove an ability to pay ongoing maintenance. The Court notes that Petitioner did not introduce any evidence, such as a by-law or a provision of a proprietary lease, that Petitioner has promulgated a rule requiring proof of filing income tax returns. The blank application form Petitioner provided to Respondent does not require it, either.[3]

For the reasons stated above, the Court credits Petitioner's position that it must verify the incomes of family members applying to have shares transferred to them. However, there are means other than income tax returns by which Petitioner may verify income. "While ... a request [for income tax returns] as part of the application process is not unreasonable, it is possible that other documentation could be submitted to insure that Respondent's income qualifies her to become a shareholder." 601 W. 135 St. HDFC, supra, 49 Misc.3d at 1210(A). In particular, Petitioner never explained why Respondent's Social Security award letter, which she annexed to

[3] The Court in the prior trial between the parties made the same finding. 601 W. 135 St. HDFC, supra, 49 Misc.3d at 1210(A).

her application, was insufficient for this purpose.

All affordable housing programs have to verify incomes, not only for applicants but often for continued occupancy of extant tenants. To the extent that affordable housing tenants and applicants do not file tax returns, alternatives, like Social Security award letters, verify incomes. See, e.g., Claugus v. Roosevelt Island Hous. Mgmt. Corp., 1999 U.S. Dist LEXIS 6162 n.9 (S.D.N.Y. 1999)(for the purpose of certifying income for state-regulated housing pursuant to Article II of the Private Housing Finance Law, commonly known as "Mitchell-Lama" housing, a Social Security award letter verifies income in the absence of an income tax return); Matter of Evans v. New York City Hous. Auth., 2010 N.Y. Misc. LEXIS 5354 (S. Ct. N.Y. Co. 2010)(a Social Security award letter verifies income for New York City Housing Authority tenants). The federal Department of Housing and Urban Development ("HUD") promulgates a handbook detailing procedures governing the operation and management of certain federally-subsidized housing. See Westbeth Corp. HDFC Inc. v. Ramscale Prods., Inc., 37 Misc.3d 13, 15 (App. Term 1st Dept. 2012), *appeal withdrawn*, 117 A.D.3d 461 (1st Dept. 2014), Cromwell Towers Redevelopment Co., L.P. v. Blackwell, 38 Misc.3d 129(A) (App. Term 2nd Dept. 2012), 1199 Hous. Corp. v. McCartney, 171 Misc.2d 239, 240 (App. Term 1st Dept. 1997). The HUD Handbook also provides that a Social Security award letter serves as an acceptable means of verifying income for tenants and/or applicants of such federally-subsidized housing. HUD Handbook 4350.3, ¶5-13(B)(1)(b).[4] The Court therefore does not find it reasonable that Petitioner rejected Respondent's application because she did not file income taxes, particularly as

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[4] The HUD Handbook can be found at https://portal.hud.gov/hudportal/documents/huddoc?id=43503c5HSGH.pdf.

Respondent provided alternate means of verifying her income.

As noted above, the Social Security award letter showed that Respondent's monthly benefits were $867.00. Respondent testified at trial that the Social Security Administration deducted $120.00 a month from her benefits from June of 2015 through December of 2016 because of student loans, a deduction that ended when she turned sixty-five years old, and that the Social Security award letter did not reflect this deduction. Respondent also testified that she had occasional work as a translator and a tutor aside from that, earning $500.00 in a good month, but still low enough that Respondent did not file income taxes from 2008 through 2015.

Whether Respondent's monthly income was $1,367.00 — the $867.00 plus the $500.00 in work income in a good month — or $747.00, Respondent's Social Security benefit less a $120.00 deduction, the Court takes judicial notice that such incomes render affordable housing a serious hardship in New York City. If Respondent cannot live at the subject premises, then, in theory, she could attempt to find housing through an affordable housing program that exists in New York City. The problem is that, as stated above, Petitioner is already part of an affordable housing program in New York City. As a cooperative in addition to being a part of an affordable housing program, a tension exists between finding shareholders with enough income to pay the maintenance but without enough income to otherwise afford housing in New York City. Be that as it may, the Court does not find it reasonable to reject an applicant even with a monthly income of $747.00 when the monthly maintenance is $275.00 plus a utility bill. If Respondent cannot afford such a monthly maintenance, she is all but doomed to homelessness for the rest of her life, a scenario that Article XI of the Private Housing Finance Law was intended to ameliorate.

Petitioner also rejected Respondent's application because she had not paid maintenance

for several months. Petitioner introduced into evidence a maintenance ledger which showed that the deceased shareholders owed no arrears as of July of 2012, then that no payments were made for five months. As noted above, the last surviving of the deceased shareholders died on October 21, 2012. The maintenance ledger shows that Respondent had caught up on the payments by April of 2013 and in fact maintained an ongoing credit balance through July of 2013. The ledger shows that nothing was paid from August of 2013 through July of 2015, then that $825.00 was paid, and then that nothing was paid through March of 2016. The maintenance ledger shows that arrears as of February of 2017 were $8,743.52.

As a *prima facie* matter, Petitioner obviously has a reasonable interest in assuring that applicants to become shareholders can pay ongoing maintenance. However, Respondent admitted into evidence a letter from Petitioner dated November 17, 2014 — before Respondent's application to transfer the deceased shareholders' lease to her — rejecting Respondent's tender of $4,977.00. As noted above, Respondent's application to transfer the deceased shareholders' lease to her included an offer to pay outstanding arrears.[5] Petitioner's rejection of Respondent's application to transfer the proprietary lease to her name cites twenty-two months' worth of arrears, which sounds dramatic until one sees Respondent's evidence that she offered to pay arrears more than a year before Petitioner's rejection. Respondent's reasons for nonpayment of maintenance thus warrant inquiry.

Respondent testified that, in 2008, before she moved into the subject premises, her father,

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[5] Respondent also introduced into evidence a letter from Respondent's attorney dated May 5, 2016 offering to pay arrears with a cashier's check attached. However, as this letter post-dated Petitioner's rejection of Respondent's application to transfer the proprietary lease to her, it does not speak to whether Petitioner's rejection was reasonable.

one of the deceased shareholders, had a fall in the bathtub there. Respondent testified that she endeavored to install handlebars in the shower stall for his safety. Respondent testified that she discussed the renovation with a prior president of Petitioner's Board ("the past president"), who told her that Petitioner would reimburse her for the renovation. Respondent corroborated her testimony by introducing into evidence an email[6] that Respondent sent the Board of Directors of Petitioner in 2008. The email showed that the past president (when he was president, as per the Board President) promised Respondent due consideration to her request to remodel the bathroom in the subject premises. Respondent testified that Petitioner did not reimburse her. The Board President's testimony corroborated Respondent's evidence, testifying not only that Petitioner did not reimburse Respondent but also that Petitioner did not notify Respondent that they were not reimbursing her. Respondent testified that she stopped paying maintenance to make someone from Petitioner's Board pay attention to that fact. Respondent testified that she brought the issue up with Petitioner's Board in July of 2014, when she met with them. Respondent testified that one member of the Board told her that it was reasonable to reimburse her, and that she handed some receipts to the Board President.

As noted above, Respondent's testimony is consistent with the testimony of the Board President, who addressed the issue on cross-examination during Petitioner's *prima facie* case. The Board President testified that Respondent hired the past president, who had some kind of profession like a carpenter, to do work in the subject premises, but Petitioner was not privy to the renovation in the subject premises. The Board President testified that the past president's desire to do the work himself "raised eyebrows" in the building, as the Board President was under the

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[6] The Board President authenticated the email addresses.

impression that Respondent and the past president were friends.[7]

The Board President testified that Petitioner never reimbursed Respondent because they did not have the paperwork they needed to do so, as Respondent only showed Petitioner proposals, not contracts. The Board President acknowledged that Petitioner received an invoice to Respondent in an amount of $9,500.00, but said that it wasn't a contract and could not be verified. The Board President testified that the past president might have had the documentation that Respondent needed in order to be reimbursed, but that he died and did not provide Petitioner with the information.

The business judgment rule does not protect a cooperative's rejection of a transfer of shares to a shareholder's family when a clause in a proprietary lease prohibits the cooperative from unreasonably withholding consent to do so. Estate of Del Terzo v. 33 Fifth Ave. Owners Corp., 136 A.D.3d 486, 488 (1st Dept.), *aff'd*, 28 N.Y.3d 1114 (2016). Instead, such a clause imposes a heightened standard of reasonableness on a cooperative. Id. On this more skeptical standard, the Court finds significant that Petitioner did not notify Respondent of their rejection of her request for reimbursement for the renovation of her bathroom. Respondent now concedes that withholding maintenance was not the appropriate means by which to procure the reimbursement from Petitioner for the renovation. But Respondent's offers to pay, combined with Respondent's documentation of the availability of funds demonstrates that Respondent was

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[7] The Board President had previously averred in an affidavit on a prior motion in this proceeding that the past president and Respondent had an "intimate" relationship. The Board President did not claim knowledge of such a relationship on his trial testimony and did not otherwise prove a basis of personal knowledge as to the nature of Respondent's relationship with the past president, even though the Board President also testified that he was personal friends with the past president as well.

still able to afford the ongoing maintenance, and can pay it on an ongoing basis.

The reasonableness of a cooperative's rejection of an application to transfer shares typically focuses on ability to pay maintenance. See, e.g., 14 Morningside Ave. HDFC v. Smalls, 48 Misc.3d 128(A)(App. Term 1st Dept. 2015), 352-54 W. 48 St. Hous. Dev. Fund Corp. v. Rodriguez, 41 Misc.3d 138(A)(App. Term 1st Dept. 2013). The evidence at trial shows that Respondent has an ability to pay maintenance, but that she exercised a lapse of judgment about withholding maintenance and that Petitioner refused her subsequent tenders of maintenance arrears. See Stowe v. 19 East 88th St., Inc., 257 A.D.2d 355, 356-57 (1st Dept. 1999)(an applicant to transfer shares in a cooperative states a declaratory cause of action even though the cooperative rejected the application on the basis of maintenance arrears when the arrears resulted from a failure to deposit tenders). As Respondent has proven able to pay maintenance, Petitioner's reason to reject her was not reasonable, especially as Petitioner was aware of the circumstances surrounding Respondent's withholding of maintenance.

Accordingly, the Court sustains Respondent's fourth affirmative defense that Petitioner unreasonably withheld consent to transfer shares appurtenant to the subject premises to Respondent. The Court dismisses this proceeding.

The parties are directed to pick up their exhibits within thirty days or they will either be sent to the parties or destroyed at the Court's discretion in compliance with DRP-185.

This constitutes the decision and order of this Court.

Dated: New York, New York
March 13, 2017

HON. JACK STOLLER
J.H.C.