

405 East 56th St., LLC v Steginsky

2013 NY Slip Op 30427(U)

March 4, 2013

HCIV, New York County

Docket Number: 89478/2012

Judge: Sabrina B. Kraus

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CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK: HOUSING PART C

405 EAST 56TH STREET, LLC X

Petitioner

-against-

DECISION & ORDER

Index No.: L&T 89478/2012

HON. SABRINA B. KRAUS

EILEEN STEGINSKY
405 EAST 56TH STREET, Unit 7F
NEW YORK, NY 10022

Respondent

“JOHN DOE” AND “JANE DOE”
Respondents-Occupants

X

BACKGROUND

The summary non-payment proceeding was commenced by **405 EAST 56TH STREET, LLC** (Petitioner) against **EILEEN STEGINSKY** (Respondent) based on allegation that Respondent owes \$18,780.35 in arrears through November 2012 at a monthly rent of \$1830.45 per month. Petitioner moves to dismiss defenses and counterclaims and for sanctions and Respondent cross-moves for leave to serve a second amended answer. The parties have been in prolonged litigation for years and both parties reference prior proceedings in their motion papers.

THE 2009 PROCEEDING

Petitioner commence a non-payment proceeding against respondent in 2009 under Index Number 70785/2009. Petitioner sought \$5,273.56 in arrears for a period covering May 2006 through April 2009 at a monthly rent of \$1656.81. Respondent filed an answer on June 24,

2009, and the proceeding was originally returnable July 2, 2009. Respondent is an attorney admitted to practice law in New York since 1984. The proceeding was scheduled for trial on October 8, 2009, Respondent failed to appear and a judgment was entered against her for \$15,214.92 on default. Respondent had submitted an affidavit of engagement which was not accepted by the court (Schneider,J). On October 20, 2009, Respondent's motion to vacate the default judgment was granted by the court (Spears, J.) And the proceeding was adjourned to November 5, 2009 for trial. On December 10, 2009, the proceeding was transferred to Part X for assignment to a trial part. The proceeding was assigned to Part P for trial. Respondent paid \$26,700.00 at trial which was rent due through June 2010, and the trial judge ruled on Respondent's claim for an abatement for the period of April 2003 through February 2010. The judge (Cohen, J) awarded Respondent an abatement totaling \$4,592.26 for said period pursuant to a decision issued December 20, 2010.

THE 2011 PROCEEDING

Even prior to the issuance of the decision by the Judge in the 2009 proceeding, Petitioner issued a three day demand for the 2011 proceeding seeking \$ 10,658.54 in arrears through December 2010. Respondent filed an answer on March 3, 2011 and the proceeding was originally returnable March 11, 2011.

Respondent sought leave to file an amended answer and Petitioner moved to strike certain defenses and for related relief. On April 13, 2011, the court issued a decision and order striking certain defenses and counterclaims. The proceeding was adjourned to May 2, 2011, when Respondent failed to appear and a default judgment was entered against her for \$12,906.86 as all rent due through January 2011. On May 17, 2011, Respondent's motion to vacate the default judgment was granted and the proceeding was set for trial on June 14, 2011 and marked

final versus Respondent. On June 14, 2011, the proceeding was transferred to Part X for assignment to trial. On July 6, 2011, the proceeding was assigned to Part R (Halperin, J) for trial.

Judge Halperin granted Respondent's application for a continuance on said date and adjourned the trial the proceeding to August 9, 2011 for continued trial. On August 9, 2011, Judge Halperin again granted Respondent's request for an adjournment and adjourned the trial to September 22, 2011. The proceeding appeared on the Part R calendar on October 5, 2011, October 27, 2011, November 2, 2011 and November 30, 2011. On November 30, 2011, the proceeding was adjourned to January 11, 2012. On said date the parties entered into an interim stipulation regarding repairs and payments and the proceeding was adjourned to April 11, 2012. On April 23, 2012, for reasons that are unclear from the file, Judge Halperin declared a mistrial. The parties entered into a stipulation on said date which provided that Respondent paid \$8000.00 in court without prejudice, both sides reserved all claims and defenses, and Petitioner asserted there remained \$5967.20 due through April 2012.

The instant proceeding followed.

RESPONDENT'S MOTION TO AMEND THE ANSWER

Respondent's motion to serve an "further amended answer" is denied. Respondent served her first answer on January 18, 2013, and filed it on January 23, 2013. Respondent then served and an amended answer on January 28, 2013 and filed her amended answer on January 31, 2013. Respondent asserts the need for a second amended answer to cure deficiencies in her second pleading which are raised by Petitioner's motion papers. Respondent's cross-motion to serve a second amended answer is denied. The cross-motion was not timely filed or served and the court finds the cross motion is otherwise without merit. Respondent will proceed on the

amended answer, which the court notes includes twenty-nine affirmative defenses and fourteen counterclaims.

PETITIONER'S MOTION TO DISMISS DEFENSES AND COUNTERCLAIMS

The first five affirmative defenses in the amended answer purport to assert defenses relating to the service of papers in this proceeding. As Respondent failed to raise these defenses in her initial pleading she has waived objections to personal jurisdiction. Additionally, Respondent has asserted unrelated counterclaim and that also constitutes a waiver of any jurisdictional claims. Finally, Respondents first five defenses do not dispute any factual allegation regarding service sufficient to require a traverse hearing. Based on the foregoing, the first five affirmative defenses are dismissed.

Respondent's sixth affirmative defense is based on the fact that the petition is verified by counsel. The RPAPL permits verification of the petition by counsel, and in any event a defective verification would not be the basis for the dismissal of this proceeding. Based on the foregoing Respondent's sixth affirmative defense is dismissed.

CPLR 3013 provides:

Statements in a pleading shall be sufficiently particular to give the court and the parties notice of the transactions, occurrences or series of transactions or occurrences, intended to be proved and the material elements of each cause of action or defense.

As noted in the practice commentaries "(t)he four corners of the pleading must contain a factual basis for each of the legal elements of the claim or defense.... The practitioner is cautioned to plead facts, not conclusions (David L Ferstendig *Practice Commentaries* 2012)."

Many of the defenses asserted in Respondent's answer fail to comply with the foregoing requirement and are no more than conclusory allegations devoid of any supporting factual assertions. The following defenses are dismissed as asserting no more than a conclusion and

unsupported by any facts in the answer: eighth, ninth, tenth, eleventh, twelfth, thirteenth, fourteenth, fifteenth affirmative defenses, and seventeenth affirmative defense and second counterclaim are dismissed.

The sixteenth affirmative defense and first counterclaim are based on determinations made by the court in the 2009 proceeding. The court in that proceeding awarded Respondent an abatement for a period through February 2010. The petition herein seeks rent from January 2012 forward. There is no overlap and Respondent's twelfth affirmative defense and first counterclaim are dismissed.

The 18th & 19th affirmative defenses and third and fourth counterclaims relate to a dispute regarding the Respondent's security deposit. As such these claims are unrelated to the main issues in this proceeding and are stricken by the court without prejudice to assertion in another forum. Defenses 20-24 and 27 and related counterclaims essentially assert a breach of warranty of habitability and are preserved for trial.

The 25th and 28th affirmative defenses and related counterclaims are based on negligence and tort and are stricken as unrelated from this summary non-payment proceeding.

Similarly the 26th affirmative defense and eleventh counterclaim which purport to be based on a stipulation from a proceeding in the year 2000 are dismissed. These claims are not properly asserted thirteen years later in this summary proceeding and as noted above there was the 2009 proceeding which resolved claims through February 2010 with finality.

Petitioner's motion for sanctions is denied.

The proceeding is restored to the calendar for trial on March 15, 2013 at 9:30 am in Part C. This constitutes the decision and order of this court.

Dated: March 4, 2013
New York, New York

Hon. Sabrina Kraus

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