

Schuette v Brookford LLC

2020 NY Slip Op 30038(U)

January 10, 2020

Supreme Court, New York County

Docket Number: 152993/2019

Judge: Kathryn E. Freed

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. KATHRYN E. FREED PART IAS MOTION 2EFM

Justice

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INDEX NO. 152993/2019

MARGARET SCHUETTE,

Plaintiff,

MOTION SEQ. NO. 001

- v -

BROOKFORD LLC,

DECISION AND ORDER

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 19

were read on this motion to/for DISMISS

In this plenary action seeking to recover attorneys' fees pursuant to Real Property Law § 234 and a lease agreement, defendant Brookford LLC ("Brookford") moves, pursuant to CPLR 3211(a)(7), to dismiss the complaint, and it requests that sanctions be imposed as against plaintiff Margaret Schuette ("Schuette") pursuant to 22 NYCRR 130-1.1 (Doc. 6-10). Schuette opposes the motion (Doc. 12). After oral argument and a review of the parties' papers and the relevant statutes and case law, the motion is decided as follows.

FACTUAL AND PROCEDURAL HISTORY:

The underlying facts of this matter are set forth in detail in prior decisions issued by both the Appellate Division, First Department, and the New York Court of Appeals (see Matter of Brookford, LLC v New York State Div. of Housing and Community Renewal, 142 AD3d 433 [1st Dept 2016]; affd 31 NY3d 679 [2018]). The essential facts are briefly summarized below.

In June 2006, Brookford, the owner of an apartment building located at 315 Central Park West, New York, New York (“the apartment building”), filed a Petition for High Income Rent Deregulation before the New York State Division of Housing and Community Renewal (“DHCR”), which identified Schuette and her late husband as tenants on the lease of an apartment in the apartment building (“the apartment”) (Doc. 1).¹ Schuette challenged the petition on the basis that her husband’s income could not be considered by DHCR in calculating the household income since he had moved to an assisted living facility in March 2005, prior to the issuance of the ICF form in April 2006 (*id.*).

After DHCR denied Brookford’s deregulation petition and its subsequent Petition for Administrative Review (“PAR”), Brookford initiated an Article 78 proceeding arguing, *inter alia*, that DHCR’s determination was arbitrary and capricious (*id.*). On appeal to the Appellate Division, DHCR moved for an order of remand (*id.*). The Appellate Division granted DHCR’s motion and remanded the case (*id.*). On remand, DHCR again denied Brookford’s PAR (*id.*). Brookford then commenced a second Article 78 proceeding challenging DHCR’s determination (*id.*). This Court denied Brookford’s challenge and dismissed the proceeding, and both the Appellate Division and the Court of Appeals affirmed DHCR’s denial of the deregulation petition (*id.*).

In March 2019, Schuette commenced the instant action seeking to recover “reasonable attorneys’ fees in an amount to be determined at trial, but in no event less than \$150,000.00, along with costs and interest,” for defending herself in the underlying action (*id.*). Brookford filed the instant motion to dismiss the complaint, arguing, *inter alia*, that Schuette is not entitled

¹ Following the death of her husband in November 2006, Schuette succeeded to a rent-regulated tenancy of the apartment (*id.*).

to attorneys' fees under Real Property Law § 234 (Doc. 7). Specifically, it claims that attorneys' fees under the relevant statute is available only in an action or summary proceeding and that Schuette is, thus, barred from such recovery insofar as "DHCR proceedings, as well as the Article 78 proceeding and the appeals therefrom, do not qualify as summary proceedings or actions" (Doc. 7). Brookford also contends that the subject lease affords no basis for recovery under the present circumstances (Doc. 7).

Brookford further argues that this action is frivolous, warranting sanctions (Doc. 7). By letter addressed to opposing counsel dated June 20, 2019, Brookford's attorney provided Schuette with, *inter alia*, the cases relied upon in the instant motion and its arguments for why neither the statute nor the lease afforded a basis for recovery of attorneys' fees (Doc. 8). It demanded that she withdraw the complaint and discontinue the action by June 24, 2019 and reserved its right to seek sanctions against her if she continued to pursue this action (Doc. 8).

In opposition to the motion, Schuette argues, *inter alia*, that Brookford fails to acknowledge her unique position of fighting against her eviction in both the DHCR and Article 78 proceedings (Doc. 12).² Moreover, she claims that "[t]he cases cit[ed] by [d]efendant are distinguishable in that the tenants have either initiated the litigations themselves, and [had] presumably been aware of the costs that they would incur, or they have received attorneys' fees from other related litigations and were not left totally uncompensated" (Doc. 12). She also opposes the motion on the basis that Article 78 proceedings have been construed as summary in nature and, thus, that the "broad remedial components of [Real Property Law] § 234 should

² It is important to note that, although Schuette characterizes the underlying action as one in which she defended against an eviction (Doc. 12 at 3), this is a mischaracterization of the proceeding since the sole issue before DHCR was whether the subject apartment could be deregulated.

apply” (Doc. 12 at 5-8). Schuette also cites to *Galicia v Rota Holding Corp., No. 2*, 57 AD3d 293, 293 (1st Dept 2008) for the general proposition that Real Property Law § 234 applies where a party seeks to enforce, modify or vacate a determination issued by DHCR (Doc. 12).

LEGAL CONCLUSIONS:

Since Schuette fails to state a claim cognizable at law (*see Basis Yield Alpha Fund (Master) v Goldman Sachs Group, Inc.*, 115 AD3d 128, 134 [1st Dept 2014]; *Berges v Bodner*, 2019 NY Slip Op 32825[U], 2019 NY Misc LEXIS 5160, *4 [Sup Ct, NY County 2019]; *Roman v 1781 Riverside, LLC*, 2019 NY Slip Op 30414[U], 2019 NY Misc LEXIS 703, *6 [Sup Ct, NY County 2019]), Brookford’s motion to dismiss the complaint is granted. Schuette cannot recovery attorneys’ fees purportedly expended in the deregulation proceeding before DHCR, the subsequent Article 78 proceedings and its appeals because it is well-established that, pursuant to Real Property Law § 234, a tenant may not recover such fees in administrative proceedings or proceedings brought pursuant to Article 78 (*see Matter of 251 CPW Hous. LLC v Pastreich*, 124 AD3d 401, 406 [1st Dept 2015]; *338 W. 46th St. Realty, LLC v Morton*, 103 AD3d 518, 518 [1st Dept 2013]; *Raynier v 159 Eluji Assoc., LLC*, 92 AD3d 617, 617 [1st Dept 2012]; *Matter of Blair v New York State Div. of Housing and Community Renewal*, 96 AD3d 687, 688 [1st Dept 2012]). Real Property Law § 234 provides that such relief applies to “an action or summary proceeding,” and the law is clear that an administrative proceeding is not an action (*see Matter of Chessin v New York City Conciliation & Appeals Bd.*, 100 AD2d 297, 306 [1st Dept 1984]). Moreover, this Court rejects Schuette’s additional contention that Article 78 proceedings are summary proceedings within the meaning of Real Property Law § 234, which she appears to confuse with “special proceedings.”

Contrary to Schuette's argument, the fact that she did not initiate the underlying proceeding has no bearing on the statute's application (*see Raynier v 159 Eluji Assoc., LLC*, 2011 NY Slip Op 34024[U], 2011 WL 11075380, *5 [Sup Ct, NY County 2011], *aff'd* 92 AD3d 617 [1st Dept 2012]). Moreover, Schuette erroneously relies on *Galicia v Rota Holding (Supra)* to argue that such relief is warranted here. In that case, attorneys' fees were granted to the tenant for fees incurred in a plenary action to enforce a DHCR determination and *not* for attorneys' fees in a proceeding before DHCR (*see also Chechak v Hakim*, 269 AD2d 333, 333 [1st Dept 2000]; *Paganuzzi v Primrose Mgt. Co.*, 268 AD2d 213, 213 [1st Dept 2000]).

Schuette's claim based on the plain terms of the lease is equally lacking in merit. Pursuant to the subject lease, attorneys' fees are available in the special context of a default, or if the owner is required to initiate a summary proceeding (Doc. 10). Since neither such scenario exists here, this Court finds that Schuette fails to state a cause of action that could withstand dismissal of the complaint (*see Raynier v 159 Eluji Assoc., LLC*, 92 AD3d at 617).

Although the complaint is lacking in legal merit, the action does not rise to the level of frivolous conduct within the meaning of 22 NYCRR 130-1.1(a) and, in its discretion, this Court declines to impose sanctions (*see Parametric Capital Mgt., LLC v Lacher*, 26 AD3d 175, 175 [1st Dept 2006]; *Kothandaraman v 80 Enters. Inc.*, 2019 NY Slip Op 30104[U], 2019 NY Misc LEXIS 156, *3 [Sup Ct, NY County 2019]).

The remaining arguments are either without merit or need not be addressed given the findings above.

Therefore, in light of the foregoing, it is hereby:

ORDERED that defendant Brookford LLC's motion is granted to the extent that the complaint is dismissed pursuant to CPLR 3211(a)(7), and it is otherwise denied; and it is further

ORDERED that defendant Brookford LLC's counsel shall serve a copy of this order with notice of entry upon plaintiff Margaret Schuette within 30 days of entry; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly; and it is further

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

1/10/2020

DATE



KATHRYN E. FREED, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE