127 East 7th St. LLC v Grega
2015 NY Slip Op 32235(U)
November 24, 2015
Civil Court, New York County
Docket Number: 88864/2014
Judge: Sabrina B. Kraus
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CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK: HOUSING PART R

127 EAST 7TH STREET LLC,

Petitioner-Landlord

-against-

STEFAN GREGA
HELENA GREGA
127 East 7th Street, Apt. 4A
New York, New York 10009

Respondent-Tenants

"JOHN DOE" and/or "JANE DOE"

Respondents-Undertenants

HON. SABRINA B. KRAUS

DECISION & ORDER
Index No.: L&T 88864/2014

BACKGROUND

This summary holdover proceeding was commenced by **127 EAST 7TH STREET LLC** (Petitioner) against **STEFAN GREGA** (Respondent) and **HELENA GREGA**, the rent stabilized tenants of record of 127 East 7th Street, Apt. 4A, New York, New York 10009 (Subject Premises), based on the allegation Respondent had made alterations to the Subject Premises in violation of his lease and without the landlord's permission.

PROCEDURAL HISTORY

Petitioner issued a Notice to Cure dated September 15, 2014, asserting that respondents had made alterations to the Subject Premises without the prior written consent of the landlord by removing or altering fixtures, appliances and flooring in the Subject Premises. The Notice

asserted this was a violation of respondent's lease agreement, and that respondents had caused damage to the Subject Premises.

The Notice further asserted that Petitioner discovered on April 30, 2014 that respondents had installed new kitchen cabinets and a backsplash, a new vanity and sink in the bathroom, an unauthorized partition, and new kitchen floors. The Notice further asserted that respondents reconfigured electrical service to the Subject Premises and that the alliterations were "illegal." The Notice directed respondents to "cease and eliminate said violations" by October 3, 2014.

Petitioner issued a Notice of Termination dated October 14, 2014 asserting that respondents had failed to cure and adding that respondents had also altered the tub and reconfigured the plumbing.

The petition is dated December 17, 2014, and the proceeding was initially returnable January 16, 2015. Respondent appeared by counsel and the proceeding was adjourned to February 24, 2015.

Respondent served a demand for a bill of particulars and Petitioner responded with a Bill dated February 22, 2015.

The proceeding was further adjourned to April 13, 2015, and on April 13, 2015, respondents failed to appear and an inquest was scheduled for May 14, 2015. On May 14, 2015, respondents' motion to vacate their default was granted by the court (Wendt, J) and a trial date was set for July 7, 2015. Respondents filed a written answer asserting defenses including statute of limitations, waiver, express authorization, laches, deflective predicate notices and related claims.

On July 7, 2015, the proceeding was transferred to the Expediter's Part for assignment to a trial judge.

On October 27, 2015, the proceeding was assigned to Part R for trial. The trial took place and the proceeding was adjourned to November 13, 2015 for the submission of post trial memoranda. On November 13, 2015, the parties submitted post trial memoranda and the court reserved decision.

PRIOR RELATED PROCEEDINGS

Petitioner had commenced two prior holdover proceedings against respondents under index numbers 91789/2012 and 84663/14. The court takes judicial notice of the contents of said files and considers same to be part of the record of the trial in this proceeding.

Index Number 91789/2012 was based on nearly identical allegations as this proceeding, except in that proceeding, Petitioner did not serve a Notice to Cure.

The petition in that proceeding was initially returnable on December 31, 2012. Respondents appeared by counsel and filed an answer asserting various defenses including that the failure to serve a notice to cure required dismissal of the proceeding.

On February 25, 2013, Petitioner moved for leave to conduct discovery. On April 15, 2013, respondents cross-moved for dismissal based on the failure to serve a notice to cure. The cross-motion to dismiss was granted by the court (Saxe, J) who held that the failure to serve a notice to cure required dismissal of the proceeding.

Petitioner also commenced a prior holdover under index Number 84663/14 based on the same allegations. The same predicate notices as in the instant proceeding were annexed to the

petition. The notice of petition was issued by the clerk on November 13, 2014 and the proceeding was initially returnable on November 24, 2014.

On January 16, 2015, the parties, through counsel, entered into a stipulation which provided that the "proceeding is withdrawn w/o prejudice to Index Number 88864/2014 and any defenses and/or counterclaims are also w/d w/o prejudice, but may be asserted in the context of the proceeding under Index # 88864/14."

FINDINGS OF FACT

Petitioner is the owner of the subject building pursuant to a deed dated October 5, 2006 (Ex 1). While an MDR was submitted into evidence it was not for the Subject Building (Ex 2). The legal registered rent for the Subject Premises is $772 per month as of July 2015 (Ex 3).

Respondents are the rent stabilized tenants of record of the Subject Premises. Respondents were provided a lease agreement by Petitioner's predecessor in interest in August 2001 (Ex A). The lease agreement was never executed by the parties. The lease agreement was relied upon by Judge Saxe in dismissing the 2012 proceeding. On September 23, 2015, Petitioner served a notice to admit pertaining to said lease. Both parties agree that said lease, while un-executed governs the terms of the tenancy from 2001 forward.

Respondents did execute a renewal lease dated June 20, 2005 for a term through July 31, 2007 at a rent of $6126.82 per month (Ex C), as well as a renewal dated April 27, 2012 for a term through July 31, 2013 at a monthly rent of $772.00 per month (Ex 4).

Annabelle Santiago (AS) testified for Petitioner. AS has worked for Petitioner since April 2009 and is employed by Steven Croman who is a managing member of Petitioner. AS only had any duties regarding the subject building for a few months between September 2013

and April 2014. AS went to the Subject Premises on April 30, 2014, and met with Respondent. This is the first and only time AS was in the Subject Premises. AS was accompanied by a Private Investigator who works for Petitioner Anthony Falconite (AF). AS went to view the Subject Premises to look at the alterations Respondent made. AS admitted she had no evidence that any work done in the Subject Premises constituted a violation of any specific law, and that she was not aware of any violations that had been issued as a result of the work. AS lacked any knowledge related to the claims in the underlying proceeding other than having visited the Subject Premises on April 30, 2014 . AS does not know if Respondent complied with the notice to cure. AS was unaware of any damage caused to the Subject Premises as a result of the alterations. AS assumes that alterations were made because the Subject Premises looks different than other units in the building and based on statements made by Respondent. AS acknowledged that Respondent was always open with Petitioner about what work was done and in responding to any inquiries Petitioner had in thsi regard. The court does not find that the testimony of AS is entitled to great weight as she had almost no first hand knowledge related to the allegations in the pleadings.

AF was the next witness called by Petitioner. AF is a security consultant for Petitioner and also does private investigations for Petitioner. AF met Respondent in June 2014. AF assumed when he saw the Subject Premises that it had been renovated because it did not look like other units in the building that he had seen. Respondent told AF about some of the work he had done in the Subject Premises. AF has only been in the Subject Premises on one occasion and essentially the only information he had about the alterations came from what Respondent told him.

Respondent testified next. Respondent and Helen Grega (HG) moved into the Subject Premises shortly after they got married . At that time HG's cousin, Mary Housack (MH) was living in the Subject Premises. HG worked for the owner of the building as a super and also by taking care of the garbage. Within several months after respondents had moved into the Subject Premises MH moved to a different apartment on the ground floor of the building, and respondents continued to live in the Subject Premises alone.

The prior owner of the building was Bogdan Zurawski (BZ). BZ made an agreement with Respondent that Respondent would do work in the building in exchange for getting a 50% abatement on the monthly rent for the Subject Premises. In 2001, BZ gave Respondent a lease (Ex A) because he was planning to sell the building and he wanted Respondent's right to occupy the Subject Premises to be secure.

Photographs of the Subject Premises taken by HG were submitted into evidence (Ex D). The photographs were taken in relation to the previous holdover based on the alterations which was brought in 2012.

Respondent described the work he did in the Subject Premises. Respondent got permission from BZ to make the improvements to the Subject Premises. BZ agreed that respondent could make the improvements, as long as Respondent paid for the materials and the costs of the improvements. Respondent purchased the necessary materials from Home Depot.

Respondent installed new floor panels in all rooms in the Subject Premises except the kitchen, in 2002 and 2003 . The panels were placed on top of the linoleum floor that was previously there. Respondent also put a new vanity door on the sink in the bathroom. The only other change Respondent made in the bathroom was to hang a glass shelf on the wall.

Respondent installed new cabinets in the kitchen in 1997 or 1998. Respondent also put new ceramic tiles on a portion of the wall in the kitchen next to where the new cabinets were hung. Respondent leveled the floor so that the base cabinets could be properly installed. Respondent removed a few metal cabinets that were there originally and placed them in the basement of the building in a storage area. Respondent does not know if those metal cabinets are still there. The sink in the kitchen is the original sink that was in the Subject Premises when Respondent moved in. The only "plumbing" work Respondent did was to close a valve by the kitchen sink until the new cabinets and counter top was installed and then reconnect the valve when the original sink was placed back in position.

Respondent never erected a partition wall. Respondent did extend by 1 foot a wall by the kitchen cabinets. Respondent installed metal studs in the track by the wall for the extension.

Respondent did not do any electrical work, but did put on new plates for the outlets and switches in the kitchen. Respondent did no plumbing work.

Respondent's responsibilities in looking after the building included taking care of the boiler, doing small repairs inside the tenants apartments, and cleaning and maintaining the common areas of the building. Tenants would either approach Respondent directly to request repairs or they would ask BZ. If a tenant approached Respondent directly regarding a repair Respondent would get permission from BZ to make the repairs. BZ and Respondent regularly met in the Subject Premises to discuss business and personal matters. Respondent continued to work as a Super for the entire time that BZ continued to own the building.

Once the building was sold, the new owner paid Respondent $300 per month for his work. Two pay stubs from 2006 and 2007 were entered into evidence (Ex G). Respondent

would pick up his pay from the office once a month and at the same time pick of the tenants rent statements and deliver them to the tenants in the building. There are approximately 12 or 13 units in the building.

In 2007 when the new owner came in Respondent dealt with Chrisitine Bermudez (CB). CB was an agent for Petitioner (see Ex F). CB came into the Subject Premises and had a conversation with Respondent in the kitchen.

Respondent's duties remained the same until MH moved out of the building in 2010. Respondent offered to take care of the garbage once MH moved out in exchange for additional compensation. Petitioner declined to pay him more and asked Respondent to take on the garbage duties without any extra pay. Respondent quit. Respondent continues to work as a handy man in a condominium building.

At the close of the trial, Respondent withdrew his first counterclaim for rent overcharge without prejudice.

DISCUSSION

§2524.3(a) of the Rent Stabilization Code permits a landlord to maintain an eviction proceeding against a tenant based on a breach of substantial obligation of tenancy.

There is no written executed lease agreement between the parties setting forth the terms of the tenancy. However, both parties have agreed that the terms of the 2001 lease agreement governs the tenancy and both parties have relied on said lease in prior litigation. Thus it is undisputed that the 2001 lease governs the terms of the tenancy. While respondents' occupancy

predated the 2001 lease by several years, there was no prior writing pertaining to respondents' tenancy. 1

However, all of the alterations except the new floor panels were done in 1997 and 1998, three years prior to the lease agreement that Petitioner alleges was violated. It is impossible to see how Petitioner can claim that the work done in 1997 and 1998 violated the terms of a lease that was not created until 2001. Certainly it can not be argued that the terms of the lease are retroactive.

It is undisputed that Petitioner's predecessor in interest gave Respondent permission to do the work and spent time in the Subject Premises on a regular basis after the completion of the work. Respondent has established a defense of estoppel (*52 Riverside Realty Co v Ebenhart* 119 AD2d 452) .

Petitioner failed to provide any evidence that Respondent had damaged the property by the work done. Petitioner failed to prove that Respondent installed a new sink in the bathroom. Petitioner failed to prove Respondent installed a new tub in the bathroom. Petitioner failed to prove Respondent reconfigured any plumbing. Petitioner failed to prove that Respondent installed a partition in the Subject Premises. Petitioner failed to prove that Respondent reconfigured electrical wiring in the Subject Premises. Petitioner failed to prove that any of the work done was illegal or resulted in violations being placed. Petitioner failed to produce any

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1 Pursuant to §2522.5(g) of the Rent Stabilization Code all renewals must be on the same terms and conditions as the original lease. However, this court did not find any authority on the issue of what happens when, as here, the initial years of the tenancy are not governed by a written agreement. In any event, in addition to the fact that both parties agree that said lease is governing, both parties are also estopped from denying the validity of the terms of the lease based on the prior litigation (*Nestor v Britt* 270 AD2d 192).

witnesses who had knowledge of anything other than what the Subject Premises looked like on April 30, 2014. Petitioner failed to provide any documentary evidence to support the claims in the pleadings.

Even if most of the work had not preceded the lease agreement, the statute of limitations for a breach of contract claim is six years. As noted all the work except the new floor panels was completed in 1998 or approximately 16 years prior to the commencement of this proceeding. The new floor panels were completed in 2003 over 10 years prior to the commencement of this proceeding. Based on the foregoing the proceeding is dismissed [*Barklee 94 LLC v O'Keefe* 18 Misc3d 134(A); *Roxborough Apartment Corp v Viard* 2002 NY Slip Op 50297(U); *Magal Properties LLC v Gritsyk* 2015 NY Slip Op 51651(U)].

The court finds that the proceeding borders on the frivolous, and Petitioner does not appear to have had a good faith basis to commence this litigation.

The court further finds that respondents are the prevailing party herein and are entitled to reasonable attorneys' fees based on the terms of the 2001 lease agreement upon which this and the two prior proceedings were predicated.

A hearing shall take place on December 16, 2015 at 9:30 am to determine the reasonable amount of attorneys' fees to be awarded, and to determine whether sanctions are warranted pursuant to Respondent's fifth defense and second counterclaim.

This constitutes the decision and order of the Court.2

Dated: New York, New York
November 24, 2015

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Sabrina B. Kraus, JHC

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2 Parties may pick up exhibits, within thirty days of the date of this decision, from Window 9 in the clerk's office on the second floor of the courthouse. After thirty days, the exhibits may be shredded, in accordance with administrative directives.

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