

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK: HOUSING PART C

346-50 EAST 20 STREET LLC

Petitioner-Landlord

-against-

CAROLYN HORAN

346 East 20th Street a/k/a 346-50 East 20th Street, Apt BE
New York, New York 10003

Respondents-Tenants

‘JOHN DOE’ and/or ‘JANE DOE’

Respondents-Undertenants

L&T Index # 68924/18

DECISION/ORDER

Hon. Clifton A. Nembhard

Background

Petitioner commenced the instant holdover proceeding by notice of petition and petition in August 2018. Prior to commencement petitioner served a Notice of Termination which asserted that respondent has violated a substantial obligation of her tenancy by chronically failing to pay her rent on time. As a result petitioner was forced to commence eleven nonpayment proceedings against her since 1994. Respondent interposed an answer containing five affirmative defenses and a counterclaim for legal fees. Respondent now moves to dismiss the petition on the grounds that nine of the eleven proceedings listed in the notice are barred from consideration by the statute of limitations.

Discussion

Summary judgment is a drastic remedy that will only be granted where there is no doubt as to the existence of a triable issue of fact. *Sillman v. Twentieth Century-Fox Film Corp.*, 3 NY2d 395 [Ct App 1957]. In its analysis of a summary judgment motion the court must construe the facts in the light most favorable to the nonmoving party. The court’s role is issue finding not issue determination. *Sillman v. Twentieth Century-Fox Film Corp.*, *supra*. When the existence of an issue of fact is even arguable or debatable, summary judgment should be denied. *Stone v. Goodson*, 8 NY2d 8 [Ct App 1960].

Respondent first argues that the termination notice is defective as a matter of law. Specifically, respondent takes issue with the fact that the notice alleges that

During these prior proceedings you repeatedly defaulted on stipulations

of settlement and / or orders of the court which caused the proceedings to be unduly protracted. You repeatedly requested adjournments. Your failure to pay rent timely has caused the landlord to incur thousands of dollars in legal fees which you have failed to reimburse to landlord.

Respondent asserts that these allegations are false as none of the prior nonpayment proceedings were ever adjourned, much less at her request. In addition none of the cases, with the exception of index No. 65453/94, were resolved by stipulation. In response petitioner argues that the claimed inaccuracies are nothing more than a red herring and that the predicate notice more than adequately establishes the grounds upon which the proceeding is based.

The standard for assessing the adequacy of a predicate notice is whether it is reasonable in view of the attendant circumstances. *Hughes v. Lenox Hill Hosp.*, 226 AD2d 4 [1st Dept 1996]. The notice must set forth sufficient factual allegations to afford the respondent the opportunity to prepare a defense. *Giannini, v. Stuart*, 6 AD2d 418 [App Term 1st Dept 1968]. The termination notice here meets this requirement. While the veracity of the allegations in the notice may be in issue, it does put respondent on notice of the petitioner's claim and allows her to interpose a defense. The notice therefore cannot be said to be defective as a matter of law.

Respondent, relying on the six year statute of limitations for contracts set forth in CPLR §213(2), next argues that the nine earliest cases cited in the predicate notice cannot form the basis for the petitioner's cause of action. As a general rule, a history of repeated nonpayment proceedings brought to collect chronically late rental payments supports an eviction proceeding on the ground that the tenant has violated a substantial obligation of her tenancy. *Sharp. v. Norwood*, 89 NY2d 1068 [Ct App 1997]. The statute of limitations does not provide a look back period or cutoff date but instead, like all statutes of limitations, sets a deadline for the commencement of a claim once it has accrued. *Kalaja Realty, LLC v. Morel*, 56 Misc3d 1210(A) [Civ Ct Bx 2017]. A court therefore is not precluded from considering cases beyond the six years in assessing whether the requisite pattern of prior nonpayment proceedings exist. *H.W. Hinkley Realty LLC v. Romulus*, , NYLJ, Feb. 15, 2017 at 40 col 1. A proceeding will be considered provided that it is part of a group of temporally clustered cases which form a pattern of unjustified defaults. *Adam's Tower Ltd. Partnership v. Richter*, 186 Misc2d 620 [App Term 1st Dept 2000].

Of the eleven cases cited by petitioner, the only cluster within a relatively short period of time are Index Nos. 54622/09, 89084/09 and 78503/10 which were commenced between February 2009 and August 2010. Petitioner's cause of action thus accrued in 2010. Since the instant case was not commenced until 2018, petitioner cannot rely on those cases to establish its cause of action. The only two cases that can be considered (Index Nos. 733770/16 and 61240/18) do not establish the requisite pattern of chronic default. See, e.g., *Terrilee 97th Street LLC v. Alaharzi*, 52 NYS3d 248 [App Term 1st Dept 2016].

Conclusion

Based on the foregoing the motion is granted and the case dismissed.

This constitutes the decision and order of the Court.

Date: February 22, 2019
New York, New York


SO ORDERED
Hon. Clifton A. Nembhard, JHC
CLIFTON A. NEMBHARD