

Columbus Park Owners, Inc. v Battin

2013 NY Slip Op 30583(U)

March 27, 2013

Civil Court, New York County

Docket Number: 58975/2012

Judge: Sabrina B. Kraus

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

COLUMBUS PARK OWNERS, INC., X

Petitioner-Landlord

-against-

DECISION & ORDER
Index No.: L&T 58975/2012

HON. SABRINA B. KRAUS

CECILE BATTIN
100 West 94th Street, APT 22A
NEW YORK, NEW YORK 10025

Respondent-Tenant

X

BACKGROUND

The underlying summary nonpayment proceeding was commenced by **COLUMBUS PARK OWNERS, INC** (Petitioner) against **CECILE BATTIN** (Respondent), the proprietary lessee based on the allegation that Respondent had failed to pay maintenance due for the Subject Premises. The building was originally in the Mitchell Lama program but Petitioner asserts that in 2009 the building withdrew from the program and became a private cooperative. At that time, Petitioner asserts Respondent elected to purchase shares instead of remaining as a rental tenant (a copy of the proprietary lease is annexed to Petitioner’s cross-motion).

PROCEDURAL HISTORY

The petition issued in March 2012 seeking \$2,429.11 in arrears due through that date. The base maintenance for the Subject Premises is approximately \$812.79 per month. The arrears were based on base maintenance accruing from November 2011 through February 2012 of

\$3135.20, utility charges for the same period of \$284.33, \$625.50 in legal fees, \$189.18 in late charges, less payments of \$1737.50 during this same period. Prior to November 2011, the maintenance appears to have been satisfied by a series of prepaid credits.

Respondent did not appear or file an on answer, and on May 21, 2012, Petitioner moved for a default judgment and related relief. The motion was granted by the court (Stanley, J.) On that date and a judgment of possession was entered against Respondent on default based on arrears accrued through February 2012. The court's order provided for forthwith issuance of the warrant of eviction.

The warrant issued on June 8, 2012.

On August 3, 2012, DSS moved for the appointment of a Guardian Ad Litem (GAL) for Respondent. The motion was based on a combination of Respondent's physical illnesses, including lung cancer, some psychological difficulties, as well as Respondent's failure to take appropriate steps for herself and her family such as completing an SSI application. The motion recites a history of a difficult relationship between Respondent and APS, with Respondent often asserting APS was responsible for her problems. The motion was granted by the court, and the proceeding was adjourned to September 7, 2012 for the appointment of a GAL.

On August 9, 2012, the court (Stanley, J.) issued an order appointing Thomas J Giles as GAL. The proceeding was adjourned from September 7, 2012, to October 12, 2012, then again to November 13, 2012.

On November 13, 2012, Judge Stanley issued the following order "Motion granted as follows: The GAL states that based upon his review there is no ability to pay maintenance of \$812.79 monthly. Execution of the warrant stayed to 12/31/12 to pay \$24,069.75! Upon default serve notice of eviction by mail only."

On January 22, 2013, Respondent was evicted. The court (Kraus, J) had signed the GAL's order to show cause that morning, but apparently the eviction took place prior to the service of the order.

On January 23, 2013, the court (Kraus, J.) denied Respondent's first post-eviction order to show cause pursuant to an order which provided:

Parties agree that there remains \$26,831.999 in arrears through January 2013. This figure includes \$11,367.05 which Petitioner asserts was incurred as legal fees. GAL represented no current ability to pay. It is undisputed that Respondent breached the 11/13/12 order. Reletting and removal are stayed through January 31, 2013, for GAL to make any last attempts to obtain funds to have Respondent be reinstated or to take any other action regarding this order.

On February 27, 2013, Respondent moved for a second post eviction order to show cause, which was returnable at Respondent's request on March 7, 2013. In this motion, the GAL raises for the first time problems regarding Judge Stanley's November 13, 2012 order. The GAL also showed for the first time that Respondent may be able to obtain assistance to pay the arrears. Petitioner filed opposition and a cross-motion. The court issued an order adjourning the motion through March 27, 2013, for Respondent to show further proof of ability to pay, and based upon evidence provided by Respondent that the Subject Premises may be valued at \$900,000.00 and that HRA was considering offering Respondent assistance.

On March 27, 2013, the Respondent asserted no further evidence of ability to pay absent a substantial reduction in the amount of arrears due, which GAL asserted was inflated by legal fees and other non-maintenance charges.

The court reserved decision on the pending motions.

DISCUSSION

Respondent's motion and Petitioner's cross-motion are consolidated for disposition and granted to the following extent. The default judgment and warrant are vacated, the petition is amended through March 2013 and Respondent may submit an answer, exclusive of traverse defenses, within ten days. Respondent is to be restored to possession forthwith.

The reasons for this determination are based on the irregularities associated with the court's November 13, 2012 order. There were no additional motions made after the DSS motion seeking the appointment of a GAL, thus the court's November order can only be read as a determination on the GAL motion, given also that the GAL order had provided that all stays were to remain in effect.

The order is troubling in a number of ways. It predicates Respondent's eviction on a figure to which Respondent had not consented and which appears to include over \$10,000 in attorneys' fees which no court prior to Judge Stanley had awarded, and for which no pending motion had been made in this proceeding.

Since the February 2012 date upon which entry of the default judgment for \$ 2429.11 was based, Respondent has paid over \$ 4137 towards arrears (although it is not clear from the breakdown if these are payments made by Respondent or if these are DSS payments made on her behalf). Thus it is not clear to this court that the judgment had not been satisfied prior to the execution of the warrant. The November order appears to have essentially deemed the petition amended through said date, and directed Respondent's eviction based on an amount alleged by Petitioner without ever having given Respondent notice of these new claims or an opportunity to be heard.

Finally, as noted by Petitioner, CPLR 1203 provides that “No default judgment may be entered against an adult incapable of adequately protecting his rights for whom a guardian ad litem has been appointed, unless twenty days have expired since the appointment.” Yet Respondent’s eviction was based on a default judgment entered prior to the appointment of the GAL in this proceeding.

For all of the foregoing reasons the court concludes that the 11/13/12 order took this proceeding out of its normal course, and was issued inadvertently. The court now endeavors to put the parties in the place they would have been had the original default judgment been vacated, and the parties permitted either to settle the proceeding pursuant to a stipulation or have a trial, neither of which ever took place in this proceeding. The trial shall include a determination on what, if any, attorneys’ fees should be properly included in the underlying judgment.

Trial shall be set for April 16, 2013 at 9:30 am.

This constitutes the decision and order of this court.

Dated: March 27, 2013
New York, New York

Hon. Sabrina Kraus

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