

Casanas v Carlei Group, LLC
2014 NY Slip Op 30287(U)
January 28, 2014
Sup Ct, New York County
Docket Number: 101057/12
Judge: Donna M. Mills
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (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.

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

PRESENT : DONNA M. MILLS
Justice

PART 58

PETER CASANAS and ELIZABETH CASANAS,

INDEX NO. 101057/12

Plaintiff,

MOTION DATE _____

-against-

MOTION SEQ. No. 004

THE CARLEI GROUP, LLC and RICHARD M. CASANAS,

FILED

Defendants.

FEB 03 2014

MOTION CAL NO. _____

NEW YORK

The following papers, numbered 1 to COUNTY CLERK'S OFFICE

PAPERS NUMBERED

Notice of Motion/Order to Show Cause-Affidavits- Exhibits....

1, 2

Answering Affidavits- Exhibits _____

3, 4

Replying Affidavits _____

5, 6

CROSS-MOTION: YES NO

Upon the foregoing papers, it is ordered that this motion is:

DECIDED IN ACCORDANCE WITH ATTACHED ORDER.

status conference is scheduled for 3/21/14 in Part 58

Dated: 1/28/14

DM

DONNA M. MILLS, J.S.C.

Check one: FINAL DISPOSITION

NON-FINAL DISPOSITION

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 58

-----X
PETER CASANAS and ELIZABETH CASANAS,

Plaintiffs,

INDEX NO.
101057/12

-against-

THE CARLEI GROUP, LLC and
RICHARD M. CASANAS,

DECISION

FILED

Defendants.

FEB 03 2014

-----X
NEW YORK
COUNTY CLERK'S OFFICE
MILLS, J.

The plaintiffs in the case at bar pursue the relief of declaratory judgment in their favor, affirming their right to occupy combined apartments 3C and 3W at 73 West 82nd Street in the City, County and State of New York, pursuant to a lease executed on January 10, 1990. The defendants, respectively, are the corporate owner of the said building, and the individual owner of that corporation. The premises were acquired by defendants by deed dated February 19, 2008.

Defendant Richard Casanas, as manager of the building, in November of 2011, served on plaintiffs, his brother and sister-in-law, a ten-day notice to quit the premises. It is the defendants' contention that plaintiff's had occupied the premises as licensees, with no interest entitling them to remain beyond the defendants' revocation of their said license.

In the instant motion, defendants request summary judgment, under CPLR 3212, declaring that plaintiffs have no rights as lessees to the combined apartments, which are the subject of the dispute herein.

Plaintiffs were living with two small children in apartment 2E in the subject building in the fall of 1989. The prior owner of the premises, Aleida Realty, was in turn owned by Carlos Casanas, father of both plaintiff Peter Casanas and defendant Richard Casanas. Carlos agreed to provide more space for his grandchildren by allowing plaintiff to move into apartment 3W, which was vacant. Carlos further agreed that apartment 3W, not yet vacant, would be remodeled and combined with apartment 3C, all for the use of the plaintiffs and their children.

At the time of these events, apartment 3C was occupied by Carmen Coletta, who, as an alleged rent-stabilized tenant, had expressed her intention, on many occasions, to terminate her tenancy and vacate the apartment. According to the affidavit in opposition of plaintiff Peter Casanas, sworn to October 14, 2013, Coletta's husband had died in the apartment compelling her to escape unhappy memories, and avail herself of the first opportunity to enter public housing. Not only did Coletta re-affirm her desire to move in the presence of Peter Casanas on several occasions, but during the time that Peter was renovating apartment 3W, Coletta expressed her willingness to permit him to take that space that was her living room and convert it to be part of apartment 3C (affidavit of Peter Casanas). Carlos Casanas, then the landlord, accordingly reduced the rent, and Peter Casanas paid the bill for electric power while Coletta remained in the reduced space (*id*).

Coletta continued to reside in the remainder of apartment 3C until her removal from the premises in 1992, at which time plaintiff took full possession of both apartments 3W and 3C (*id*). Plaintiffs executed a "Memorandum of Lease" dated January 10, 1990, with Carlos Casanas, president of the landlord corporation, for a term of 100 years, terminating on January 1, 2090.

Defendants contend that, because Coletta was in undisputed possession of a portion of apartment 3C, at the time that the 100-year lease with plaintiffs was executed, the landlord at the

time (Carlos Casanas), had no authority to enter into another lease with another party until, Coletta's rights to apartment 3C, of whatever nature, were first terminated. However, the cases relied upon by defendants are distinguishable. In *Cobert Construction Corporation v. Bassett*, (109 Misc2d 119 [App Term 1st Dept 1981]), one Fraser, a month-to-month tenant, was away from the apartment for months at a time. Bassett moved in as Fraser's roommate but then entered into a new signed lease for the same premises at an increased rental. The landlord attempted to hold both of the roommates to the higher rent in the new lease, but the Appellate Term held the lease unenforceable "upon the ground that a landlord is precluded from entering into a binding lease by virtue of a prior and continuing tenancy" (*id.*, at 122).

The case at bar is clearly not the same in that, herein, the tenant had expressed and demonstrated her free choice to give up her rights to her apartment and remain there strictly on a temporary basis until public housing found a place for her. Surely the tenant may control her own destiny as to her choice of status regarding the premises as long as there are no binding obligations that prevent it. She was entitled to become a licensee of her own free will, revocable on notice and free to walk away whenever she chose.

Defendants contend that Coletta's status as a rent-stabilized tenant required some formal termination before the premises were eligible for re-let. If she had sent to the landlord an answer to the offer of a renewal lease, with intention to vacate marked therein, then whatever lease was in effect would terminate on the last day of its term. However, no such evidence has been offered by either party. We have the plaintiff Peter Casanas in sworn affidavits and a deposition, asserting that Coletta had expressed every intention to terminate her tenancy, as soon as public housing was available. There is further testimony that she manifested this intention by voluntarily offering to give up her living room to be included in Peter Casanas' adjacent

apartment, received a reduction in the rent and payment of her electric bill in return, which implies an intention to move in the very near future, as it appears to be unlikely that she would otherwise give up her living room.

We have Richard Casanas' sworn statement, uncontradicted by his adversary, that Coletta occupied the premises of the former apartment 3C for at least two years after the 100-year lease was signed. However, we have no documents submitted that tell us if she is a licensee, whose revocable occupancy could be terminated at any time, or if she continued to enjoy the status of a statutory tenant under the Rent Stabilization Law.

The venerable decision in *Hennessy Realty Co. v. Bernstein*, (110 Misc. 331 [App. Term 1st Dept 1920]), relied on by defendants herein, is inapposite. It concerns two leases with overlapping terms to the same apartment, given at different times. We can look at the documents and know that they are in conflict. That determination is not available here, without documents and without Colleta, who, according to Peter Casanas' deposition testimony, appears to be deceased.

The question of Colleta's status as a tenant is a disputed issue of fact which will not warrant the remedy of summary judgment. In *F.G.F. Enterprises Corp v. Crown Wisteria, Inc.* (128 AD2d 382 [1st Dept 1987]), the plaintiff had previously sold to defendant a Manhattan town house immediately adjacent to another town house, of which plaintiff retained ownership (*id*). The deed conveyed to defendant contained a covenant restricting development on his property so long as plaintiff "occupied" the adjacent property (*id*). At some point, plaintiff's alter ego corporate owner of his town house entered into a lengthy lease with plaintiff as an individual for the premises (*id*, at 400). Plaintiff, in turn, vacated and sublet the property for lucrative remuneration. That's when defendant began the construction forbidden by the restrictive covenant in the deed.

Plaintiff sued to enforce the restriction and moved for summary judgment. The question turned on whether plaintiff was still an "occupant" by virtue of his leasehold interest, even though physically absent. The Appellate Division decided that the issue was a question of fact as to what the parties intended at the time the covenant was entered into, and a trial court award of summary judgment to plaintiff was reversed (*id*).

In the case at bar, there is no submission of documentary evidence that establishes as an undisputed fact whether the 100-year lease between plaintiff Peter Casanas and his landlord father was made while the prior tenant, Coletta, retained her leasehold interest, or subsequent to its termination.

Accordingly, defendants have failed to carry the burden of showing the absence of a triable issue of fact sufficient to warrant judgment in their favor (*Friends of Animals, Inc. v Associated Fur Mfrs., Inc.* 46 NY2d 1065, 1068 [1979]).

WHEREFORE, it is

ORDERED, that defendants' motion for summary judgment, declaring that plaintiffs have no right to possession of apartments 3W and 3C in 73 West 82nd Street, New York, New York, is denied in all respects, and it is further

ORDERED, that this constitutes the decision and order of the court

FILED

FEB 03 2014

NEW YORK
COUNTY CLERK'S OFFICE

Dated 1/28/14

ENTER: [Signature]

J. S. C.

DONNA L. HILLS, J.S.C.