Vargas v. Sotelo, 12419/2017

May 17, 2017

- Civil Court, Bronx County, Housing Part K
- 12419/2017
- Judge Diane Lutwak
- For Plaintiff: Petitioner: Osman Vargas Bronx, NY.
- For Defendant: Respondent Undertenant: Cristin Sotelo, Bronx, NY. Attorney for Respondent Undertenant-undertenant: Thomas Miller, Law Graduate, MFY Legal Services, Inc., New York, NY.

Cite as: Vargas v. Sotelo, 12419/2017, NYLJ 1202786328858, at *1 (Civ., BX, Decided April 3, 2017)

CASENAME
Read Summary of Decision
Decided: April 3, 2017

MFY Legal Services, Inc., New York, NY.
Recitation, as required by CPLR Rule 2219(a), of the papers considered in the review of the Respondent's Motion to Dismiss:
Papers Numbered
Notice of Motion, Affirmation & Exhibits A-I 1
Respondent's Memorandum of Law 2
Petitioner's Opposition 3

DECISION & ORDER

*1

Upon the foregoing papers and for the following reasons, the pre-answer motion to dismiss filed by Respondent-Undertenant Cheryl Laboy is decided as follows.

PROCEDURAL & FACTUAL BACKGROUND
This is a holdover eviction proceeding in which Petitioner-Prime Tenant Osman Vargas, unrepresented by counsel, seeks to recover possession of the first floor bedroom and common areas of Apartment 1A at 416 East 173rd Street in the Bronx from Cristin Sotelo, an alleged undertenant, and Cheryl Laboy, an alleged undertenant of the undertenant. The Petition, dated February 23, 2017, alleges that

Respondent Sotelo entered into possession of the premises under a written week-to-week rental agreement starting September 9, 2015 and ending February 8, 2017. The Petition further states that Respondent was served with a written notice terminating his tenancy and references an annexed copy of that notice. The Petition also states that the premises are a multiple dwelling, subject to the Rent Stabilization Law of 1969 and duly registered with the New York State Division of Housing and Community Renewal. The Petition seeks rent arrears and use and occupancy of $6400, plus interest from June 2016 forward.

The termination notice, dated January 7, 2017, is a "Blumberg form" (B 307) for terminating a monthly tenancy, converted by handwriting into a "7 Day Notice — Weekly". The notice advises Respondents "that Osman Vargas elects to terminate your tenancy of the above described premises now held by you under weekly hiring" and that Mr. Vargas would commence a summary eviction proceeding against them if they did not move out on February 8, 2017. *2

Respondent Cheryl Laboy, represented by counsel, moves to dismiss under Rule 3211(a)(2), (3) or (7) of the New York State Civil Practice Law and Rules ("CPLR"). Respondent argues that the Petition should be dismissed for lack of subject matter jurisdiction, lack of standing and/or failure to state a claim as Petitioner lacks any legal interest in the premises, does not qualify as a person permitted to maintain this proceeding under Section 721 of the Real Property Actions and Proceedings Law ("RPAPL") and further lacks standing as his claim that he is the prime tenant "is not plausible given the facts and circumstances of this case". Respondent's Memorandum of Law at p. 2. Respondent points out that the subject premises at 416 East 173rd Street in the Bronx (Block 2897/Lot 55) is owned by the City of New York, and attaches a copy of the most recent deed to the premises, dated July 11, 1984, showing that the City took title to the building pursuant to an in rem tax foreclosure action. Respondent's counsel asserts that the Deputy General Counsel for the City's Department of Housing Preservation and Development ("HPD") told him "that there are no current tenants at the subject premises paying rent to the city." Attorney's Affirmation at ¶6. Respondent's motion is further supported by copies of the following additional documents pertaining to the subject premises:

NYC Department of Finance Notice of Property Value dated 1/15/2017 which states that the building has a market value of $501,000, contains three residential units and is categorized as tax class 1 ("Primarily one to three unit residential property") and building class C0 ("Walk-up apartments").

Printouts from HPD's website reflecting no multiple dwelling registration on file for the building.

NYC Department of Citywide Administrative Services statement containing various data points about the building, including that it is under the jurisdiction of HPD, has an "RPAD_ DESCRIPTION" of "WALK UP APTS/OLD LAW TENEMENTS" and, under columns labelled "Primary Use Text" and "Final Commitment Text", it is designated, respectively, as "NO USE-RES STRUCTURE" and "FINAL COMMITMENT-DISP".

In the alternative, Respondent requests "discovery of Petitioner's purported lease".
In opposition, Petitioner pro se has provided the court with a notarized "To Whom It May Concern" letter from Iliana Itzkowitz, who identifies herself as "secretary of tenants association". Ms. Itzkowitz asserts that Petitioner and his wife "are currently the prime occupants residing at" the subject premises, that 416 East 173rd Street "is a homesteading building", that "the occupants themselves have repaired and are maintain[ing] the building" and that "as such, they do not have formal leases".

DISCUSSION
Pleadings are to be liberally construed, CPLR §3026, especially where a party appears without counsel. Pezhman v. City of New York (29 AD3d 164, 812 NYS2d 14 [1st Dep't 2006]). Further, on a motion to dismiss under CPLR 3211, the court must construe the petition liberally, draw all reasonable inferences in favor of the nonmoving party and consider the documentary evidence submitted by both sides. Leon v. Martinez (84 NY2d 83, 87-88, 614 NYS2d 972, 974 [1994]). The court must consider the entire pleading, "[h]owever imperfectly, informally or even illogically the facts may be stated". Condon v. Associated Hospital Service (287 NY 411, 414, 40 NE2d 230, [1942]). This is especially so where a litigant is unrepresented, as the court must interpret the submissions of an unrepresented litigant so as to raise the strongest arguments they suggest. Hollingsworth v. Regional Tr Serv, Inc (20 Misc3d 224, 857 NYS2d 477 [City Ct Roch 2008]). *3

Section 711 of the RPAPL authorizes the commencement of a holdover eviction proceeding on various grounds. Based on Petitioner's claim that Respondent Sotelo is an undertenant who entered into possession under a week-to-week agreement which has been terminated by written notice, it appears that Petitioner is proceeding under Section 711(1), which covers eviction proceedings based upon

the claim that the tenant "continues in possession…after the expiration of his term."

Section 721 of the RPAPL lists who can maintain summary eviction proceedings under Article 7 of the RPAPL. This list includes, as relevant herein based on Petitioner's claim that he is the prime tenant, "The landlord or lessor", RPAPL §721(1), and "The lessee of the premises, entitled to possession," RPAPL §721 (10). See generally Redhead v. Henry (160 Misc2d 546, 610 NYS2d 433 [Civ Ct Kings Co 1994]).

Subject matter jurisdiction refers to the power of the court to hear the kind of case that is presently before it for adjudication. See, e.g., New York County Dist Attorney's Office v. Oquendo (147 Misc2d 125, 553 NYS2d 973 [Civ Ct NY Co 1990]). "The question to be resolved is whether the court has jurisdiction over the 'type' of case, not whether it has jurisdiction over 'this particular' case." Id. (147 Misc2d at 128). Petitioner's claim that he is the prime tenant and that Respondents are his undertenants whose week-to-week tenancy has been terminated is properly the subject of a summary eviction proceeding in the Housing Part of the Civil Court of the City of New York and falls well within the subject matter jurisdiction of this court. See East 41st St Assocs v. 18 East 42nd St, LP (248 AD2d 112, 669 NYS2d 546 [1st Dep't 1998]). In fact the New York State Unified Court System's website provides instructions and forms under its "Roommate Holdover Program", which can be used in circumstances such as those presented herein to generate the papers needed to commence a case such as this one in this court. Accordingly, Respondent's motion is denied to the extent it seeks dismissal for lack of subject matter jurisdiction under CPLR 3211(a)(2).

Similarly, Respondent's motion is denied to the extent it seeks dismissal for failure to state a cause of action under CPLR 3211(a)(7). The Petition, however "imperfectly, informally or even illogically" plead, Condo Associates, supra, states a cause of action for eviction following termination of a week-to-week agreement between prime tenant and undertenant and falls within the ambit of RPAPL §711(1).

Finally, Respondent's motion to dismiss under CPLR 3211(a)(3) for "lack of capacity to sue" is denied. Respondent's conclusory statement that "Petitioner's claim that he is the prime tenant is not plausible" and the documents annexed to Respondent's moving papers are insufficient at this juncture to warrant dismissal of the proceeding. While it is clear that HPD owns the building, this is not inconsistent with Petitioner's claim that that he has the right to bring this

proceeding as prime tenant of the premises. One need not be the owner to bring a summary eviction proceeding. See Bergen Brick LLC v. Whinfield (32 Misc3d 614, 928 NYS2d 190 [Civ Ct Kings Co 2011]); Redhead v. Henry, supra.

The cases cited by Respondent are inapposite due to their procedural postures and other facts. Other than the Bergen Brick case, they all involve matters in which hearings were held at which evidence was presented about the petitioner's standing or lack thereof. In Redhead v. Henry, supra, it was at the close of petitioners' prima facie case that the court found that petitioners had failed to prove they were the landlord or lessor and dismissed the case, without prejudice. In Terner v. Brighton Foods, Inc (27 Misc3d 1225[A], 910 NYS2d 409 [Civ Ct NY Co 2010]), it was after an inquest that the court dismissed the petition, where the "uncontroverted evidence" established that petitioners had transferred their *4 interest three weeks prior to commencement of the proceeding. In Haber v. Vandell (NYLJ, March 14, 1988, at 18, col 6 [App Term 9th & 10th Jud Dists]), the Appellate Term reversed the trial court's post-trial decision and dismissed a nonpayment proceeding brought by someone "who did not present any evidence to demonstrate that he was a person who was entitled to maintain this proceeding under section 721 of the RPAPL." In Valentin v. HPD (160 Misc2d 418, 609 NYS2d [Civ Ct Bx Co 1994]), it was after a hearing that the court dismissed an HP action and found that the petitioner, who was a squatter who had entered and taken up occupancy in a vacant apartment without permission, lacked standing. While the court held no evidentiary hearing in the Bergen Brick case, a nonpayment proceeding, the court denied the respondent's motion for summary judgment and found, on the uncontroverted facts presented, that the petitioner had standing as a matter of law as it was the legal owner of the property "with the absolute authority to bring this summary proceeding."

Petitioner does not claim to have a lease, a fact that is not necessarily fatal to his claim of standing to bring this proceeding. Redhead v. Henry, supra. Through the notarized statement of Iliana Itzkowitz, who identifies herself as the secretary of the tenants' association, Petitioner claims to occupy the apartment as the prime tenant through "homesteading". This appears to be a reference to the City's "Urban Homestead Program" run by HPD in the 1980's; as described in the "Directory of New York City Affordable Housing Programs" maintained on the New York University Furman Center's website, this program was offered "to tenants willing to inhabit and simultaneously renovate vacant city-owned buildings." Furmancenter.org/institute/ directory/entry/urban-homestead-program. While the court has found no cases discussing the Urban Homestead Program, the description is similar to that of the "Tenant Interim Lease Program" ("TIL"), "instituted by the City to assist tenants in the purchase and management of dilapidated and

abandoned buildings acquired by the City through in rem tax foreclosure proceedings." 172 E 122 St Tenants Ass'n v. Schwarz (73 NY2d 340, 345, 537 NE2d 1281, 540 NYS2d 420 [1989]). Under the TIL Program, "an association of tenants residing in a City-owned building are trained in building management by HPD, which also finances repairs. When the tenants establish that they can successfully manage the building, the City sells it to the tenants as a cooperative." 502 West 135th Street Tenants Ass'n v. Zimroth (160 AD2d, 453, 454, 554 NYS2d 127 [1st Dep't 1990]).

That the building does not appear to be registered with HPD as a multiple dwelling, Respondent's Exhibit D, that the building is "supposed to be vacant", Respondent's Memorandum of Law at p. 5 and Exhibit E, and that "HPD represented to Respondent's counsel that there are no authorized tenants with leases", Respondent's Memorandum of Law at p. 4 and Attorney's Affirmation at ¶6, along with Petitioner's claim that he is the prime tenant due to "homesteading", are all factual issues for trial.

Accordingly, for the reasons stated above, Respondent's motion to dismiss is denied. Respondent's unbriefed request for discovery of Petitioner's lease is also denied given that, as discussed above, Petitioner does not claim to have one.

Petitioner is cautioned that testifying to being the landlord or lessor and producing a lease between himself and Respondent Sotelo will not be sufficient to prove that he is the landlord or lessor entitled to bring this proceeding under RPAPL §721. As explained by Judge Johnson in Redhead v. Henry, supra.

One cannot confer the status of landlord or lessor upon oneself in a vacuum. One is not a landlord or lessor simply because he/she proclaims so. One cannot prove *5 he/she is a landlord by simply testifying that he/she is a landlord. Nor is producing a lease between the purported landlord and tenant sufficient to prove one is a landlord or lessor. A lease merely evidences the transfer of an interest, it doesn't show the transferor had the right or authority to transfer it. Testimony or production of the lease is only half of what need be shown in proving one is a landlord or lessor. The other half is authority or right to transfer an interest in real property. Expressed as an equation: Landlord authority or right to transfer an interest in real property + transfer of an interest in real property via a lease, oral or written.

This proceeding is restored to the court's calendar for settlement or trial on May 7, 2017 at 9:30 am. This constitutes the Decision and Order of this Court. Copies of

this Decision and Order will be mailed by the court to Petitioner pro se, Respondent Cristin Sotelo pro se and Respondent Cheryl Laboy's counsel.
Dated: April 3, 2017
Bronx, New York