2024-01-18

99 Randall Ave. Owners Corp. v. Strong

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99 Randall Ave. Owners Corp. v Strong
2024 NY Slip Op 50116(U)
Decided on January 18, 2024
Appellate Term, Second Department
Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431.
This opinion is uncorrected and will not be published in the printed Official Reports.

Decided on January 18, 2024
SUPREME COURT, APPELLATE TERM, SECOND DEPARTMENT, 9th and 10th JUDICIAL DISTRICTS

PRESENT: : JAMES P. McCORMACK, J.P., JERRY GARGUILO, TIMOTHY S. DRISCOLL, JJ
2022-824 N C

99 Randall Avenue Owners Corp., Respondent,

against

Emanuel Strong and Deidre Strong, Appellants, et al., Undertenants.

Emanuel Strong and Deidre Strong, appellant pro se. Schneider Buchel, LLP (Ryan D. Hersh of counsel), for respondent.

Appeals from an order of the District Court of Nassau County, First District (Gary M. Carlton, J.), entered August 18, 2022 and an order of that court entered December 22, 2022. The order entered August 18, 2022, insofar as appealed from, granted the branch of landlord's motion seeking to dismiss the fifth counterclaim and denied tenants' separate motion to dismiss the petition and for summary judgment on their counterclaims in a holdover summary proceeding. The order entered December 22, 2022 granted landlord's motion for leave to reargue the branches of landlord's prior motion seeking summary judgment on the petition and to dismiss the remaining counterclaims and, upon reargument, awarded landlord summary judgment on the petition and dismissed the remaining counterclaims.

ORDERED that, on the court's own motion, the appeals are consolidated for purposes of disposition; and it is further,

ORDERED that the order entered August 18, 2022, insofar as appealed from, and the order entered December 22, 2022 are affirmed, without costs.

Landlord, a residential cooperative corporation, commenced this holdover proceeding after it terminated tenants' proprietary lease on the ground that tenants had engaged in objectionable conduct. In an order entered August 18, 2022, the District Court granted the branch of landlord's motion seeking to dismiss the fifth counterclaim, for breach of quiet enjoyment, denied the branches of landlord's motion seeking summary judgment on the petition and to dismiss the remaining counterclaims, and denied tenants' separate motion to dismiss the [*2]petition for failure to state a cause of action and for summary judgment on their counterclaims. Tenants appeal from so much of that order as denied their motion and as partially granted landlord's motion. In an order entered December 22, 2022, the District Court granted landlord's motion for leave to reargue the branches of its prior motion that were denied in the August 18, 2022 order and, upon reargument, granted those branches of landlord's prior motion. Tenants appeal from that order as well.

The branch of tenants' motion seeking to dismiss the petition was properly denied because the petition clearly stated a cause of action (*see Miglino v Bally Total Fitness of Greater NY, Inc.*, 20 NY3d 342 [2013]). Tenants' arguments with respect to so much of the August 18, 2022 order as denied the branch of tenants' motion seeking summary judgment on their counterclaims lack merit.

With respect to so much of the December 22, 2022 order as granted landlord's motion for summary judgment on the petition, "[w]hen scrutinizing a cooperative's conduct in terminating a tenancy, the courts will, inter alia, examine . . . whether the cooperative acted in good faith and in the corporate interest to terminate the tenancy for the reasons alleged" (*Breezy Point Coop., Inc. v Young*, 16 Misc 3d 101, 104 [App Term, 2d Dept, 2d & 11th Jud Dists 2007]; *see 40 W. 67th St. v Pullman*, 100 NY2d 147 [2003]; *1050 Tenants Corp. v Lapidus*, 39 AD3d 379 [2007]). Here, landlord provided evidence in support of its summary judgment motion that the tenancy was terminated because tenants engaged in "objectionable" conduct (*see 40 W. 67th St. Corp. v Pullman*, 100 NY2d at 154), and that the board sent tenants a notice of default, a notice of additional objectionable conduct, and notice of a special meeting before terminating the lease. Thus, the board established that it acted "for the purposes of the cooperative, within the scope of its authority and in good faith" (*Matter of Levandusky v One Fifth Ave. Apt. Corp.*, 75 NY2d 530, 538 [1990]), and so the business

judgment rule applies (*see 40 W. 67th St. v Pullman*, 100 NY2d at 153-154). Tenants' conclusory allegations regarding the board's alleged lack of good faith were insufficient to raise an issue of fact (*see Molander v Pepperidge Lake Homeowners Assn.*, 82 AD3d 1180, 1183 [2011]; *Bay Crest Assn., Inc. v Paar*, 72 AD3d 713, 714 [2010]). Consequently, tenants have not demonstrated that the Civil Court erred in granting landlord leave to reargue the branch of its motion seeking summary judgment on the petition and, upon reargument, granting that branch of the motion.

Regarding tenants' counterclaims sounding in retaliatory eviction, we find that the actions taken by tenants, purportedly to enforce their rights under the proprietary lease, were not in good faith (*see Ghadamian v Channing*, 295 AD2d 127 [2002]). Tenants' remaining arguments with respect to their counterclaims lack merit.

Accordingly, the order entered August 18, 2022, insofar as appealed from, and the order entered December 22, 2022 are affirmed.

McCORMACK, J.P., GARGUILO and DRISCOLL, JJ., concur.

ENTER:
Paul Kenny
Chief Clerk
Decision Date: January 18, 2024