

Dexter Props., LLC v Pliego

2006 NY Slip Op 30804(U)

December 13, 2006

Supreme Court, New York County

Docket Number: 115281/05

Judge: Marilyn Shafer

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.

This opinion is uncorrected and not selected for official publication.

6

SUPREME COURT OF THE STATE OF NEW YORK – NEW YORK COUNTY

PRESENT HON. MARILYN SHAFER PART 62

DEXTER PROPERTIES, LLC

INDEX NO. 115281/05

Plaintiff,

MOTION DATE _____

-against-

MOTION SEQ. 003

**JESSICA PLIEGO and THE WEST SIDE SRO
LAW PROJECT,**

Defendants.

By order to show cause dated April 2, 2006, plaintiff Dexter Properties (Dexter) seeks to strike defendant Jessica Pliego and The West Side SRO Law Project's (Pliego) answer and counterclaim, due to their alleged failure to respond to interrogatories. Pursuant to stipulation and conferences before the Honorable Marilyn Shafer in September of 2006, Dexter and Pliego resolved all outstanding discovery that was the basis for the order to show cause, with the exception of an interrogatory on Pliego's residency and immigration status which Dexter maintains is probative on the question of Pliego's residency. Dexter owns the Dexter Hotel (the Hotel) at 345 West 86th Street, consisting largely of single room occupancy units (SRO's). Pliego, at all relevant times a tenant of room 903 at the Hotel (the room), requested a rent stabilized lease from Dexter which Dexter refused to provide, resulting in Dexter's lawsuit. The Westside SRO Law Project (the Law Project) is a nonprofit legal services provider representing low-income tenants and which has represented the Dexter House's Tenants Association. Dexter brings the underlying action against the Law Project for what it alleges is tortious interference

FILED
DEC 27 2006
NEW YORK
COUNTY CLERK'S OFFICE

with its business.

Dexter brought a previous order to show cause enjoining Pliego from refusing Dexter access to the room so that Dexter could rent it on a shared basis, and seeking use and occupancy fees to be paid by Pliego. The order, dated May 26, 2006 and signed by the Honorable Barbara Kapnick, directed Pliego to pay fees in the amount of the last regulated rent for the room, but otherwise denied Dexter's application, finding Dexter had failed to demonstrate a likelihood of success on the merits.

In the underlying action Dexter asks, among other things, for a declaration that it should be allowed to lease the room "free of rent regulation" (Complaint p 8, Exhibit A, Order to Show Cause), that the room is "intended to be occupied by multiple individuals at any given time" (id.), that Pliego should be denied rights as a tenant since she fraudulently obtained occupancy; and that the room was rented to Pliego on a "non-exclusive basis" (id.). Additionally, Dexter seeks a declaration that Pliego is "not entitled to a rent-stabilized lease and permanent tenancy rights pursuant to the Rent Stabilization Code or any other provision of law because an illegal alien may not have a primary residence in this country in which she illegally resides" (Complaint, ¶ 41).

Authority is scant for what Dexter claims is its entitlement to know Pliego's residency and immigration status. Of five cases they cite in support of this proposition, two deny succession rights to relatives of rent stabilized tenants who failed to establish that they had been present in the apartment on a regular rather than a sporadic basis (*Honeyman v Collingwood*, 705 NYS 2d 520 [1st Dept 2000]; *Haroust Corp. v Chin*, 547 NYS 2d 289 [1st Dept 1989]). A third

stands for rather different proposition that a jury may consider the immigration status of a plaintiff worker when the plaintiff put his immigration status at issue in seeking future lost earnings (*Barahona v Trustees of Columbia University*, 816 NYS 2d 851 [S. Ct. Kings Ct. 2006]). *Schwartz v Seidman* finds the tenancy of a landlord's relatives in a Soho loft unlawful under zoning resolutions requiring tenancy by artists (*Schwartz v Seidman*, NYLJ 10/1/03, p. 18, col. 1 [Civ. Ct. NY Co.]), while *Franmar* merely concerns application of the Loft Law to protect an artist tenant who testified that had listed his place of residence with the INS (*Franmar Infants Wear v Rios*, 128 Misc. 2d 996 [Civ. Ct. NY Co. 1985]).

For housing accommodations located in hotels, the Rent Stabilization Code §2520.6(j) defines a permanent tenant, in pertinent part, as “an individual . . . who [has] continuously resided in the same building as a principal residence for a period of at least six months. In addition, a hotel occupant who requests a lease of six months or more . . . or who is in occupancy pursuant to a lease of six months or more shall be a permanent tenant even if actual occupancy is less than six months.”

CPLR §3101(a) provides for full discovery of all matter material and necessary in the prosecution or defense of an action. Nonetheless, “competing interests must always be balanced; the need for discovery must be weighed against any special burden to be borne by the opposing party” (*Kavanagh v Ogden Allied Maintenance Corp.*, 92 NY2d 952, 954 [1998], *internal citations omitted*).

Dexter claims that Pliego's immigration status is relevant since Pliego must establish permanent tenancy to be entitled to a lease. However, Dexter has not shown that Pliego's residency and immigration status is relevant to her ability to establish permanent tenancy

pursuant to the Rent Stabilization Code §2520.6(j) or that her status is material and necessary to the prosecution of the action. Further, the *in terrorem* effect of compelling disclosure on this question clearly outweighs its limited probative value (*Flores v Amigon* 233 F. Supp. 2d 462, 463; *Liu v Donna Karan* 207 F. Supp. 2d 191, 192; *Cano v Mallory Management*, 195 Misc. 2d, 666, 669).

Accordingly, Dexter's interrogatory demand for Pliego's immigration status is denied; and it is further

ORDERED that Dexter's order to show cause dated April 2, 2006 is denied.

This constitutes the decision and order of this court.

Dated: 12/13/06

HON. MARILYN SHAFER, JSC

J.S.C.
 NON-FINAL DISPOSITION

Check one: FINAL DISPOSITION

FILED
DEC 27 2006
NEW YORK
COUNTY CLERK'S OFFICE