2021-08-06

517 W. 212th Street TA v. Pecora

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK, HOUSING PART B

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517 WEST 212th STREET TENANT ASSOCIATION, HILDA MINIER, MILADY PEREZ RAFAEL CASTRO, MARIANA PEREZ, EUDACIA PEREZ, WENDOLYN CRUZ, JENNIFER ORDONEZ, RIQUELIN ESPINAL, and CELIANA PAULINO,

Petitioners- Tenants,

-against-

Index No. L&T 1717/16
DECISION AND ORDER

517 WEST 212 ST. LLC, FRANK PECORA, 517-525 W. 212TH ST LLC and JLP METRO MANAGEMENT INC.

Respondent-Landlord

And THE DEPARTMENT OF HOUSING PRESERVATION & DEVELOPMENT OF THE CITY OF NEW YORK

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FRANCES A. ORTIZ, JUDGE

Recitation as required by CPLR 2219(a), of the papers considered in the review of the respondents' motion demanding a jury trial and a stay of the proceedings and co-respondent's motion for sanctions.

Papers	**Numbered**
Notice of Motion for Stay and Other Relief, Affirmation, Note of Issue & Jury Demand	1
Affirmation in Opposition	2
Notice of Cross-Motion & Affirmation in Opposition to Motion and In Support of Cross-Motion	3
Affirmation in Opposition to Cross-Motion for Sanctions and in Further Support of Motion For Stay and Other Related Relief	4
Affirmation in Reply	5

Upon the foregoing cited papers, the Decision/Order of this Court on the motion seeking a stay and a jury demand and the cross-motion seeking sanctions is as follows:

Petitioners commenced this HP action in September 2016 seeking an order to correct violations of the Housing Maintenance Code. The matter was settled via consent order in January 2017. Petitioners, believing that respondents 517 West 212 St. LLC and Frank Pecora (collectively referred to as "Pecora Respondents") failed to abide by the terms of the consent order, filed a motion seeking both civil and criminal contempt in September 2017. The court ordered a hearing on the motion, but after four days of a bench hearing the motion was settled via stipulation in February 2018.

Petitioners filed a second motion in June 2018 seeking both civil and criminal contempt, alleging that the Pecora Respondents were in contempt of the February 2018 stipulation. This second contempt motion was settled by the parties via stipulation in March 2019. That stipulation included the following provisions: (1) the Pecora Respondents would tender $19,000 to petitioners in satisfaction of the contempt motion, (2) the Pecora Respondents would tender $4,000 to HPD in settlement of civil penalties, (3) the Pecora Respondents would correct all open violations within 40 days of April 3, 2019, (4) the petitioners would receive rent credits for open violations, and would continue to receive rent credits until said violations were corrected, (5) if the violations were not corrected by May16, 2019, the Pecora Respondents would tender $500 to petitioners per repair, per month, and such payments would continue until such conditions had been corrected and (6) that if the repairs were not timely completed, the Pecora Respondents could again be subject to civil fines by HPD. The stipulation includes language that

it would be binding upon, and inure to the benefit of, the parties, their successors and their assigns.

In May 2019, two months after signing the March 2019 stipulation, the Pecora Respondents sold the subject building to 517 West 212 St. LLC.

Petitioners brought a motion in October 2019 seeking to join 517 West 212 St. LLC and JLP Metro Management (collectively the "New Owner Respondents") to the action and seeking criminal and civil contempt against both the Pecora Respondents and the New Owner Respondents, claiming they disobeyed the terms of the so-ordered March 2019 stipulation. Specifically, the petitioners alleged that the repairs had not been completed, that petitioners had not received the rent credits promised in the March 2019 stipulation and that petitioners had not received the $500 fees for failing to timely complete the repairs. In addition, the petitioners sought civil penalties for the unfinished repairs. The Pecora Respondents cross-moved to have the matter dismissed as against them, as they were no longer owners of the building.

The court issued a Decision/Order on March 9, 2020 joining the New Owner Respondents to the proceeding, denying the Pecora Respondents' cross-motion, and granting the motion for civil contempt against the New Owner Respondents and criminal contempt against the Pecora Respondents to the extent of setting down the matter for a hearing for liability and assessment of damages and equitable relief. Due to scheduling restrictions imposed by the COVID-19 pandemic, the court was unable to schedule a hearing for some time after that, but finally set it down for a hearing on March 4, 2021. Then, eight days before that hearing was to commence and 354 days after the decision setting the matter down for a hearing was entered, the Pecora Respondents filed the instant four-page motion, demanding a trial by jury and seeking a

stay of the proceedings until a jury could be empaneled. Both the petitioners and the New Owner Respondents oppose the motion, and the New Owner Respondents cross-move for sanctions, arguing that the Pecora Respondents' motion is frivolous and that they should be awarded attorneys' fees for their time spent opposing it.

Pecora Respondents' Motion for a Jury Trial

Demands for jury trials in the context of criminal contempt proceedings are old hat and regularly denied. The arguments underlying these motions generally follow this logic:

1. Per *DHPD v. 24 W. 132 Equities (137 Misc. 2nd 459, 461 (AT 1st Dep't 1987) aff'd, 150 A.D.2d 181 (1st Dept'1989))*, a proceeding to punish for a criminal contempt of court arising out of or during the trial of a civil action commences a special proceeding which is separate and distinct from the original action.
2. Because the contempt proceeding brought under Section 750 of the Judiciary Law is cognized as a new proceeding, the alleged contemnors have all rights and defenses that would be available to them in a new action.
3. Article I, Section 2 of the New York State Constitution and the Sixth Amendment to the United States Constitution afford criminal defendants a right to a jury trial in criminal actions.
4. Therefore, the alleged contemnor has a right to demand a jury trial in criminal contempt hearings brought pursuant to Section 750 of the Judiciary Law.

While this argument accords with a lay understanding of Sixth Amendment jurisprudence, it overlooks a crucial exception to the general rule regarding the right to jury trials: said right only attaches when the offense charged is considered "serious." *New York City Transit Auth. v.*

Transport Workers Union of America, 35 A.D.3d 73, 87 (2nd Dept 2006) (citing United Mine Workers of America v. Bagwell, 512 U.S. 821, 826-827 (1994)). A charge whose maximum prison sentence is less than six months cannot be considered "serious" under the law. *Id.* Because the maximum sentence for criminal contempt is only 30 days (*NY Jud. Law § 751*), those accused of criminal contempt under *Judicial Law § 750* have no right to a jury trial.

While the Pecora Respondents include a version of this argument in their motion, they give it short shrift. Perhaps realizing that the criminal contempt charges brought against them are not sufficient to support their request for a jury trial, the Pecora Respondents instead focus on an altogether different line of argument. Instead of relying solely on the criminal contempt charge to justify the jury demand, the Pecora Respondents focus on the relief sought by petitioners. As detailed above, the petitioners ask the court to award them the rent abatements, $500 monthly fees per violation, and civil penalties. The Pecora Respondents argue that this is the "main thrust" of the petitioners' legal claims, and because, they argue, this relief is monetary in nature, these "claims" sound in law rather than equity and allow for a jury trial to be demanded. *Pecora Resp. Aff. in Support at 7, citing Hudson View II Assoc. v Gooden, 222 A.D.2d 163 (1st Dep't 1996); Phoenix Garden Rest., Inc. v Chu, 234 A.D.2d 233 (1st Dep't 1996).*

This argument ignores that the sole rationale for a party demanding a jury trial in the context of criminal contempt proceeding derives from the fact that such a proceeding is considered a special proceeding separate and distinct from the original action. *DHPD v. 24 W.*

132 Equities, supra; *see also People ex rel Negus v. Dwyer, 90 N.Y. 402, 407 (1882)*.[1] No such special proceeding was initiated when the court ordered a hearing on that part of petitioner's motion seeking specific performance of the terms of the stipulation. The Pecora Respondents right to a trial, let alone a jury trial, on any claims in this matter other than criminal contempt was extinguished when this matter was settled via consent order on January 20, 2017. Its demand for a jury trial is therefore untimely by more than four years.

The court has the power to supervise all phases of pending actions before it, including a discretionary power to relieve parties of the consequences of a so-ordered stipulation. *Teitelbaum Holdings v. Gold, 48 N.Y.2d 51, 54 (1979)*. While a party may institute a plenary proceeding for enforcement of the terms of a stipulation, it is under no obligation to do such, and may instead seek such relief by interposing a motion in the underlying action. *Id. at 55*. While a party may have a right to a trial if a plenary action is sought, no such right attaches if the relief is sought by motion in a matter where the claims in the petition have already been resolved.

The court further notes that, even if there was a right to a trial in an evidentiary hearing, the Pecora Respondents still would not be entitled to a jury because petitioner seeks equitable relief in the motion. The petitioners seek specific performance of the terms of the stipulation including, but not limited to a rent credit that presumably would continue until the violations at

[1] *Negus* is particularly instructive on rationale for this point. There, the Court of Appeals grapples with whether appellant can appeal its conviction for criminal contempt entered by the civil court below. Appellee argues there is no appeal of the conviction as the proceeding is best cognized as criminal special proceeding. But the Court notes that the statute authorizing criminal special proceedings enumerates the types of criminal special proceedings available and criminal contempt is not on that list. The Court therefore finds that, despite being called "criminal contempt", a criminal contempt proceeding must be a civil special proceeding since such proceedings were authorized by what was then known as the Civil Code.

issue are corrected. Per *Security Pacific Nat. Bank v. Evans (148 A.D.3d 465 (1st Dep't. 2017))* specific performance of a stipulation is equitable relief and litigants have no right to a jury trial in these circumstances. The Pecora Respondents should not be surprised that the court finds that this claim sounds in equity—the court previously informed the parties of this finding. Judge Stoller's March 9, 2020 decision on petitioners' contempt motion noted that the court would have to be deciding equitable relief at the hearing. ("The Court shall restore this proceeding for a hearing to determine damages, equitable relief, civil contempt, civil penalties and criminal contempt . . ." p.7.) *CPLR §4101(1)* provides for a trial by jury in an action where the party "demands and sets forth facts which would permit a judgment for a sum of money *only*"[2] *(emphasis added.)* "Under established principles, the joinder of claims for legal and equitable relief amounts to a waiver of the right to demand a jury trial." *Kaplan v. Long Isl. Univ. 116 A.D.2d 508, 509 (1st Dep't, 1986) (citing Panarella v. Penthouse Int'l 64 A.D.2d 545 (1st Dep't 1978).)*[3] Because both equitable and monetary relief could be awarded in resolution of the motion, the Pecora Respondents have no right to a jury trial , even if one were available at the current procedural posture.

The petitioners have no right to a jury trial in the criminal contempt proceeding, and no right to a trial at all regarding the other relief sought by petitioners. As such, the Pecora

[2] The court notes that the Pecora Respondents cite to CPLR 4101 in their papers but omit the crucial last word "only."

[3] The Pecora Respondents, citing to a Fourth Department case from 1916 (*McGurly v. Delaware, Lackawanna and Western R.R. Co., (172 A.D. 46)*) assert that if a complaint contains one cause of action that must be tried by jury, then they all must be tried by jury. That is true, insofar as it goes, but the Pecora Respondents have failed to meet the condition antecedent, i.e., that one cause of action must be tried by a jury. Clearly, that is not the case here.

Respondents motion for a jury trial is denied. Its motion for a stay pending the empanelment of the jury is denied as moot.

The Cross-Motion Seeking Sanctions

Having denied the motion-in-chief, the court now turns to the New Owner Respondent's cross-motion for sanctions against the Pecora Respondents. *22 NYCRR § 130–1.1* allows courts to sanction attorneys for engaging in frivolous conduct, including conduct: (1) "completely without merit in law"; (2) "undertaken primarily to delay or prolong the resolution of the litigation, or to harass or maliciously injure another"; or (3) "assert[ing] material factual statements that are false." *22 NYCRR § 130–1.*1 further provides that:

> "In determining whether the conduct undertaken was frivolous, the court shall consider, among other issues the circumstances under which the conduct took place, including the time available for investigating the legal or factual basis of the conduct, and whether or not the conduct was continued when its lack of legal or factual basis was apparent, or should have been apparent, or was brought to the attention of counsel or the party."

The New Owner Respondents argue that the motion made by the Pecora Respondents is completely without merit and must therefore have been made either to harass the other litigants or to delay the proceedings.

The law is not static, and the application and understanding of the law is likewise not static. Laws change as they are applied to new circumstances and as novel arguments are made regarding those laws. Accordingly, novel arguments should be dissuaded out of hand.

As such, the legal question raised by the Pecora Respondents in the motion in chief may be considered a novel argument or simply a frivolous argument in an attempt to delay the

proceedings. Some factors lean toward a border line frivolous motion. First, the timing of the motion is suspect. The Pecora Respondents had almost a full calendar year to make the motion seeking a jury trial, but instead waited until four days before the hearing was to begin. The court had conferenced this case repeatedly before the motion was made, and the Pecora Respondents' counsel never mentioned that this motion was forthcoming or even that it was a possibility.

Second, the papers submitted in support of the motion minimally address this novel issue raised . For instance, The Pecora Respondents cite two fairly recent First Department cases in support of their motion as well as one Fourth Department Case from 1916. None of these cases address if the court has the authority to order a jury for an evidentiary hearing in the first instance, and certainly do not address precedent easily found by each of the parties in opposition that would ask the court to deny their motion.

Third, more concerning than the lack of precedent cited by the Pecora Respondents is the content of the argument. The Pecora Respondents paint a picture of the legal framework wherein the court is required to provide a jury trial if *any* of the claims presented sound in law rather than equity. This is incorrect. The court can only provide a jury trial if all of the claims are legal; if any claim sounds in equity then no jury trial can be demanded. *Kaplan v. Long Isl. Univ. supra.*

Fourth, there is some indication that the Pecora Respondents knew that this argument was incorrect but proceeded to make the argument anyway. Most notably, the Pecora Respondents cite to *CPLR § 4101(1)* for the proposition that "an action setting forth facts which would permit a judgment of money is deemed an issue triable by a jury." *(Pecora Respondent's Affirmation in Support of Motion for Stay and Other Relief at ¶ 4.)* This is a mischaracterization of the statute. Properly, it should read that "an action setting forth facts which would permit a judgment of

money *only* is deemed an issue triable by a jury." Unfortunately, this does not appear to be a typo. The entirety of paragraph four gives the impression that a jury can be ordered if *any* claim is found to be in law rather than equity. This is no small matter since courts rely on the papers presented by attorneys to accurately reflect the law.

While the issues raised above are certainly concerning, the court cannot say they rise to the level of sanctionable conduct. Although the argument presented to the court was cursory and incorrect as a matter of law, the court cannot say for certain that it was designed to harass the parties or to delay the proceedings, and the New Owner Respondents give no evidence to support their assertion that it was designed as such. Therefore, the cross-motion for sanctions is denied.

The matter is restored to the calendar for pre-hearing conference with the court attorney on September 10, 2021 at 10:30 a.m.

ORDERED: 512 West 212 St. LLC and Frank Pecora's demand for a jury trial is denied.

ORDERED: 512 West 212 St. LLC and Frank Pecora's motion for a stay is denied as moot.

ORDERED: 517-525 W. 212th St. LLC and JLP Metro Management Inc.'s cross-motion for sanctions is denied.

This is the decision and order of the Court, copies of which are being uploaded to NYSCEF and emailed to those indicated below.

Dated: New York, NY
August 6, 2021

APPROVED
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