SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : PART 55

----------X

NICOLA GREGORETTI,

Plaintiff,

DECISION/ORDER
Index No. 157151/2014

-against-

92 MORNINGSIDE AVENUE, LLC, GROSSINGER MANAGEMENT, INC., 92 MORNINGSIDE, INC., 92-98 MORNINGSIDE, LLC and BARUCH SINGER Individually and d/b/a 92-98 MORNINGSIDE, LLC,

Defendants.

----------X

HON. CYNTHIA KERN, J.:

Plaintiff Nicola Gregoretti commenced the instant action against defendants asserting causes of action for declaratory judgment, injunctive relief, breach of contract and attorneys' fees in connection with his eviction from his rent-stabilized apartment. Defendant 92 Morningside Avenue, LLC ("92 Morningside") now moves for an Order pursuant to CPLR § 3212 granting it summary judgment dismissing plaintiff's complaint. The remaining defendants separately move for an Order pursuant to CPLR § 3212 granting them summary judgment dismissing plaintiff's complaint. The motions are consolidated for the purpose of disposition and are granted for the reasons set forth below.

The relevant facts are as follows. On or about March 1, 2001, plaintiff entered into a residential rent-stabilized lease agreement (the "initial lease") with defendant 92 Morningside, Inc. for an apartment unit (the "unit") in a building located at 92 Morningside Avenue, New York, New York (the "building"). The building was rendered uninhabitable by a fire on or about November 19, 2002, requiring all tenants to vacate the building. The building remained vacant for over a decade thereafter. After the fire, plaintiff applied to the Division of Housing and Community Renewal ("DHCR") for a rent reduction order for the unit. On or about March 13, 2003, DHCR issued an order reducing the rent for plaintiff's unit to $1.00 per month and providing that plaintiff is entitled to be restored to occupancy of the unit upon payment of this

reduced rent (the "DHCR reduced rent order"). 92 Morningside, Inc. regularly renewed plaintiff's lease, ordinarily voluntarily but in 2009 because it was ordered to do so by DHCR.

In 2008, the defendants herein other than 92 Morningside commenced an action in Supreme Court, New York County seeking a declaration that the former tenants of the building were not entitled to be restored to occupancy of their apartment units due to the economic infeasibility of restoring the building (the "prior action"). On or about October 12, 2010, Special Referee Lancelot B. Hewitt determined on an inquest that they were not entitled to such a declaration because economic infeasibility is an affirmative defense that should be used as a "shield" rather than a "sword" and because there was insufficient evidence that restoring the building would be economically infeasible.

On or about March 25, 2012, another fire caused extensive damage to the building. 92 Morningside purchased the building from 92 Morningside, Inc. on or about April 24, 2013. After the purchase, 92 Morningside inspected the building and found that the interior of the building had completely collapsed, thus requiring it to perform a gut renovation. 92 Morningside's renovations, which rebuilt the interior of the building, added two floors and reduced the number of apartment units by increasing the size of the units, began in 2013 and were completed in 2016.

The last renewal lease for the unit was between plaintiff and 92 Morningside, Inc. for the term from October 1, 2011 to September 30, 2013. In or around September 2013, plaintiff attempted to pay $24.00 in rent to 92 Morningside, the building's new owner. 92 Morningside rejected plaintiff's attempted payment of rent. Plaintiff commenced the instant action in July 2014 alleging that defendants had wrongfully evicted him and breached the initial and renewal leases. He demands a declaration that the unit is subject to rent stabilization and that he is the lawful tenant of the unit, an order directing defendants to restore the unit to a habitable condition, restoring him to occupancy of the unit and registering the unit as a rent stabilized unit with DHCR and monetary damages as he was required to pay higher rents for alternative housing and attorneys' fees.

The court first considers the portion of defendants' motions for summary judgment dismissing plaintiff's causes of action for a declaratory judgment and injunctive relief sounding in wrongful eviction on

the ground that the building was effectively demolished as a result of which plaintiff is not entitled to be restored to occupancy of the premises. On a motion for summary judgment, the movant bears the burden of presenting sufficient evidence to demonstrate the absence of any material issues of fact. *See Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320, 324 (1986). Summary judgment should not be granted where there is any doubt as to the existence of a material issue of fact. *See Zuckerman v. City of New York*, 49 N.Y.2d 557, 562 (1980). Once the movant establishes a *prima facie* right to judgment as a matter of law, the burden shifts to the party opposing the motion to "produce evidentiary proof in admissible form sufficient to require a trial of material questions of fact on which he rests his claim." *Id.*

The First Department has held that where a rent-stabilized or rent-controlled building is effectively demolished by fire, which requires the building to be "so damaged by fire, without being burned to the ground, that the owner is left with no real choice but to demolish it," "the owner is not obligated to offer apartments in the new building to the former tenants of the rent-stabilized and rent-controlled apartments no longer in existence." *Quiles v. Term Equities*, 22 A.D.3d 417, 421 (1st Dept 2005). In *Quiles*, the building was not completely destroyed by a fire but rather remained standing, although it was uninhabitable. *Id.* at 419. The defendant owners then renovated the building, increasing the number of apartment units from 16 to 39. *Id.* The First Department reversed the trial court's order granting the plaintiffs' cross-motion for summary judgment on their wrongful eviction claim on the ground that there was an issue of fact as to whether the building was "so damaged by the fire as to have been 'effectively demolished.'" *Id.* at 421. The plaintiffs had submitted affidavits and deposition testimony of one of the plaintiffs stating that "the stairs, hallways and apartments were still in place" after the fire and that her apartment unit had sustained water damage but was still intact, while the defendants had submitted "an engineer's letter expressing the opinion that the building required a 'gut' renovation" because of substantial damage to the floor structure on the north side of the building and to the walls, ceilings, floor boards and plumbing, electrical and heating systems. *Id.* at 419-20.

In the present case, defendants have made a *prima facie* showing of their entitlement to summary judgment dismissing plaintiff's causes of action for a declaratory judgment and injunctive relief sounding in

wrongful eviction on the ground that the building was effectively demolished as a result of which plaintiff is not entitled to be restored to occupancy of the premises. Defendants Grossinger Management, Inc., 92 Morningside, Inc., 92-98 Morningside, LLC and Baruch Singer, individually and d/b/a 92-98 Morningside, LLC, have submitted the affidavit of Baruch Singer stating that after the first fire, he "observed that the entire building interior was essentially gutted by the fire which would require a total gut renovation of the premises." They have also submitted the report of Gerald Goldstein, an architect, dated December 15, 2009 stating his opinion that the interior of the building had sustained catastrophic damage, including the collapse of portions of the building's interior, from the first fire and that a gut renovation was required. In addition, defendant 92 Morningside has submitted the deposition testimony of Michael Shultz, its representative, that after the second fire, "[t]he interior of the building was a [sic] complete collapse," the floor joists were collapsed inwards and there were piles of debris. The court finds that this evidence is sufficient to make a *prima facie* showing that the building was effectively demolished.

In opposition, plaintiff has failed to raise a triable issue of fact. Plaintiff has not submitted any admissible evidence that the building was not effectively demolished. Further, plaintiff's arguments in opposition to defendants' motions are all without merit. Plaintiff's argument that defendants' motions must be denied because the building was not burned to the ground is without merit. In *Quiles*, the First Department held that a building need only be effectively demolished rather than completely demolished by a fire for the owner to be under no obligation to offer apartments to the former tenants of the "rent-stabilized and rent-controlled apartments no longer in existence." *Quiles*, 22 A.D.3d at 421. In fact, the building at issue in *Quiles* was not burned to the ground by the fire and was merely renovated following the fire rather than razed to the ground and entirely rebuilt. *Id.* at 419; Brief of Plaintiffs-Respondents at *3, *Quiles*, 22 A.D.3d 417 (1st Dept 2005).

Further, plaintiff's argument that he is entitled to be restored to occupancy of the unit based on the DHCR rent reduction order is without merit. In *Quiles*, the First Department held that DHCR orders reducing the tenants' rent to $1.00 per month, which entitled them "upon continued payment of the reduced

rent...to be restored to occupancy of the apartments," did not entitle the former tenants to be restored to occupancy of the apartments if the building were found to have been effectively demolished. *Id.* at 418.

Plaintiff's argument that defendants' motions must be denied because Special Referee Lancelot B. Hewitt determined in the prior action that restoring the former tenants to occupancy of their apartment units was economically feasible is also without merit. Special Referee Hewitt did not address the First Department's holding in *Quiles* regarding the effective demolition of a building, which is binding on the court, but rather held that the unrelated affirmative defense of economic infeasibility could not be used as a "sword." Further, Special Referee Hewitt did not determine that such restoration was economically feasible but rather that defendants had failed to establish that restoring the building would be economically infeasible.

To the extent that plaintiff argues that defendants' motions must be denied because they did not properly terminate his lease and provide the requisite statutory notice of the grounds for eviction, such contention is unavailing as the court in *Quiles* held that the provisions of the Rent and Rehabilitation Law regarding eviction procedure and notice are not applicable where the building has been effectively demolished as the tenant has not been evicted under the meaning of Rent and Rehabilitation Law. *See Quiles*, 22 A.D.3d at 421.

The portion of the motion of defendants Grossinger Management, Inc., 92 Morningside, Inc., 92-98 Morningside, LLC and Baruch Singer, individually and d/b/a 92-98 Morningside, LLC, for summary judgment dismissing plaintiff's cause of action for breach of contract is granted as the court has determined that the building was effectively demolished as a result of which defendants had no obligation to renew plaintiff's lease or restore him to occupancy of the premises.

Further, the portion of the motion of defendants Grossinger Management, Inc., 92 Morningside, Inc., 92-98 Morningside, LLC and Baruch Singer, individually and d/b/a 92-98 Morningside, LLC, for summary judgment dismissing plaintiff's cause of action for attorneys' fees on the ground that the initial lease only provides for the award of attorneys' fees to the prevailing party in a dispute between the parties is granted as

the court has determined that defendants are entitled to summary judgment dismissing plaintiff's causes of action for declaratory judgment, injunctive relief and breach of contract.

The portion of defendant 92 Morningside's motion for summary judgment dismissing plaintiff's causes of action for breach of contract and attorneys' fees as against it on the ground that it did not enter any lease with plaintiff is also granted without opposition.

Accordingly, the motions of defendant 92 Morningside Avenue, LLC and of defendants Grossinger Management, Inc., 92 Morningside, Inc., 92-98 Morningside, LLC and Baruch Singer, Individually and d/b/a 92-98 Morningside, LLC for summary judgment dismissing plaintiff's complaint are both granted. As the court has determined that defendants are entitled to summary judgment dismissing plaintiff's complaint on the aforementioned grounds, the court need not consider defendants' remaining arguments, including their argument based on the statute of limitations for wrongful eviction actions. Plaintiff's complaint is hereby dismissed in its entirety. This constitutes the decision and order of the court.

DATE: 4/5/17

KERN, CYNTHIA S., JSC
HON. CYNTHIA S. KERN
J.S.C.