2020-04-21

Shuhab HDFC v. Delacruz

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK: HOUSING PART N

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SHUHAB HDFC, Index No. 64402/17

Petitioner-Landlord,

-against-

MARJA DELACRUZ,

Respondent-Tenant,

"JOHN DOE" and "JANE DOE,"

Respondents-Undertenants.

PREMISES: Apartment 11G1
644 Riverside Drive
New York, New York 10031

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TIMMIE ERIN ELSNER, J.H.C.

SHUHAB HDFC ("petitioner") commenced the within holdover proceeding to recover possession of Apartment 11G1 ("premises") at 644 Riverside Drive, New York, NY 10031 ("building"), from the rent-stabilized tenant of record, Marja Delacruz ("respondent") pursuant to RPL Section 231, RPAPL Sections 715 (1) and 711(5) on the grounds that the respondent used or permitted the premises to be used for immoral or illegal activity, to wit: the distribution and/or sale of controlled substances.

Respondent interposed an answer, by leave of court, on February 28, 2019. As part of her defense, respondent asserted, among others, that she neither knew of or acquiesced to illegal trade or manufacture of drugs in the premises, and that, as a victim of domestic violence, respondent is disabled and, therefore, entitled to a reasonable accommodation pursuant to the Americans with Disabilities Act ("ADA").

TRIAL TESTIMONY

By stipulation, dated June 19, 2018, the parties agreed to the admissibility of a "Certificate of Disposition" for Yudelfi Martinez a/k/a "Cuba" ("Cuba"), "Minutes from his Plea agreement," and three Lab Analysis Reports, dated June 19, 2018. These documents showed that on June 22, 2016, Cuba was arrested in the premises. On June 26, 2017, Cuba plead guilty to criminal sale of a controlled substance, to wit: heroin. As a predicate felon, Cuba was sentenced to four years imprisonment and, thereafter, three years post-release supervision. Also arrested was respondent's son, Cheston Pallet ("Cheston"), who was 18 years old at the time of the incident. Items vouchered following the arrest were substantial amounts of heroin and cocaine as well as marijuana.

The parties also agreed that: petitioner is the record owner of the building; there is a current Multiple Dwelling Registration in effect for the building; and respondent is the rent-stabilized tenant of the premises.

Petitioner's sole witness was Detective Alexander Sosa, a veteran of the New York City Police Department ("NYPD"). At the time of his testimony, he had been employed by the NYPD for many years and was a Detective Second Grade. He served 17 years with the Drug Enforcement Administration Task Force and received a promotion thereafter. As of June 20, 2016, he was assigned to the Manhattan North's Major Case Unit, where he executed search warrants, received training in "buy and bust" operations, and engaged in narcotics identification including methods of preparing, packaging and selling narcotics. Over the course of his career, he participated in approximately 2,000 arrests and drafted approximately 100 search warrants. He executed approximately 1,000 search warrants. The court recognized Detective Sosa as an expert in the trade of illegal narcotics.

Detective Sosa initiated investigation of the sale of narcotics from the premises in the Spring of 2016. Following several purchases of heroin, he initiated and executed a search warrant on June 20, 2016. At that time, Detective Sosa and his team breached the door to the premises and conducted a room-to-room search. He described the premises as having an open floor plan and discovered narcotics in the living room and throughout the premises. Narcotics were openly visible. He observed a person fleeing the living-room and running to the bathroom to dispose of drugs. He described glassine envelopes as falling to the ground behind the assailant like a "trail of crumbs." NYPD officers located cocaine in the master bedroom and broke open the toilet to reveal envelopes of heroin.

The targets of the investigation, Cuba and Cheston, along with two others were arrested and the narcotics located in the premises were vouchered and tested to determine their content. Lab results verified that narcotics found throughout the premises in open view to be heroin, cocaine, and marijuana. Additionally, a "kilo press" with heroin residue was recovered from the laundry room along with two scales, one in each bedroom. Detective Sosa verified that at least two "buys" had taken place in the premises before the search warrant was issued. He opined that the premises were used for the manufacture, distribution, and sale of narcotics.

Respondent's first witness was Dr. B.J. Cling, a forensic psychiatrist who matriculated from New York University ("NYU") Graduate Department of Clinical Psychology in 1980 and a Juris Doctor from University of California at Los Angeles ("UCLA") School of Law in 1985. She has been a forensic consulting psychiatrist since 1990 and has held both adjunct and assistant professorships at numerous universities. In addition, she maintained a legal career since 1985. The court recognized Dr. Cling as an expert.

Respondent was referred to Dr. Cling for a psychological evaluation following respondent's arrest and indictment for drug-related charges stemming from execution of the search warrant on June 20, 2016. As part of the evaluation, Dr. Cling interviewed the respondent on four occasions in September and October 2016 for a total of eight and a half hours. She has neither interviewed nor treated her since then. According to Dr. Cling, respondent suffers from Post-Traumatic Stress Disorder ("PTSD") as a result of severe domestic abuse she sustained from Cuba. She defined PTSD as a normal reaction to abnormal circumstances. Symptoms include re-experiencing trauma through flashbacks, disassociation, and amnesia.

According to Dr. Cling, at the time of her examination. the respondent exhibited psychological symptoms when re-explaining or re-living trauma. Although the respondent was in therapy, she exhibited avoidance syndrome and had difficulty accomplishing tasks which raised memories of Cuba. She had difficulty focusing on problems or appreciating the repercussions of her relationship with him. The respondent was terrified of Cuba, unable to control him or respond to his actions. It was her belief that Cuba could exert control over respondent through her son, Cheston, even if Cuba was not in contact with respondent.

Respondent testified next. The court notes that it has rarely witnessed such compelling testimony. Respondent first met Cuba in the late 1980's, when she was in seventh grade. The couple had a relationship and lived together on the street as adolescents. At some point, her family sent her to the Dominican Republic, her birthplace, and she lost contact with Cuba. Upon her return to the United States, she became involved with Mohammed Jaffa ("Jaffa") and had two children with him. When she broke up with Jaffa, he threatened to take their infant son to Beirut, Lebanon in revenge.

In 1995, as her relationship with Jaffa was unraveling, she reunited with Cuba. In an effort to keep Jaffa from taking their son, she spent more time with Jaffa, causing Cuba to become jealous. Cuba beat and threatened to kill respondent by pulling out a weapon. On one occasion, she woke up to observe him holding a gun in her face after which Cuba went to the bathroom window and discharged the weapon out the window. As things escalated, Jaffa kidnapped their son and took him to Beirut, Lebanon. In 1997, she became pregnant with Cuba's child, Cheston. During her pregnancy, Cuba was incarcerated for reckless homicide.

For the next several years, respondent worked to regain custody of her son with Jaffa. At first, she visited Cuba in jail and "did everything she was supposed to." Over time, she lost contact with Cuba and focused her energy on obtaining custody of her son who had remained in Beirut. In 2007, her child was returned to her, however their relationship was troubled. She was "never the same" thereafter and suffered bouts of depression and anxiety. The relationship between mother and son was never repaired. In 2010, he returned to his father and she stopped fighting for custody.

In 2008, Cuba was released from prison and the couple reconnected. At first, she was happy he was free. However, it soon became apparent to her that "he had become a bad person." In 2009, she and her children went into therapy and requested that Cuba stay away. He continued to visit, berating her and commenting negatively on her physical appearance. He became increasingly violent. About three months after his release, respondent's daughter accused Cuba of sexually harassing her and New York City Administration for Children Services ("ACS") became involved. Cuba threatened to kill her and her two remaining children. Ultimately, Cuba was incarcerated on an unrelated charge and served a year in prison.

Upon his release, he broke into the premises by climbing an exterior fire escape and breaking the window. He continued to come to the premises frequently. Respondent found drugs in the premises shortly before a planned ACS visit and transferred them to another floor in the building. When Cuba discovered the drugs had been removed, he punched and kicked her and stomped on her head.

In 2010 or 2011, Cuba was incarcerated again. He was released in 2014 and was remanded to jail until 2015. Upon his release, he threatened to murder the person she was dating and frequently returned to the premises. Cuba did not sleep there as he designated a different address as his home for parole purposes. Despite the couples' troubled relationship, Cuba's son, Cheston, maintained contact with him and sought his company.

By 2016, Cuba did not visit the premises, usually stopping by in the afternoon when respondent was not present. Cheston opened the door for Cuba during these visits. On June 23, 2016, respondent returned to the premises at about 5 a.m. following a visit with a friend whose brother was critically ill. All appeared normal as she locked the door behind her and went to bed. About 11:00 a.m., she noticed Cuba in her room. She was anxious and went into the living room where she observed small bags on the table and Cuba on the telephone. She observed him "packaging stuff." At that point, the police knocked down the door and Cuba ran into the bathroom. She followed behind asking what was going on. She, her son, and Cuba were arrested.

Ultimately, the charges against her were dismissed and the record relating to Cheston was sealed. Respondent denied that she saw drugs in the premises prior to June 2016, or on any occasion other than that in 2010. Upon information and belief, Cuba was released from prison in or about January 2020.

At present, Cheston works on and off in construction with a family member and, at the time of respondent's testimony, was 21 years old. Respondent has been in therapy since 1998. She has increased the frequency of her visits over the last three years. She now sees her therapist once a week. Respondent has no desire to reconnect with Cuba and does not believe Cheston is in contact with him.

LEGAL ANALYSIS

RPAPL Section 711(5) provides that a special proceeding may be commenced where the "premises, or any part thereof, are used or occupied as a bawdy-house . . .or for any illegal trade or manufacture, or other illegal business." *RPL Section 231(1)* provides that illegal activity voids the lease. It is well-settled that pursuant to *RPAPL Section 711(5)* and *RPL 231(1)*, the landlord has the burden to establish by a preponderance of the credible evidence that the subject premises were used to facilitate trade in drugs and that the tenant knew or should have known of the activities and acquiesced in the illegal drug activity in the apartment. " *See 855-79 LLC v Salas*, 40 AD3d 553 [2d Dept 2007]; *see also, Riverview Apts., Inc. v Guzman, N.Y.L.J*, Feb. 13, 1991, at 21, col 2 [App Term, 1st Dept]; and *137 Realty Assocs. v Samuel*, 7 Misc3d 80 [App Term, 1st Dept 2005]. "A tenant will be liable for the illegal acts committed in the leased property by a subtenant or occupant and is subject to forfeiture of the leasehold if the tenant had knowledge of and acquiesced to the use of the demised premises for such an illegal activity." *1895 Grand Concourse v Ramos*, 179 Misc2d 508 [Civ Ct, Bronx County 1998]. "It is not necessary that the tenant actually participated in the illegal activity; it is sufficient that the acts and conduct complained of warrant the inference of acquiescence. *See 88-09 Realty, LLC v Hill*, 305 AD2d 409 [2d Dept 2003](*citing, City of New York v Goldman*, 78 Misc2d 693 [Civ Ct, NY County 1974]).

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1 t t g nt p j d s pr n y e u t s a b *e* . *t v i e*, 9 s 9 p s 2] *s e* , *5 es C ye* , s 5 A T , D t 2 1 C rt ha e o niz P S ca s to th leve of i abi . *S I h t r f r g n od e s, nc.* 1 6 A 3d 1132 3d Dept 2017](substantial evidence, including medical testimony that claimant was 100% disabled from his PTSD diagnosis, supports

the Worker's Compensation Board's determination of worker's compensation benefits to claimant); *see also, In the Matter of Perez v SN Gold Corp.*, 155 AD3d 1298 [3d Dept 2017](substantial evidence supports award of worker's compensation benefits to claimant who suffered partial disability from PTSD from robbery).

In this proceeding, Dr. B.J. Cling, a forensic psychiatrist, conducted an extensive psychological evaluation of respondent after her arrest. Dr. Cling examined her in September and October 2016 and has not seen respondent since then. She testified credibly that respondent suffers PTSD as a result of severe domestic abuse she sustained at the hands of Cuba. She defined PTSD as a normal reaction to abnormal circumstances. Symptoms include re-experiencing trauma through flashbacks, disassociation, and amnesia. Dr. Cling stated respondent exhibited psychological symptoms when re-explaining or re-living trauma and avoidance syndrome and had difficulty accomplishing tasks which raise memories of Cuba. Based upon Dr. Clings testimony, the court finds respondent suffered from a disability (PTSD) which prevented her from confronting Cuba or preventing him from utilizing the premises for illicit purposes.

In exceptional circumstances, courts have found that tenants who suffer disabilities which result in nuisance behavior may be granted a probationary stay despite a landlord's entitlement to a final judgment. In *529 West 29th LLC v Reyes*, the landlord commenced nuisance holdover proceeding based upon the tenant starting fires in the premises. The trial court awarded a final judgment of possession to landlord but conditionally stayed the warrant of eviction for six months for a probationary period based upon the court's findings that tenant took significant steps to change his behavior. The trial court stated:

> "Dr. Jay Crosby testified at the trial that [tenant] entered an intensive treatment program called 'On Track' at Bellevue Hospital, in January 2017. The program is designed for young adults with schizophrenia and other psychoses who are within the first two years after their first psychotic

> episode. [Tenant] takes prescribed medication for his illness and is seen frequently by medical and social service providers at the program. Dr. Crosby testified that [tenant] has shown marked improvement since he started in the program. The improvement is documented in his medical records. Further, there is no evidence of repeated nuisance behavior since [tenant] started treatment at 'On Track.' "

The trial court found that, based upon the expert witness' testimony, the tenant's behavior had been largely ameliorated through an intensive treatment regimen and social services assistance, and that the maintaining of the tenancy, subject to a probationary period, will acceptably lessen the risk tenant exposed to other residents.

Upon landlord's appeal, Appellate Term, First Department affirmed the trial court's decision holding:

> Under FHA, a landlord is obligated to provide a handicapped tenant with a reasonable accommodation, if necessary, for the tenant to keep his or her apartment (*see 42 USC 3604[f][3][B]*). Although a landlord is not required to provide a reasonable accommodation to an individual "whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others" (*42 USC Section 3604[f][9]*), the landlord is obligated to either reasonably accommodate the tenant's handicap or show that no reasonable accommodation will eliminate or acceptably minimize the risk posed by the handicapped tenant (*see Sinisgallo v Town of Islip Hous. Auth.*, 865 F.Supp.2d 307 [E.D.N.Y. 2012]; *Matter of Prospect Union Assocs. v DeJesus, infra*.
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> "[E]vidence supported finding that tenant had 'handicap' under Fair Housing Act ("FHA"), and thus was entitled to reasonable accommodation, and stay of execution of warrant was objectively reasonable accommodation. Evidence consisting of testimony by tenant and expert testimony by clinical psychologist supported finding that tenant had been diagnosed with schizophrenia and unspecified mood disorder, and thus had 'handicap' within the meaning of the FHA so as to be entitled to reasonable accommodation. *See 42 USC Sections 3604[f][2][A],[3][8]; see also, RCG-UA Glenwood LLC v Young*, 9 Misc3d 25 [App Term, 2d Dept 2005]; *Matter of Prospect Union Assoc. v DeJesus*, 167 AD3d 540 [2018]("no specific diagnosis is necessary for a person to be "handicapped" and protected under the statute [and] the determination may even be based upon the observations of a lay person").

Respo s circum s e d since he nt ch ed he is for his p e e t an s q n t on y Dr. Cling, ondent a ee n p a h h s a a t n n t c h r a m c o e e o o o e h h i e s p y a i o ct e e s m C ’ i c e s o ll e e l w C e t e s n s n e o l f r s i C o t pr o l n c e c e i wi ng Cu o e t . e s u o g e i h t t e o n. Ac i g r p e s n t i Cuba is i C ’s r o f i at o *s f* h f s nt e d i D) a s t is i w n l t c f t h r f e pr hi m g g r l e r h i i e l , e a s i h bu ng n a s e er e il on d l h i g s he u er , o h l re l a e r e d a r a e a l e r e i e r p o r n h n. as p t o o n , h c u t i t t r e s de h s us in b den that she is entitled to a reasonable accommodation in the form of a probationary stay.

CONCLUSION

Petitioner is entitled to a Final Judgment of Possession against respondent, John and Jane Does. The court finds that, in compliance with the FHA, respondent is entitled to a probationary order as a reasonable accommodation. Given the nature of the activity in the premises, the danger it causes to others in the building, and respondent's history with Cuba, as well as his release from prison, the court believes an extended probation is appropriate. Thus, for a period of two years through April 30, 2022, she is to exclude Cuba from the premises. Additionally, she may not participate and must also preclude occupants and their invitees from participating in drug-related activity, including sale, distribution and processing of narcotics from the premises. In the event of a breach, petitioner may move this court for issuance of a Judgement of possession in its favor along with a warrant of eviction and its forthwith execution. The court notes that no breach of this order will be deemed *de minimis*.

In the event respondent fully complies with the terms of this order, the proceeding will be deemed dismissed with prejudice on May 1, 2022.

This constitutes the order and decision of this court.

Dated: New York, New York
April 21, 2020

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TIMMIE ERIN ELSNER, J.H.C.