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2020-11-17

### Cook v. Fairfax Mgmt Corp.

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CIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF NY: HOUSING PART B

----- X  
MARY WILLIAMS COOK, HOMER O COOK  
Petitioners,

Index No. HP 2046/18

- against -

**Decision and Order**

FAIRFAX MGMT CORP, ET AL.  
Respondent -Owner,

-and-

DEPARTMENT OF HOUSING PRESERVATION  
AND DEVELOPMENT (DHPD)  
Respondent-Agency.

----- X  
Present: Hon. Daniele Chinea  
Judge, Housing Court

Petitioners seek an order holding Respondent-Owner in civil contempt of court pursuant to Judiciary Law §753 for its failure to comply with the so-ordered stipulation of settlement entered December 16, 2019 (the “Stipulation”); and, if contempt is found, setting the matter for a hearing on damages, including costs and attorney’s fees. (NYSCEF EF #s 3 & 4) DHPD filed papers in support of Petitioners’ motion. (EF #s 7-10) Respondent filed opposition claiming the delays in complying with the Stipulation were due to circumstances beyond its control; i.e. COVID-19 global pandemic shutting down non-essential construction and administrative delays at the Department of Buildings (DOB). Respondent-Owner claims to have used its best efforts to meet the deadlines but to have had difficulty getting their structural plans approved by the DOB and it argues that the Governor’s prohibition on non-essential construction due to the COVID-19 pandemic made it impossible to meet the already aggressive timeline set forth in the Stipulation. (EF #s 11-18)

On October 29, 2020, the court heard argument. In a civil contempt proceeding, the proponent must demonstrate: (1) that a lawful order of the court was in effect; (2) that there was a clear unequivocal mandate; (3) that the respondent had knowledge of the order; (4) that there is proof to a reasonable certainty that the order has been disobeyed; and (5) that the rights of a party were prejudiced. McCormick v Axelrod, 59 NY2d 574, 583 [1983], amended, 60 NY2d 652 [1983].

After argument, it is undisputed that the parties agreed to a timeline in the Stipulation. It is undisputed that the deadline for lifting the Vacate Order (April 30, 2020) and the deadline for returning Petitioners to possession (May 30, 2020) were missed. It is undisputed that these deadlines remain unmet. The Stipulation indicated on its face that the timeline was aggressive, perhaps impossible. Each deadline was followed by this caveat: “Respondent/Landlord believe this dates(s) is not realistic or practical given the extensive work needed & Administrative delays reasonably expected.” The Stipulation also provided for Respondent-Owner’s ability to motion the Court for an extension of time to perform at least 15 days prior to any deadline by demonstrating its good faith efforts to meet the deadline and that its failure was beyond its control. It is undisputed that the parties discussed the need for an extension outside of Court, but none was ever agreed. It is undisputed that Respondent-Owner never sought an extension from the Court.

Perhaps COVID-19 would have delayed construction, as Respondent-Owner alleges. But it never achieved approved plans in order to commence with construction and COVID-19 was not an impediment to obtaining approved plans. DHPD affirmatively stated as much in its Affirmation in Support of a finding of contempt. Email communications with DOB provided by Respondent-Owner establish as much. The delay in meeting its obligations was known to Respondent-Owner within time to appeal to the Court for an extension, as set forth in the Stipulation. It did not.

Respondent-Owner argues Petitioners are proceeding in bad faith because they never intend to return to this premises. Petitioners vehemently deny this allegation, but it is also irrelevant. Respondent-Owner agreed to repair the premises and to restore Petitioners to possession. It has never sought to vacate the Stipulation. Instead it violated its Court-Ordered and agreed obligations without leave of Court and to the detriment and impairment of Petitioners, who remain out of possession.

Petitioners have been out of possession since 2012. They commenced this matter in December 2018, two years ago. They were supposed to be restored to possession as of May 30, 2020 but remain in limbo. This limbo status is *per se* prejudicial. Courts have found that “tenants’ rights in the litigation were necessarily and significantly impaired” when a party failed to complete repairs required by a so ordered stipulation. Various Tenants of 446-448 W. 167th St. v. N.Y.C. Dep’t of Hous. Pres. & Dev., 153 Misc. 221 at 222 (AT 1<sup>st</sup> Dep’t 1992), *aff’d*, 194 A.D.2d 311 (AD 1<sup>st</sup> Dep’t 1993).

Decision and Order:

Petitioners’ motion is granted. Based upon the foregoing, the court finds Respondent-Owner in civil contempt. Sexter v. Kimmelman, 277 A.D.2d 186, 187 (AD 1<sup>st</sup> Dep’t 2000); *see also*, Dep’t of Hous. Pres. & Dev. v. Gottlieb, 136 Misc. 2d 370, 373, 518 N.Y.S.2d 575, 578 (Civ. Ct. N.Y. Cty. 1987) (“The summary disposition of a civil contempt proceeding where there are no disputed facts has long been permitted.”).

This matter shall be set down for a hearing as to damages, including costs and legal fees. The hearing shall occur virtually, per Administrative Directive pausing in person proceedings through mid-January 2021. **The Court will be in touch to discuss its procedure for a virtual hearing and to set a date and time for that hearing.**

The parties may reach the Part by calling Part B at (646)386-5529 or emailing the Court Attorney, Jason Vendzules, at [jvendzul@nycourts.gov](mailto:jvendzul@nycourts.gov).

This constitutes the decision and order of the court. A copy shall be uploaded to NYSCEF and emailed to the parties.

DATED: November 17, 2020

SO ORDERED

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Hon. Daniele Chinaea, JHC