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Vatel v Wills
2022 NY Slip Op 22013
Decided on January 21, 2022
Civil Court Of The City Of New York, Ny County
Ortiz, J.
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Decided on January 21, 2022

Civil Court of the City of New York, NY County

<p>Frank Vatel, Petitioner,</p> <p>against</p> <p>Lenice Wills, Respondent.</p>
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Inde No. L & T 10141/21

Petitioner was represented by Northern Manhattan Improvement Corporation, Bryan Daly, Esq. (212) 822-8330.

Respondent, Lenice Wills was pro se with a phone number [redacted] and email address of [redacted].

Frances A. Ortiz, J.

Frank Vatel, the petitioner in this proceeding ("Petitioner"), commenced this proceeding against Lenice Wills, the respondent in this proceeding ("Respondent") pursuant to RPAPL § 713 (10) seeking possession of 870 Columbus Avenue, apt. 9G, New York, New York ("the subject premises") on the ground of an alleged illegal lockout. Respondent is *pro se* and did not file a written answer but orally articulated a defense of voluntary surrender/abandonment.

The Court held a trial of this matter on January 4, 2022, January 6, 2022, and January 18, 2022.

Petitioner testified on his own behalf and called his former neighbor Janice Brooks as a witness. Ten exhibits were admitted into evidence on his behalf. Respondent testified on her own behalf and had one exhibit admitted into evidence.

Janice Brooks testified she lived next door to the subject premises and that petitioner lived across from her for about four to five years. She saw no one else besides petitioner reside there. Then, she saw respondent resurface in March 2021 and respondent told her she was renting the subject premises to petitioner. Also, she observed respondent and her boyfriend physically hit petitioner and the police arrested them. Lastly, she indicated that on or about April 2021 she personally observed respondent and her boyfriend drilling the locks to the subject premises on at least two to three occasions.

Petitioner, Frank Vatel, testified that he rented all rooms at the subject premises from respondent, and that respondent interviewed him before he moved in. He moved in around late 2016/early 2017 and lived there alone in what he later discovered was a New York City Housing Authority ("NYCHA") apartment. At first, he paid \$1,100 a month in rent but after 2018 he paid respondent \$1,300 a month in rent. He made payments to the respondent via a PayPal account for YogaStenics (*Petitioner's Exhibit 4 in evidence*). He stopped paying rent in 2020 because he [*2] stumbled on paperwork that respondent owed her landlord/NYCHA \$777.67 in rent and her monthly share was at most \$148 (*Petitioner's Exhibit 6 in evidence*). Once he stopped paying rent his relationship with respondent changed, and respondent and her "boyfriend" Sean Griffith would forcibly enter the subject premises and harass him.

According to petitioner, on November 23, 2021 he learned that respondent was breaking into the subject premises so he rushed home. When he arrived, there were ten to eleven police officers in the hallway outside of the subject premises. He observed that there was a hole drilled into the door lock of the subject premises, and respondent was inside with a chain on the door. The police spoke to them. He went into his bedroom to retrieve his laptop, social security card and passport and left the premises. He returned to the subject premises 24-48 hours later to remove his personal property. He packed for several hours and got his own UHAUL.

Respondent, Lenice Wills, testified that she gave petitioner a copy of the key to the subject premises and others for a limited purpose. The key was for petitioner to give access to NYCHA for repairs in her absence, since she was doing missionary work in Georgia. She

stated that she did not have an agreement with petitioner to live at the subject premises and that the PayPal account for YogaStenics (*Petitioner's Exhibit 4 in evidence*) showing payments of \$1,100 was a donation to YogaStenics for health and wellness services she provided to petitioner.

Specifically, as to the events of November 23, 2021, respondent testified that petitioner was at her door. She called the police who spoke to her and petitioner. The police asked them to talk it out. Petitioner said "I'm leaving" in the presence of the police officers. To further substantiate her claim that petitioner agreed to vacate the subject premises, respondent offered and was admitted into evidence as *Respondent's F* an audio recording. On this recording, petitioner states that "enough is enough," "this has gone way too far," "I'm gonna leave," and "I am going to grab my stuff." The police officer is heard saying, "You guys are settled." Thereafter, she indicated that she had a very cordial conversation with petitioner.

Petitioner testified on rebuttal that he paid rent to Culcha Society another organization related to YogaStenics. (*Petitioner's 10 in evidence*) and the word "rent" appeared in the memo of the Venmo payment.

Based upon the credible documentary and testimonial evidence, the Court makes the following findings of fact and conclusions of law.

Discussion:

The relevant statutes considered in an illegal lockout are *RPAPL § 713 (10)*, *RPAPL § 768*, *RPAPL § 711*, and *New York City Administrative Code § 26-521*.

Under *RPAPL § 713 (10)*, a special proceeding may be maintained where:

The person in possession has entered the property or remains in possession by force or unlawful means and he or his predecessor in interest was not in quiet possession for three years before the time of the forcible or unlawful entry or detainer and the petitioner was peaceably in actual possession at the time of the forcible or unlawful entry or in constructive possession at the time of the forcible or unlawful detainer; no notice to quit shall be required in order to maintain a proceeding under this subdivision.

Further *RPAPL § 768 (1) (a)* indicates that:

It shall be unlawful for any person to evict or attempt to evict an occupant of a

dwelling unit who has lawfully occupied the dwelling unit for thirty consecutive days or longer or who has entered into a lease with respect to such dwelling unit except to the extent permitted by law pursuant to a warrant of eviction or other order of a court of competent [*3]jurisdiction or a governmental vacate order.

Similarly, *New York City Administrative Code § 26-521* provides that :

a. It shall be unlawful for any person to evict or attempt to evict an occupant of a dwelling unit who has lawfully occupied the dwelling unit for thirty consecutive days or longer ..except to the extent permitted by law pursuant to a warrant of eviction or other order of a court of competent jurisdiction or a governmental vacate order by:

(1) using or threatening the use of force to induce the occupant to vacate the dwelling unit; or

(2) engaging in a course of conduct which interferes with or is intended to interfere with or disturb the comfort, repose, peace or quiet of such occupant in the use or occupancy of the dwelling unit, to induce the occupant to vacate the dwelling unit including, but not limited to, the interruption or discontinuance of essential services; or

(3) engaging or threatening to engage in any other conduct which prevents or is intended to prevent such occupant from the lawful occupancy of such dwelling unit or to induce the occupant to vacate the dwelling unit including, but not limited to, removing the occupant's possessions from the dwelling unit, removing the door at the entrance to the dwelling unit; *removing, plugging or otherwise rendering the lock on such entrance door inoperable; or changing the lock on such entrance door without supplying the occupant with a key.*

Additionally, *RPAPL § 711*, provides that "[n]o tenant or lawful occupant of a housing accommodation shall be removed from possession except in a special proceeding," if he or she has been in possession for thirty consecutive days or longer.

Here, the petitioner has been in possession of the subject premises pursuant to a subtenancy arrangement with respondent that began in late 2016/early 2017. He had exclusive possession of the subject premises and paid monthly rent to respondent for either \$1,100 or \$1,300. This amount exceeded respondent's monthly rent to NYCHA by eight times. Based on these events, petitioner has been in lawful possession for thirty consecutive days or longer, namely over four years, at the subject premises. This was further supported by the disinterested and credible testimony of Janice Brooks who told this Court that for at least four years of her living next door to petitioner, she thought petitioner was the tenant of record for the subject premises. She had not seen respondent until early 2021. Lastly, she

testified that respondent told her that she was subletting the premises to petitioner.

Further, this Court found incredible respondent's testimony that she did not have an agreement with petitioner to live at the subject premises but merely provided a key for him to provide access to NYCHA workers while she was away on her mission work, that the PayPal and Venmo payments made by petitioner of \$1,100 or \$1,300 were donations to YogaStenics and Culcha Society for health and wellness services she provided to petitioner.

Moreover, the credible testimony of petitioner and evidence demonstrates that respondent on or about November 23, 2021 forcibly removed petitioner from the subject premises. *RPAPL § 713 (10)*. Respondent broke into the subject premises by drilling a hole into the entrance door lock. She placed a door chain to prevent petitioner from entering and barricaded herself inside. She only opened the door once the police interfered. *New York City Administrative Code § 26-521*.

Accordingly, up until these above events of November 23, 2021, petitioner showed the elements of an illegal lockout pursuant to *RPAPL § 713 (10)*, *RPAPL § 768* and *New York City [*4] Administrative Code § 26-521*. However, the turning point occurred when petitioner told the police that "enough is enough" and "this has gone way too far," "I'm gonna leave," and "I am going to grab my stuff." (*Respondent's F in evidence — audio*). Petitioner admitted that on that same day he went and got his laptop, social security card, passport and left. However, he returned days later to remove his personal property from the premises. In fact, he made two trips on the same day to remove his property. On that same day, he spent hours packing and got his own UHAUL.

Waiver is a voluntary and intentional relinquishment of a known right. *Albert J. Schiff Assocs., Inc. v. Flack*, 51 NY2d 692, 698 (1980). "The doctrine of waiver, by its nature, ordinarily applies to all rights or privileges to which a person is legally entitled, provided such rights or privileges belong to the individual and are intended solely for that individual's benefit." *Hudsonview Co. v. Jenkins*, 169 Misc 2d 389, 392 (NY Cty Civ. Ct. 1996). Here, petitioner had a legal right to be restored to possession but voluntarily relinquished that known right when he indicated to the police and respondent that he was leaving, packed some of his belongings on November 23, 2021, then returned days later, after a cool down period to voluntarily pack his own belongings.

Since petitioner waived his rights to maintain this proceeding, this Court has no other option but to dismiss the petition without prejudice to petitioner's rights, if any, pursuant to *RPAPL §768*, *RPAPL §853*, and/or *NYC Admin Code §26-521*, and subject to any defenses

respondent may raise therein.

Respondent should in no way interpret the dismissal of this proceeding as an endorsement or approval of her actions in this matter. The credible testimony and evidence showed that respondent sublet her NYCHA apartment to petitioner for eight times what she was paying NYCHA. She disguised these payments as income by having petitioner make rent payments to a non-profit organization and characterize it as a donation. Then, instead of using court process and the rule of law to evict her subtenant, respondent illegally locked petitioner out of his apartment on several prior occasions. During the times when he regained possession of the premises with the assistance of the police, respondent would subsequently retaliate with violence and further break-ins. Respondent's behavior throughout has been shameful and despicable.

ORDERED: that this proceeding is dismissed.

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

Date: January 20, 2022
Frances Ortiz
Judge, Civil/Housing Court

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