

Greene Org. LLC v Jones
2021 NY Slip Op 31962(U)
June 15, 2021
Supreme Court, Kings County
Docket Number: 508862/2020
Judge: Carolyn E. Wade
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

l

At Part 84 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, located at Civic Center, Brooklyn, New York on the 15th day of June 2021

PRESENT:

HON. CAROLYN E. WADE,

Justice

-----X
Greene Organization LLC,,

Plaintiff,

Index No.
508862/2020

-against-

ORDER

Joyce E. Jones, Tahjhae A. Jones, Dayonne Jones, John Doe and Jane Doe, representing any and all occupants of the entire Premises,

Defendants.
-----X

Recitation, as required by CPLR §2219(a), of the papers considered in the review of Plaintiff's Motion and Defendant Joyce Jones' Cross-Motion:

Papers Numbered	
Order to Show Cause/Notice of Motion and Affidavits/Affirmations Annexed.....	1, 2
Cross-Motion and Affidavits/Affirmations.....	3
Answering Affidavits/Affirmations.....	3
Reply Affidavits/Affirmations.....	3
Memorandum of Law.....	3

Upon the foregoing cited papers, and after oral argument, the plaintiff Greene Organization LLC. ("Plaintiff") moves for an Order granting it summary judgment and a

default judgment against the defendants Joyce E. Jones, Tahjhae A. Jones, Dayonne Jones, John Doe and Jane Doe (“Defendants”) (motion seq. #1). Defendant Joyce Jones, by cross-motion and in opposition, moves to dismiss the Complaint pursuant to CPLR Rule 3211(a)(1), (2), and (7), and 3211(e) on the ground that Plaintiff has failed to properly plead a cause of action, and improperly seeks relief in Supreme Court by a writ of assistance rather than proceeding in the Civil Court, Housing Part (motion seq. #2).

The underlying ejectment action was commenced by Plaintiff, the new owner of a two-family dwelling located at 1187 Greene Avenue, Brooklyn, New York, against the Defendants, who reside at the premises. Plaintiff alleges in its Complaint that Defendants, *inter alia*, have failed to pay rent/use and occupancy, and have created a nuisance by accumulating garbage, which has caused vermin and insects to infest the apartment.

In support of its motion for summary judgment/default judgment, Plaintiff asserts that the Defendants have not interposed an Answer. Thus, it argues that they are in default, and are entitled to an entry of judgment against them pursuant to CPLR § 3215.

By cross-motion and in opposition, defendant Joyce Jones argues that Plaintiff failed to properly plead acts of nuisance by Defendants with sufficient details, so that it can set forth a defense. She notes that Plaintiff claims that the Defendants have been a nuisance since the onset of their tenancy. She also contends that there are several factual inaccuracies in the pleadings. In particular, she points out that the Summons and Complaint indicate that the NYC Department of Buildings determined that the first floor and the basement of the subject premises were too dangerous to occupy. However, she asserts that the Defendants resided only on the second floor. Defendant Joyce Jones maintains that the Department of

Building's Order to Repair/Vacate Order, effective November 28, 2018, and the recorded violations that were issued pursuant to Building Maintenance Code, did not concern their second floor residence. She also submits that she has appeared, and that a Notice of Appearance has been submitted to the court, which is sufficient to defeat the instant motion for a default judgment. Defendant Joyce Jones adds that upon the submission of a hardship declaration, the COVID-19 Emergency Eviction and Foreclosure Prevention Act of 2020 stays all matters related to residential evictions through May 1, 2021.

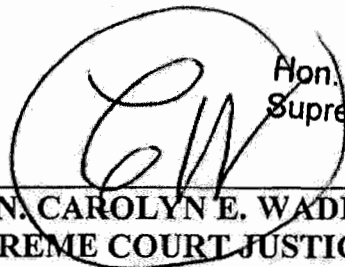
This Court credits Defendant Joyce Jones' assertion that the COVID-19 Emergency Eviction and Foreclosure Prevention Act of 2020, which Governor Cuomo signed into law on December 28, 2020, is applicable to this matter. The Act provides that a residential tenant's submission of a "Tenant's Declaration of Hardship During the COVID-19 Pandemic" ("hardship declaration"), which reports financial hardship on the account of the pandemic or exposure to significant health risk to herself or her family, if they were required to vacate, will result in the stay of an eviction matter (see *Jacob Cram Coop v. Ziolkowski*, 2021 NYLJ LEXIS 79 [Sup Ct, N.Y. Cty 2021] [Act is applicable to ejectment cases]). Most recently, Governor Cuomo extended the stay from May 1, 2021 to August 31, 2021. In the instant case, Defendant Joyce Jones, as well as tenants/occupants Jayvonne Lee, Nicole Berry, and Donnielle Jones filed hardship declarations, dated February 20, 2021, which were e-filed.

Notably, the hardship declaration states that "[y]ou may still be evicted for violating your lease by persistently and unreasonably engaging in behavior that substantially infringes on the use and enjoyment of other tenants, occupants or causes a substantial safety hazard to

others.” In the instant case, Plaintiff’s Complaint is very vague, as it does not include details regarding the specific acts, and their timeframes. Thus, this Court finds that Defendants have not engaged in recent, persistent activity that falls under the nuisance exception of the Act.

Accordingly, based upon the above, this action, including Plaintiff’s Motion for Summary Judgment and Defendant Joyce Jones’ Cross-Motion to Dismiss are **stayed through August 31, 2021**, pursuant to the COVID-19 Emergency Eviction and Foreclosure Prevention Act of 2020.

This constitutes the Decision and Order of the court.



Hon. Carolyn E. Wade
Supreme Court Justice

HON. CAROLYN E. WADE
SUPREME COURT JUSTICE

6/30/2021 11:54:43