

Chelsea Dynasty LLC v Pennington
2013 NY Slip Op 31372(U)
June 28, 2013
Civil Court of the City of New York, New York County
Docket Number: 53489/2013
Judge: Sabrina B. Kraus
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CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK: HOUSING PART C

CHELSEA DYNASTY LLC X

Petitioner

-against-

DECISION & ORDER

Index No.: L&T 53489/2013

HON. SABRINA B. KRAUS

MELI PENNINGTON and BRIAN BOTHWELL
222 West 23rd Street - Room 220/222
NEW YORK, NY 10011

Respondent

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

X

BACKGROUND

This summary nonpayment proceeding was commenced by **CHELSEA DYNASTY LLC** (Petitioner) against **MELI PENNINGTON** and **BRIAN BOTHWELL** (collectively Respondents) seeking to recover possession of 222 West 23rd Street - Room 220/222, New York, NY 10011 (Subject Premises) based on the allegation that Respondents have failed to pay rent due for the Subject Premises.

PROCEDURAL HISTORY

Petitioner issued a rent demand dated January 14, 2011, seeking \$88,500.00 in arrears for a period covering September 1, 2011 through January 2013. The amount demanded includes an unexplained opening balance of \$7,500.00 on September 1, 2011, rent at \$2500 per month through May 2012, and rent at \$12,000 per month for a period from June 1, 2012 forward.

The petition is dated January 28, 2013. The petition asserts that Respondents are in possession pursuant to an oral agreement made between Respondents and Petitioner's predecessor in interest. The petition further asserts that the premises are exempt from rent regulation because they were a combined unit with a rent of over \$2000 per month.

On February 14, 2013, Respondents through counsel filed a jury demand and a verified answer. The answer asserts that Respondents are Rent Stabilized tenants as they are permanent tenants of the hotel. The answer asserts that the Subject Premises has never been registered with DHCR, and that Respondents first paid \$700 per month for rent in Apt 220 in 1994 and \$1400 per month in rent for Apt. 22. The answer further asserts that these remain the legal rents for the units to date, but that in January 2000 the rents were illegally increased to \$800 per month for Apt. 220 and \$1600 per month in Apt 222, with a further illegal" increase in August 2004 to \$900 per month for Apt. 220.

Respondents seek treble damages for the alleged overcharge. Respondent also assert breach of warranty of habitability and that there was never an oral agreement to pay \$12000 per month for the Subject Premises.

The proceeding was initially returnable on February 22, 2013. On that date, the parties entered a stipulation adjourning the proceeding to April 12, 2013, to argue a motion. The stipulation set forth an agreement for service of papers on said motion.

Respondents agreed to pay "use and occupancy" to Petitioner at a rate of \$1600 per month for Apt 222 and \$900 per month for Apt 200, by the first of each month pending the litigation.

On April 12, 2013, Petitioner moved for an order dismissing Respondents' first, second, third and fourth affirmative defenses and Respondents' counterclaim. The motion also sought an

order “compelling Respondents to pay petitioner use and occupancy *pendent lite* at the last rental rate paid by Respondents (\$2,500) by the first of each month without prejudice.”

On April 12, 2013, the parties entered a second stipulation adjourning the proceeding at Respondent’s request to May 17, 2013. The stipulation asserted that due to health reasons Respondent’s counsel was unable to comply with the previous schedule for motion papers. The parties agreed to a new schedule.

On May 17, 2013, Petitioner made a second motion seeking relief pursuant to RPAPL 745(2)(c)(I) and CPLR § 3126, which was denied as moot since the use and occupancy agreed to was paid in court. Respondent made an additional application for time to respond to the motion, which the court granted over Petitioner’s objection. Respondent was to file opposition and a cross-motion by May 24, 2013, and the proceeding was adjourned to June 13, 2013, pursuant a schedule set forth by the court.

On June 13, 2013, the parties appeared and yet again Respondent had failed to file any responsive papers to the motion and the motion was adjourned a final time over Petitioner’s objection to June 27, 2013.

On June 27, 2013, Respondents’ counsel made another application for time to respond to Petitioner’s motion. Respondents’ counsel again asserted serious health problems had prevented him from complying the motion schedule. The court denied Respondents’ application and reserved decision on the motion.

DISCUSSION

Petitioner’s motion is denied in its entirety. Petitioner’s claim that the Subject Premises are exempt from Rent Stabilization is not supported in any manner by the moving papers. In order to claim that the premises are exempt from Rent Stabilization based on a legal rent of over

\$2000, Petitioner must show that an initial registration and annual registrations were filed with DHCR. Petitioner can not claim an exemption where it never complied with Rent Regulation requirements in the first place [*See eg Tribeca M. Corp. v Haller* 2003 NY Slip Op 51271(U); *Randall Associates LLC v Davis* 20 Misc3d 1116(A)].

The underlying proceeding also appears to be fatally defective in numerous ways, not the least of which is that there does not appear to be any basis for Petitioner to claim an oral agreement with Respondents to pay \$12,000.00 per month rent for the Subject Premises. Absent proof of such agreement, the rent demand and petition would both be fatally defective and subject to dismissal, irrespective of all the other claims and defenses of the parties.

Petitioner's counsel is therefore cautioned to evaluate whether there is any good faith basis to proceed with this case.

Petitioner's motion for "use and occupancy" is denied. Petitioner has not yet appeared ready for trial, and has started a holdover proceeding against Respondents which would preclude any obligation to pay ongoing rent after the termination date.

Trial is set for August 1, 2013, at 9:30 am.

This constitutes the decision and order of the court.

Dated: June 28, 2013
New York, New York

Hon. Sabrina Kraus

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