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Matthews v. Jones

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CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF BRONX: HOUSING PART G

X

SOPHIA L. MATTHEWS,

Petitioner,

-against-

CURTIS JONES and ASHTON DAVID,

Respondents – Occupants,

JOHN DOE and JANE DOE,

Respondents – Unknown Occupants.

X

Petitioner commenced this proceeding on or about May 28, 2018, following service of a ten-day notice to quit, seeking to recover possession of the apartment located on the first floor of the property located at 714 East 215th Street, Bronx, New York, on the ground that Respondents are in possession of the apartment without Petitioner's consent.

Respondent Curtis Jones ("Respondent") appeared by counsel in defense to this proceeding. Counsel subsequently moved for an order appointing a *guardian ad litem* ("GAL") for Respondent. The motion was granted and a GAL was appointed to assist Respondent in this proceeding. Respondent's answer was later deemed a general denial. When no resolution could be reached, the proceeding was transferred to the Expediter and referred to this part for trial.

At trial, Petitioner testified that there is no rental agreement between herself and Respondent, and that she does not know how Respondent came into possession of the premises. Petitioner testified that she only found out about Respondents when she was issued a summons for the lack of heat and hot water by the Department of Housing Preservation and Development ("HPD") and had to make a court appearance¹.

According to Petitioner, she filed for bankruptcy sometime after she purchased the subject property, and the property was to have been included in the bankruptcy petition. As a result of the bankruptcy filing, she essentially walked away from the property. However, at some point

¹ From Petitioner's testimony, it appears that the summons refers to the pleadings in an HP action commenced by Respondents.

she received a call from Respondents which is when she informed Respondents that they had to vacate the premises because she never gave Respondents permission to occupy the premises, never invited Respondents to the premises and did not accept rent from Respondents.

On cross-examination, Petitioner testified that she purchased the property in 2008 and filed for bankruptcy in 2013. Petitioner testified that she has visited the building several times since she purchased the property but was unaware that Respondents were in the apartment. Petitioner testified that when she purchased the property there were no tenants in occupancy and her brother occupied the second floor. Petitioner further testified that she only found out from Consolidated Edison that Respondents were in possession which was after the HP action had been commenced. Petitioner testified that she then discovered that Respondent was in the apartment when she engaged counsel who performed a background check. However, even after she learned that an individual was in possession of the apartment, she did not visit the property because the property is located in a high crime area. In addition, Petitioner testified that each apartment has its own meter, and that even though she owns the property she did not maintain essential services on the property.

Although Respondent did not present any witnesses at trial, at the close of Petitioner's case in chief Respondent moved to dismiss the petition on the ground that Petitioner has failed to establish her prima facie case.

Both sides submitted post trial memoranda to address Respondent's motion.

In support of his motion, Respondent argues that Petitioner commenced this proceeding on the ground that Respondent is a licensee but that at trial Petitioner testified that Respondent did not have a license to occupy the premises. Respondent also argues that even if the Court was to find the theory of the case as plead sufficient, the predicate notice is defective as it fails to plead with specificity why Petitioner could not ascertain the nature of Respondent's occupancy prior to commencing this proceeding which is required when a Petitioner seeks to remove an occupant on the alternate grounds of licensee and squatter. In the alternative, Respondent seeks a stay of the execution of the warrant of eviction as a reasonable accommodation to Respondent who suffers from a long-term illness.

In opposition, Petitioner points to Respondent's failure to move by way of a formal motion, points to the lack of supporting evidence and argues that counsel's arguments are made without personal knowledge of the facts. In addition, Petitioner argues that the case law relied upon by Respondent involves an apartment that is subject to the Rent Stabilization Code whereas the subject property is not subject to rent regulation.

Petitioner commenced this proceeding pursuant to § 713 of the Real Property Actions and Proceedings Law ("RPAPL") after service of a ten-day notice to quit upon Respondents which states the following:

Please take notice that you and all other persons occupying the premises at 714 East 215th Street, 1st Floor, Bronx, NY are required to vacate the premises on or before April 6, 2018, because you have never had and do not currently have a lease or other permission from the current owner, SOPHIA MATTHEWS, allowing you to occupy the premises, or

if such permission was ever granted the term has expired and/or such permission is hereby revoked, you have not paid and the Owner has not accepted from you any rent or use and occupancy from you, and the premises are not subject to Rent Stabilization of 1969, as amended.

Please take further notice that the Undersigned owner will commence appropriate proceedings pursuant to RPAPL § 713 to recover possession of said premises and to remove you from said premises for the holding over after the termination of your license and will demand the value of your use and occupancy of the Premises during such holding over.

After reviewing the evidence adduced at trial, including the arguments made by both sides in support of their respective positions, this Court finds that Petitioner's cause of action as plead, which advances alternative theories for possession, requires that the petition be dismissed.

Pursuant to RPAPL § 741 every petition shall state the respondent's interest in the premises and his relationship to petitioner with regard thereto, and shall also state the facts upon which the special proceeding is based (*see* RPAPL §§ 741 [2] and [4]). In reviewing a proceeding commenced on alternative theories, it has been held that courts adopt "a measured, balanced rational approach permitting the use of an allegation of squatter/licensee under specific circumstances" (*City of New York v Bullock*, 159 2d 716 [Civ Ct, Kings County 1993] *aff'd* 164 Misc 2d 1052 [App Term, 2d and 11th Jud Dists 1995]). However, it is insufficient "for a petitioner to simply argue that he doesn't know the status of the occupant, when he should have known, or was in the position to have known" (*id*).

Here, the evidence at trial which centered on Petitioner's testimony, was that Petitioner acquired the subject property by bargain and sale deed dated July 14, 2008. Several years later, in 2013, Petitioner filed for bankruptcy and the property was to have been made part of the bankruptcy proceeding but that unbeknownst to Petitioner the bankruptcy filing did not include the subject property and she remained the owner of the property. However, given the fact that several years had passed between the time that the Petitioner first took title to the property and the time that this proceeding was commenced, Petitioner as the owner of the property was under the obligation to investigate the nature of Respondent's occupancy prior to commencing this proceeding and allege the necessary facts in support of her claim for possession so as to apprise Respondent of the claims and give Respondent the opportunity to challenge those claims. If Respondent had been given a license to occupy the premises by a third party, then that should have been alleged. Petitioner testified that her brother occupies the second floor of the property and under the circumstances, it is plausible that he may have granted Respondent a license to occupy the apartment. However, if no license was ever granted and Respondent intruded upon the property, then a squatter proceeding would be more appropriate and it would then be up to Respondent to prove otherwise. And, if Petitioner chose to proceed, as she did here, on alternate theories, then she would be under the obligation to state those facts.

Notwithstanding the above, this Court notes that had Petitioner specifically plead in the petition the facts to which she testified, the outcome would have been no different as this Court finds it unreasonable that having been the owner of the subject property for all these years, Petitioner did

not take steps to investigate the nature of Respondent's occupancy as she is required to do as the owner of the property.

Based on the foregoing, this Court finds that the defects in the petition prevent Petitioner from obtaining the relief sought herein, and the petition is hereby dismissed without prejudice to a proceeding commenced on grounds stated with specificity as is required by law and as noted in this Court's decision.

A copy of this decision/order will be mailed to all.

This constitutes the decision and order of this Court.

DATED: December 17, 2019

7
SO ORDERED:



HON. CHRISTEL F. GARLAND

Christel F. Garland, JHC