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2021-11-04

Groves v. Dwayne

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CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK

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Index No. 66665/19

ASTLEY GROVES,

Petitioner,

-against-

DECISION/ORDER

MICHAEL DWAYNE, DANIEL GIVENS,

Respondents.

-----X

SCHNEIDER, J.

This nonpayment proceeding was commenced in August 2019. Separate counsel was appointed for each respondent. Respondents moved for discovery and to dismiss. The motions were pending when the Covid-19 pandemic emergency disrupted court operations. After the case was restored to the court’s virtual calendar in the summer of 2020, it was settled by a three attorney stipulation dated November 12, 2020. The agreement provided for withdrawal of the motions, discontinuance of the nonpayment proceeding and for repairs to be made in the subject apartment.

In February 2021 respondent Dwayne moved to hold the petitioner in contempt for failure to make repairs in compliance with the November 2020 stipulation. Petitioner’s papers in opposition alleged both that petitioner had been denied access and that petitioner had completed many of the required repairs. The court issued an interim order on March 12, 2021 setting additional access dates later that month for completion of the repairs in the November 2020 stipulation.

While the contempt motion was pending, respondents moved again, this time for an order to correct a new condition – the collapse of the ceiling in the bathroom and hallway. Both respondents submitted affidavits in support of this second motion indicating that neither petitioner nor any workers came to the apartment on the November 2020 access date, that petitioner did not request any

additional access dates after that, that although petitioner did come to the apartment on the first March 2021 access date, no work was done on that date, and no work was done in the apartment after that. Counsel for respondent Dwayne also submitted an affirmation indicating that between November 2020 and February 2021 he repeatedly sought additional access dates for repairs from petitioner's counsel but received no response to his requests. The petitioner submitted no papers in opposition to the motion.

The court held a hearing on both motions on August 5 and August 24, 2021. The hearing was held on the Teams virtual platform. Both respondents appeared and testified at the hearing. No one testified on behalf of the petitioner.

The court notes, first, that the records of the Department of Buildings and of the Department of Housing Preservation and Development both reflect that this building has been converted from a Class B to a Class A multiple dwelling and has not obtained a certificate of occupancy. For this reason, petitioner is currently barred, under Multiple Dwelling Law Section 302, from collecting rent from the respondents and from other tenants in the building. It was respondents' motion to dismiss the nonpayment proceeding on this basis that led to the November 2020 stipulation discontinuing the proceeding.

Next, the court notes that HPD inspection records show that the subject apartment, on the building's third floor, has leaks from the roof throughout, collapsed ceilings, mold, infestations of mice and roaches, and a number of other severe conditions. The respondents testified credibly to all of these conditions, and petitioner offered no challenge to their testimony.

Based upon the uncontradicted evidence at the hearing, the court determines that petitioner has failed to comply with the November 2020 so-ordered stipulation and with the March 2021 court order, that petitioner was fully aware of both orders and had ample opportunity to comply, and that petitioner's failure to comply impeded and impaired the rights of the respondents. Accordingly the

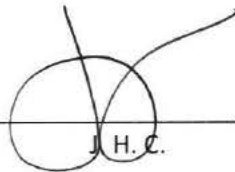
court finds that petitioner is in civil contempt of court. The court further finds that respondents have been damaged by petitioner's contempt in the amount of \$5000.00 each, and the clerk is directed to enter judgment in favor of each respondent in that amount. Respondents may seek to recover their legal fees in connection with the contempt if so advised.

Further, it is hereby

ORDERED that petitioner shall correct all HPD violations of record in the subject premises and in the public areas of the building on or before December 15, 2021 or within 30 days of service of a copy of this order with notice of entry, whichever is sooner.

If petitioner fails to comply with this order, respondents may restore the proceeding and seek a further remedy of coercive incarceration until the work is done.

Dated: 11/4/21



J.H.C.