SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2910-15T4

DIANNA QUAMINA,

Plaintiff-Appellant,

v.

STELLA GARDENS APARTMENTS,

Defendant-Respondent.

Submitted February 27, 2017 – Decided March 21, 2017

Before Judges Nugent and Haas.

On appeal from Superior Court of New Jersey, Law Division, Essex County, Docket No. L-6224-14.

Dianna Quamina, appellant pro se.

Capehart & Scatchard, P.A., attorneys for respondent (Laurel B. Peltzman, of counsel and on the brief).

PER CURIAM

Plaintiff Dianna Quamina appeals from an order of summary judgment dismissing her complaint. Her complaint alleged defendant Stella Gardens Apartments discriminated against her in violation of the New Jersey Law Against Discrimination (LAD),

N.J.S.A. 10:5-1 to -49. Specifically, plaintiff alleged defendant denied her a housing accommodation for her physical disability and then retaliated by evicting her after she filed a complaint with the New Jersey Division on Civil Rights (DCR). Having considered plaintiff's arguments in light of the record and controlling legal principles, we affirm.

This action's procedural history spans many years. In October 2005, plaintiff and her son moved into a third-floor, three-bedroom apartment at the Prince 2004 apartments, one of three Newark complexes collectively known as the Stella Gardens Apartments. Nearly seven years later, in February 2012, plaintiff filed a verified complaint with the DCR, claiming defendant failed to provide reasonable housing to accommodate her disability.

While plaintiff's DCR complaint was pending, defendant filed an eviction action in landlord-tenant court seeking to evict plaintiff for non-payment of rent. Following a hearing in landlord-tenant court in August 2012, defendant obtained a judgment for possession and requested a warrant of removal. On September 28, 2012, a month after the landlord-tenant trial was completed, the DCR found no probable cause to support plaintiff's claim of disability discrimination. Plaintiff appealed.

On August 1, 2014, the Appellate Division remanded the matter, finding that the DCR had not advised plaintiff of her right to

bring a court action instead of pursuing administrative remedies. Quamina v. Stella Gardens Apartments, No. A-1480-12 (App. Div. Aug. 1, 2014) (slip op. at 5). The panel gave plaintiff thirty days "to withdraw her DCR complaint or to seek a hearing before an Administrative Law Judge." Id. at 10. The panel directed that "[i]f she does so, the DCR shall vacate its finding of no probable cause." Ibid. The court made no decision on the merits of the DCR's finding, merely restoring the parties to their status before the time of the DCR's final decision. Id. at 10-11.

On August 30, 2014, less than a month after the panel issued its decision, plaintiff filed this action in the Law Division, alleging discrimination in housing accommodation based on disability under N.J.S.A. 10:5-4, and retaliation by eviction for her filing the DCR discrimination action under N.J.S.A. 2A:42-10.10 and -10.11. She also claimed that her rent was never late and always had been current.

On January 8, 2016, following oral argument, the trial court granted defendant's motion for summary judgment and dismissed plaintiff's complaint with prejudice. This appeal followed.

These are the facts and the parties' contentions. On October 25, 2005, plaintiff and her son moved into a third-floor, three-bedroom apartment at the Stella Gardens Apartments in Newark. Quamina, supra, No. A-1480-12 (slip op. at 2-3). Some of the

apartments qualified for federal subsidies. Plaintiff's apartment did not, but she received rental assistance from a State agency because she had previously been displaced from an apartment in Irvington. When her State subsidy ended in 2009, plaintiff became responsible for the entirety of her $1254 monthly rent. Ibid.

According to plaintiff's medical documents, she has difficulty ascending and descending stairs due to a lower back injury, foot reconstruction surgery, and a right knee replacement. Defendant does not dispute plaintiff's physical impairment. Due to her impairment, plaintiff requested a subsidized, ground-floor, handicapped accessible apartment. Plaintiff asserted she first requested a first-floor apartment in 2005. She further asserted she never asked for a two-bedroom apartment, and that she was willing to take a first-floor apartment of any size. Ibid. However, according to defendant "because [plaintiff] lived with her sixteen-year-old-son and requested a subsidized apartment, she was not eligible for a one-bedroom apartment." Ibid.

In any event, on February 9, 2012, plaintiff prepared a "Housing Discrimination Complaint" on a form approved by the United States Department of Housing and Urban Development. Plaintiff alleged she was "denied reasonable accommodation." The form complaint asked when the alleged discriminatory acts occurred. In response, plaintiff wrote, "Oct 1 2011 and continuing."

The following week, on February 16, 2012, plaintiff filed a verified complaint with the DCR. In a section of the complaint entitled "personal harm," plaintiff stated: "Complainant alleges that since on or about October 1, 2011 and continuing, Respondent has refused her request for reasonable accommodation for her disabilities." Under a section in the complaint entitled "Discrimination Statement," plaintiff stated:

> Complainant alleges that she was unlawfully discriminated against with respect to denial of reasonable accommodation for her disabilities, in that:
>
> > 1. On or about October 1, 2011, Complainant advised [respondent's manager] that she needed an accessible apartment without stairs. Complainant alleges that she completed the form [respondent's manager] gave her and submitted medical documentation in support of her request.
> >
> > 2. Complainant alleges she was not placed on a waiting [list] for an accessible apartment, and alleges that [respondent's manager] did not provide her with any specific information regarding the status of her request.

As previously recounted, the DCR found no probable cause to support plaintiff's claim of disability discrimination, plaintiff appealed, and plaintiff ultimately filed the action now before us.

In this action, plaintiff asserts she has been seeking an accommodation from defendant since 2005.

Defendant disputes plaintiff's assertions. According to defendant's property manager, who signed a certification in support of defendant's summary judgment motion, defendant's management regarded plaintiff as the "head of a two-person household, composed of a mother and adolescent son. Therefore, [plaintiff] required a two bedroom apartment." Defendant disputed plaintiff first requested an accommodation in 2005. According to defendant, plaintiff first made the request for an accommodation in 2011. The property manager averred in a certification that the building in which plaintiff lived had three, two-bedroom flat, handicapped, subsidized units. One had become available on June 30, 2005, another on July 27, 2005, and the third on August 31, 2005. None of the units became available until 2012. Thus, none of the units were available from the time plaintiff moved into the building in October 2005 until June 2012.

In June 2012, a handicapped unit became available and defendant offered plaintiff the unit. Defendant averred this was the first to become available after plaintiff first made her request in 2011. Ibid. Defendant alleges plaintiff "did not respond to its offer, and the apartment subsequently became unavailable because others were in need of housing." Id. (slip

op. at 4). Plaintiff denies refusing the apartment. "She claims that defendant's manager refused to sign off on her application for rental subsidy because, in the meantime, a dispute arose between the parties regarding whether she was in arrears on rent." Ibid.

Defendant alleged plaintiff did not pay her June 2012 rent, and therefore "could not complete [her] recertification for the handicapped accessible apartment." In June 2012, defendant filed the landlord-tenant action seeking plaintiff's eviction for non-payment of rent. Plaintiff and defendant appeared in landlord-tenant court on July 30, 2012, at which time she tendered her June 2012 rent payment. However, plaintiff had not paid her July 2012 rent, so the court rescheduled the matter for August 2012. On the rescheduled date, following a hearing in which plaintiff was represented by counsel, the court entered a judgment of possession. The same day, defendant requested a warrant of removal.

Plaintiff's deposition testimony in this action is significant in two respects. First, plaintiff conceded she did not pay her July 2012 rent. Second, defendant conceded she did not know if any subsidized, handicap accessible apartments were available from 2005 through 2012.

Based on the foregoing facts, the trial court granted defendant's summary judgment motion and dismissed plaintiff's complaint. Plaintiff appeals from the summary judgment.

We "review the grant of summary judgment 'in accordance with the same standard as the motion judge.'" Globe Motor Co. v. Igdalev, 225 N.J. 469, 479 (2016) (citations omitted). Under that standard, summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to judgment . . . as a matter of law." R. 4:46-2(c). In adhering to this standard of review, courts "must keep in mind that 'an issue of fact is genuine only if, considering the burden of persuasion at trial, the evidence submitted by the parties on the motion, together with all legitimate inferences therefrom favoring the non-moving party, would require submission of the issue to the trier of fact." Bhagat v. Bhagat, 217 N.J. 22, 38 (2014) (quoting R. 4:46-2(c)).

A non-moving party cannot prevail in a motion for summary judgment "merely by pointing to any fact in dispute." Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 529 (1995). Rather, "once the moving party presents sufficient evidence in support of the motion, the opposing party must 'demonstrate by competent

evidential material that a genuine issue of fact exists.'" Globe Motor Co., supra, 225 N.J. at 479-80 (quoting Robbins v. Jersey City, 23 N.J. 229, 241 (1957)).

Plaintiff first argues defendant failed to provide reasonable accommodation for her disability under the LAD. She contends she first made a request for a first-floor, subsidized apartment (of any size) in 2005 and that her rent was current.

"[T]he LAD prohibits discrimination by a public entity on the basis of a tenant's disability." Oras v. Hous. Auth. of City of Bayonne, 373 N.J. Super. 302, 311 (App. Div. 2004). The LAD "is to be construed liberally . . . to insure that handicapped persons will have 'full and equal access to society, limited only by physical limitations they cannot overcome.'" Franek v. Tomahawk Lake Resort, 333 N.J. Super. 206, 217 (App. Div. 2000) (quoting D.I.A.L., Inc. v. N.J. Dep't of Cmty. Affairs, 254 N.J. Super. 426, 439 (App. Div. 1992)). Implementing the LAD, the administrative code makes it unlawful for any person to "[r]efuse to make reasonable accommodations in rules, policies, practices or services . . . when such accommodations or modifications may be necessary to afford a person with a disability equal opportunity to use and enjoy a dwelling." N.J.A.C. 13:13-3.4(f)(2).

"A handicapped tenant alleging a wrongful denial of a requested accommodation bears the initial burden of showing that

the requested accommodation is or was necessary to afford him or her an equal opportunity to use and enjoy a dwelling." Oras, supra, 373 N.J. Super. at 312 (citing Lapid-Laurel, L.L.C. v. Zoning Bd. of Adjustment of the Twp. of Scotch Plains, 284 F.3d 442, 457 (3d Cir. 2002)). If such a showing is made, "the burden of proof shifts to the landlord to show that the requested accommodation is or was unreasonable." Ibid. (citation omitted).

Despite the protections afforded by the LAD, this court has "made clear that a duty to provide a reasonable accommodation for a resident with a disability does not necessarily entail the obligation to do everything possible to accommodate such a person." Estate of Nicholas v. Ocean Plaza, 388 N.J. Super. 571, 588 (App. Div. 2006) (citation omitted). "[C]ost (to the defendant) and benefit (to the plaintiff) merit consideration as well." Oras, supra, 373 N.J. Super. at 315 (citation omitted). Applying these standards to the facts presented by the parties on the summary judgment motion record, we conclude the trial court correctly granted summary judgment to defendant.

We recognize there is a factual dispute as to when plaintiff first requested an accommodation. Nevertheless, even if we were to conclude the dispute over that issue is not one-sided, and should be decided in favor of plaintiff for purposes of summary judgment, defendant is entitled to summary judgment. There are

two reasons we reach this conclusion. First, the statute of limitations concerning LAD claims is two years. See Montels v. Haynes, 133 N.J. 282, 292 (1993). Consequently, even if plaintiff sought an accommodation as early as 2005 — contrary to her statements in her Housing and Urban Development and DCR complaints — plaintiff did not file any complaint until February 2012, and did not file her civil complaint in superior court until 2014. Thus, even assuming a handicapped accessible, first-floor apartment was available in 2005, plaintiff's claim would be barred by the applicable statute of limitations.

More significantly, and even if the statute of limitations was not applicable based on some continuing violation theory, plaintiff is unable to refute defendant's evidence that first-floor, handicapped accessible apartments were unavailable from the time after plaintiff moved into the complex through the time defendant offered plaintiff an accommodation in June 2012. Defendant was not obligated to terminate someone else's tenancy in a handicapped accessible apartment to accommodate plaintiff.

We also agree with the trial court that summary judgment was appropriate as to plaintiff's retaliation claim. Plaintiff tried the rent issue in landlord-tenant court, lost, and did not appeal. In addition, plaintiff admitted in her deposition that she did not pay her July rent, which resulted in the landlord-tenant

proceedings. Thus, there is no genuine issue of material fact in dispute as to whether defendant filed the eviction proceedings for a non-retaliatory reason.

For the foregoing reasons, we affirm the entry of summary judgment and the dismissal with prejudice of plaintiff's complaint.

Affirmed.