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Galvez v 545 W. 144 LLC
2021 NY Slip Op 32962(U)
June 21, 2021
Civil Court of the City of New York, New York County
Docket Number: Index No. HP 76/2021
Judge: Frances A. Ortiz
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CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK: HOUSING PART B

-----X
BRIGIDO GALVEZ

Index No. HP 76/2021

Petitioner, Tenant

DECISION AND ORDER

-against-

545 WEST 144 LLC, as registered owner,

JASON GREEN, head officer and managing agent

Respondents, Owners

-and-

New York City Department of Housing Preservation and
Development

Co-Respondents.

-----X

FRANCES A. ORTIZ, JUDGE

Recitation as required by CPLR 2219(a), of the papers considered in the review of petitioner's motion for civil contempt.

Papers	Numbered
Petitioner's Order to Show Cause, Affirmation, Affidavit in Support & Exhibits.....	1/ NYSCEF 17, 9-14,
Respondent's Affirmation, Affidavit in Opposition & Exhibits.....	2/ NYSCEF 23-29, 35, 36
Reply Affidavit and Affirmation.....	3/ NYSCEF 30-32, 34

Upon the foregoing cited papers, the Decision/Order of this Court on this motion is as follows:

This is an HP Action originally brought by petitioner/tenant against his landlord seeking an order to correct Housing Maintenance Code violations at the subject premises and for a finding of harassment. This Court on February 16, 2021 issued an Interim Order to Correct the Housing Preservation and Development (“HPD”) violations for the subject premises reported on February 3, 2021, January 11, 2021, January 8, 2021, December 20, 2020, December 2, 2020, November 18, 2020 and August 25, 2020. Subsequently, on March 11, 2021 this Court issued another Interim Order to Correct HPD violations reported on March 5, 2021 for the subject premises. Specifically, the March 5, 2021 Order extended the respondent/owner’s obligation to reinstate the cooking gas at the subject premises to April 9, 2021 because this Court recognized that the owner was working with Consolidated Edison (“Con Ed”) to reinstate the gas.

Now, petitioner moves for civil contempt pursuant to *Judiciary Law §753 (A) (3)* against respondent/owners for failure to comply with this Court’s February 16, 2021 and March 11, 2021 Orders to Correct (“the Orders”). Petitioner also moves for civil penalties against respondent/owners pursuant to the Housing Maintenance Code for failure to correct the HPD violations referred to in the Orders. Additionally, petitioner seeks damages for out of pocket expenses, physical discomfort, emotional distress, diminution in quality of life and anxiety. After a finding of default of the Court’s orders, petitioner asks for a final order to correct all HPD violations in his apartment. Lastly, petitioner seeks reasonable attorney’s fees pursuant to *Judiciary Law §773*.

Petitioner, Brigido Galvez, in support of his contempt motion submits an affidavit. He states that according to the Order of February 16, 2021 he provided the owner with access to his apartment on February 17, 2021 and February 18, 2021 to address the HPD violations. (*Galvez Affi’d ¶ 5*). The superintendent came to his apartment on February 17, 2021 for a few hours and

applied some paint and plaster to a portion of his bathroom wall due to a leak, painted over some mold in the bathroom but did not believe that the underlying leak was properly abated. The super did not do any further work that day. (*Id.* ¶ 6). The next day the superintendent returned and applied plaster to the walls in the entrance hallway to his apartment and the kitchen ceiling walls. However, he states the super did not paint the hallway or the kitchen, despite the HPD violations that required the landlord to paint and plaster the ceiling. After applying the plaster, the super left. (*Id.* ¶ 7). Thereafter, on March 2, 2021 the owner sent contractors to his apartment to work on pipes associated with a lack of gas in his apartment. The workers installed gas pipes but the gas service was not restored. In the areas where the gas pipes were added the workers attempted to cover the holes on the floor and ceiling with cardboard and black tape. (*Id.* ¶ 8). The workers did not return on March 3, 2021, and there is still cardboard and black tape on his floor and ceiling. Actually, the new gas pipes are protruding from the basement into his apartment through the floor. He can see the basement through the hole which allows vermin to enter into his apartment. (*Id.* ¶ 9). Additionally, Mr. Galvez states that he does not have a working stove. The stove is missing screws to hold the top in place and the oven door is not fastened by the hinges, his refrigerator gasket is broken and has not been fixed, despite the court order to do so. The broken gasket affects the cooling of the refrigerator. (*Id.* ¶ 10). As such, he and his family are forced to eat out and spend at least \$30 to \$40 daily. (*Id.* ¶ 11). Specifically, Mr. Galvez states that the following conditions have not been corrected: refrigerator gasket, defective stove, hallway and kitchen need painting, restoration of cooking gas, sealing of areas near the newly installed gas pipes, window sash in his son's room, ceiling in his son's bedroom and living room needs to be painted and plastered. (*Id.* ¶ 14).

Respondent/owners in opposition to the motion for contempt submit affidavits from Adam Green (property manager) and Richard Veintimilla (superintendent). According to Adam Green, since the commencement of this HP Action, he has had issues with access to the subject premises. He personally directed and accompanied the superintendent, Richard Veintimilla to work at the premises on February 17th and 18th, 2021. (*Green Affi'd* ¶ 4). However, he states that after being threatened and cursed by the petitioner, he was compelled to leave the apartment to “de-escalate a hostile situation caused solely by the Petitioner.” (*Id* ¶ 5). According to Mr. Green, the only remaining issues were the refrigerator and oven which he says petitioner refused access and the gas service has been restored as of April 27, 2021. (*Id* ¶ 6, 9 & 10). According to Mr. Green, petitioner only wanted to accept new appliances. (*Id* ¶ 9). As to the holes in the floor and ceiling complained by petitioner, Mr. Green states that those holes were necessary to have new risers installed from the basement to the top floor. (*Id* ¶ 13). The owner was unable to close the holes because it was required to wait for gas to be restored prior to sealing the holes. (*Id* ¶ 14).

Additionally, Richard Veintimilla, the superintendent, states in his affidavit that he has remedied all the violations at the subject premises as required by law to date. (*Veintimilla Affi'd* ¶ 3, *NYSCEF 25*). He claims that there was a delay in repairing the refrigerator and oven due to petitioner’s refusal to provide access and his insistence on new appliances. (*Id* ¶ 4). However, he states that he was told to provide petitioner with an almost new oven and refrigerator and did so. He annexes as *Exhibit D* pictures of the appliances. (*Id* ¶ 6). Mr. Veintimilla states that the gas service to the subject premises was restored on April 27, 2021 and that the stove is fully functional. (*Id* ¶ 7). Additionally, Mr. Veintimilla states that he will continue working on fixing the damage to the apartment walls caused by Con Ed and perform the work on some new

violations. (*Id* ¶ 8). According to Mr. Veintimilla, "...[P]etitioner is always rude, obnoxious and difficult..." and his unit is the only one he has problems with. (*Id* ¶ 9).

Mr. Galvez in reply states that between March 3, 2021 and April 29, 2021 no work was done in his apartment, except for one additional day. (*Galvez Reply Affi'd* ¶ 4/ *NYSCEF* 31). According to Mr. Galvez, the hallway has not been painted, the cracks remain in the ceiling of various bedrooms, much of the work that was done has been subpar. (*Id* ¶ 5). Mr. Galvez did confirm that the gas service to his apartment has been restored as of April 27, 2021. (*Id* ¶ 6) Further, Mr. Galvez indicates that on April 29, 2021 the super delivered an old stove and refrigerator, despite the owner's contention that they were almost new. The refrigerator had dents with missing shelves, the stove does not work and the oven had a dead mouse in it. (*Id* ¶ 8). Mr. Galves states that as of the date of his reply affidavit there still are conditions and violations that have not been corrected in this apartment. (*Id* ¶ 13).

Adam Green in response to Mr. Galvez indicates that the appliances provided to Mr. Galvez were almost new and there was no dead mouse in the oven. (*Green Sur Reply Affi'd* ¶s 2 & 6/ *NYSCEF* 35).

DISCUSSION

To prevail on a motion to hold a party in civil contempt, the movant is required to prove by clear and convincing evidence certain elements. The elements necessary to support a finding of civil contempt are as follows: "First, it must be determined that a lawful order of the court, clearly expressing an unequivocal mandate, was in effect. Second, it must appear, with reasonable certainty, that the order has been disobeyed. Third, the party to be held in contempt must have had knowledge of the court's order, although it is not necessary that the order actually have been served upon the party. Fourth, prejudice to the right of a party to the litigation must

be demonstrated.” (*El-Dehdan v El-Dehdan*, 26 N.Y.3d 19, 29 [2015] [internal quotation marks, citations and brackets omitted]; see *Matter of McCormick v Axelrod*, *supra.*; *Rubin v Rubin*, 78 A.D.3d 812 [2nd Dep’t 2010]; *Alderman v Alderman*, 78 A.D.3d 620 [2nd Dep’t 2010]; *Judiciary Law* § 753 [A]).

As far as civil contempt is concerned, the purpose of a fine is to compensate. The fines that may be imposed for a civil contempt are found in *Judiciary Law* § 773. The statute provides for two types of awards: one where actual damage has resulted from the contemptuous act in which case an award sufficient to indemnify the aggrieved party is imposed, and one where the complainant's rights have been prejudiced but an actual loss or injury is incapable of being established. Under those circumstances, the fine is limited to \$250, plus the complainant's costs and expenses.

A hearing is only required if the papers in opposition raise a factual dispute as to the elements of civil contempt, or the existence of a defense and cannot be resolved on the papers alone. *Lundgren v. Lundgren*, 127 A.D.3d 938, 940 (2nd Dep’t 2015); *El-Dehdan v. El-Dehdan*, *supra.*; *Bowie v. Bowie*, 182 A.D.2d 1049, 1050 (3rd Dep’t 1992).

Here, the owner’s papers in opposition raise a factual dispute as to the elements of contempt which constitutes a basis for a hearing. The affidavits from Adam Green and Richard Veintimilla indicate the violations were corrected and Mr. Galvez disputes this in his reply affidavit. Accordingly, petitioner’s motion for contempt is granted to the limited extent of setting the matter down for a contempt and civil penalties hearing.

The Court calendars the matter to July 8, 2021 at 2:30 p.m. for a pre-hearing conference. Microsoft Teams invites will be sent to the parties.

ORDERED: Petitioner’s motion for civil contempt and civil penalties against respondent/owner is granted to the extent of setting the matter down for a hearing.

This is the decision and order of this court. Copies of this decision will be emailed to the parties indicated below.

Date: June 21, 2021

New York, NY



Judge, Civil/Housing Court
Frances Ortiz
Frances A. Ortiz
Judge, Housing Court

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CIVIL COURT OF THE
CITY OF NEW YORK
JUN 21 2021
ENTERED
NEW YORK COUNTY