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New York City Hous. Auth. V. Scott

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[*1]

New York City Hous. Auth., Sedgwick Houses v Scott
2019 NY Slip Op 51916(U) [65 Misc 3d 1229(A)]
Decided on November 22, 2019
Civil Court Of The City Of New York, Bronx County
Sanchez, J.
Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431.
This opinion is uncorrected and will not be published in the printed Official Reports.

Decided on November 22, 2019

Civil Court of the City of New York, Bronx County

New York City Housing Authority, Sedgwick Houses, Petitioner,

against

Kellie Scott, FREDRICK McKNIGHT, Respondents.

810861/18

New York City Housing Authority

Blondine Mathews, Esq.

Attorney for Petitioner

250 Broadway

New York, NY 10007

Kellie Scott

Respondent

Fredrick McKnight

Respondent

Enedina Pilar Sanchez, J.

Procedural History

On September 18, 2018, petitioner prepared this non-payment petition. Petitioner sought rents from August 2018 through September 2018. On November 16, 2018, the parties entered into an agreement with a final judgment for rents from August 2018 through November 2018. Respondents agreed to pay the arrears plus current rent on or before December 31, 2018.

Sometime in April 2019, the warrant of eviction issued. On May 9, 2019, respondent Kellie Scott filed an Order to Show Cause stating that the rents were paid through May 2019.

On May 23, 2019, the Order to Show Cause was heard. Petitioner noted that all the rent was paid through May 2019. The judgment and warrant were vacated and the case was discontinued through May 2019.

On or about October 4, 2019 respondent was served with a Notice of Eviction. Respondent Scott filed an Order to Show Cause. The Court noted that a Notice of Eviction was issued even though the judgment and warrant were vacated on May 23, 2019. The parties were given notice of a hearing regarding a possible imposition of sanctions.

Hearing on October 29, 2019

On October 29, 2019, the parties appeared and were sworn in. Petitioner's witness, Victoria Davis, is the manager at Sedgwick Houses and has been the manager for two years

Respondent Scott testified that she filed the Order to Show Cause after receiving a Notice of Eviction. While she understood that a Marshal's notice may mean an eviction, she was confused because she believed that the rent was paid through May 2019 and correctly believed [*2]the case was over. Ms. Scott stated that she owed new rent but that it came due after May 2019. Ms. Scott's

testimony was credible.

Ms. Davis testified that the Housing Assistant, Sandra Paulino, "went back to the ledger in September" and based on the ledger in September determined that rent was owed. The Housing Assistant then "told the Marshal to serve the notice of eviction." No evidence was presented to indicate what rent was owed.

Ms. Davis testified that when a case is discontinued, the protocol is to "canceled out" the case. A new case would have to be commenced. The Housing Assistants have the power to ask the Marshal to serve a Notice of Eviction. The Housing Assistants can also make decisions based upon the rent ledger.

Ms. Davis testified that there is a "legal log" which contains court stipulations, warrant of eviction information and other information regarding court cases. The "legal log" is in a loose-leaf binder. It is not a bound book. All court related documents and information are kept in a binder. There is a series of binders — when one is full, another one is started. The "legal log" binder is kept in the reception area. Housing Assistants, managers and possibly others in the office have access to the "legal log." Ms. Davis also testified that she looks at the binder very rarely. She added that she takes the binder whenever there is a meeting with the Borough Office supervisor, Ms. Theresa Bethea.

Ms. Davis believes that after the warrant is vacated the "case is closed." However, the Marshal is not asked to return the warrant to the court. Nor is the Marshal notified that the warrant is vacated. There is no protocol regarding warrants that are vacated.

Discussion:

The manager's testimony indicates that there is little or poor record keeping when it comes to the disposition of a non-payment proceeding. Notwithstanding that in May 2019 the judgment and warrant were vacated, and the case was discontinued, petitioner's employee was able to simply call the Marshal to issue a Notice of Eviction. This practice is of concern because the Marshal did not know that the warrant was vacated and appears to have relied on a telephone call from the Housing Assistant. It was clear to the Court that the manager did not understand the legal consequences of requesting a notice of eviction after the warrant is vacated.

There is no legal basis to issue a Notice of Eviction once the warrant is vacated and the case is discontinued. It is undisputed that the manager and the Housing Assistant knew that the case was

discontinued. Even though the judgment was vacated, petitioner's agent directed the Marshal to issue a Notice of Eviction. This conduct is egregious because it could lead to an illegal eviction. If respondent, correctly believing that the case was discontinued, did not come to court, she and her family would have been evicted. *Real Property Actions and Proceedings Law (RPAPL) Section 768* states that it shall be unlawful to evict a tenant "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." Pursuant to the newly enacted Housing Stability and Tenant Protection Act of 2019, illegal evictions are punishable as a Class A misdemeanor.

22 NYCRR 130-1.1 allows the court, in its discretion, to award to any party in any civil action costs in the form of reimbursement of actual expenses reasonably incurred and reasonable attorney's fees, resulting from frivolous conduct as defined in this part. Costs and/or sanctions can be imposed upon the court's own initiative, after a reasonable opportunity to be heard. The form of the hearing shall depend upon the nature of the conduct and the circumstances of the case. 22 NYCRR 130-1.1d

In order to determine whether imposition of sanctions is proper, the Court must examine the circumstances and determine whether issuance of a Notice of Eviction after the warrant was vacated constitutes frivolous conduct within the meaning of *Rule 130*.

This Court previously found that issuance of a Notice of Eviction after a case is discontinued constitutes frivolous conduct. After a hearing, sanctions were imposed against New York City Housing Authority. [*New York City Housing Auth. v. Marrero*, 64 Misc 3d 1228\(A\) \(Bx. Co. Civ. Ct., 2019\)](#).

Petitioner did not present any excuse or mitigating circumstances as to why this Notice of Eviction was issued. There seems to be a lack of understanding regarding the legal impact of seeking an eviction after the warrant is vacated and the case is discontinued. This cannot be considered a harmless error especially since this is not an isolated occurrence. *Supra*

Petitioner, as an agency with its own legal department, can readily avail itself of legal advice to be in compliance with the law. Petitioner commences summary non-payment proceedings on a regular basis. This disregard of the law regarding evictions is especially troubling due to the volume of cases filed by petitioner. This disregard of the law can lead to numerous illegal evictions, causing harm to residents who may be forced to enter the shelter system and burdening the Court with post-eviction motions.

The Court finds that petitioner's conduct was frivolous and therefore imposition of sanctions is proper. The Court sanctions the petitioner a sum of \$50.00 for every day that petitioner did not notify the Marshal that the warrant was vacated. Petitioner is sanctioned from May 24, 2019 through October 30, 2019 [\[FN1\]](#), when the Marshal's office was finally informed that the warrant was vacated on May 23, 2019. (160 days). The total amount should be \$8,000.00 (\$50 per day for 160 days), however, given that petitioner is part of a public housing authority, in the discretion of the Court and in the interest of justice, the sanction is modified to \$4,000.00.

It is ORDERED that petitioner credit respondents' rental account \$4,000.00. This amount is to be credited to respondents' rental account and proof provided to the Court within 30 days of this Decision/Order.

This Decision and Order is being mailed to both sides.

This constitutes the Decision and Order of this Court.

Dated: November 22, 2019

Bronx, New York

So ordered,

ENEDINA PILAR SANCHEZ

Judge, Housing Court

Footnotes

[Footnote 1:](#) The Court notes that while the hearing took place on October 29, 2019, the Court was presented with an email dated October 30, 2019 that the Marshal was notified that the warrant was vacated. Petitioner did not inform the Marshal that the Order to Show Cause was signed on October 8, 2019 or at any time up until the hearing.

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