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Negron v. Foster

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

_____ x
KASSANDRA NEGRON,

Petitioner,

-against-

BORIS FOSTER,

Respondent,

-and-

NEW YORK CITY DEPARTMENT OF HOUSING
PRESERVATION AND DEVELOPMENT (DHPD),
Co-Respondent.

L&T Index No.: 13968/2020

DECISION/ORDER

Hon. Shorab Ibrahim

_____ x
This Decision and Order follows a virtual trial held on November 19, 2020, December 15, 2020, and January 20, 2021.

BACKGROUND

In the August 5, 2020 verified petition, Kassandra Negron (“petitioner”) alleges that Boris Foster (“respondent”) harassed her, within the meaning of the NYC Admin Code, with the intent to force her to leave the apartment at 4023 Pratt Avenue, Bronx NY 10466, Apt 1 (“the subject premises”).

Petitioner seeks a finding of harassment, an order restraining respondent from further harassing her, civil penalties, and damages and fees.

Respondent’s answer denies that he has harassed the petitioner or her children. In fact, respondent alleges it is the petitioner that has harassed him.

THE TRIAL

Motion to Amend the Answer

At the onset of trial, respondent moved to amend his answer to include a defense that the harassment statute does not apply to the subject two-family dwelling. Petitioner opposed the motion on the grounds that the proposed amendment has no merit in law. The court reserved decision.

CPLR 3025(b) provides that leave to amend a pleading shall be freely given upon such terms as may be just. (*Norwood v City of New York*, 203 AD2d 147, 148-149, 610 NYS2d 249 [1st Dept 1994]). Amendment can be at any time, especially where there is not significant prejudice to the opposing party. (*National Union Fire Ins. Co. v Schwartz*, 209 AD2d 289, 290, 619 NYS2d 542 [1st Dept 1994]). However, proposed defenses which “plainly lack merit” should be denied, (*Thomas Crimmins Contracting Co.*, 74 NY2d 166, 170, 544 NYS2d 580 [1989]; *MBIA Ins. Corp. v Greystone & Co., Inc.*, 74 AD3d 499, 2010 NY Slip Op 04867 [1st Dept 2010]).

Respondent’s proposed amendment is clearly without merit. § 27-2005(d) of the NYC Admin Code (the “Housing Maintenance Code” or “HMC”) states: The owner of a dwelling shall not harass any tenants or persons lawfully entitled to occupancy of such dwelling as set forth in paragraph 48 of subdivision a of section 27-2004 of this chapter.

§ 27-2005(d) and § 27-2004(48) do *not* exempt one or two-family dwellings from the harassment statute. Rather, “rebuttable presumption that such acts or omissions were intended to cause such person to vacate such dwelling unit or to surrender or waive any rights in relation to such occupancy, ... *shall not apply to such acts or omissions with respect to a private dwelling.*”¹ [emphasis added].

As such, respondent’s application to amend his answer is denied.

Kassandra Negron Testimony

Kassandra Negron (“Ms. Negron”) testified to the following: she has lived at the subject premises since some time since 2017 with her two children. She met the respondent in the middle of 2019 when he purchased the house. She entered a lease with the respondent in November 2019. She called DHPD to remove the respondent from the premises because he was living in the building’s basement.

Ms. Negron testified she commenced this proceeding because the respondent has verbally, mentally and physically harassed her. She introduced text messages between herself and the respondent which she claims made her feel disrespected.

The texts between the parties on April 3, 2020 reveal a dysfunctional relationship:

Ms. Negron at 12:24 P.M.: Can u stop banging so loud its banging in my house do you need the cops? All morning is consistent banging.

Mr. Foster at 1:02 P.M.: This house is under construction, Are u ready to pay your rent, or ready to [sic].

Ms. Negron at 4:22 P.M.: Are you or anyone smoking down there it smells like smoke and I have kids I will report this if I continue to have this smell in my

¹ A private dwelling is any building or structure designed and occupied for residential purposes by not more than two families. (NYC Admin Code § 27-2004(a)(6)).

house!! My kids are asthmatic and so am I its not good for us to breathe. Stop smoking and having it travel in my house

Mr. Foster at 4:32 P.M.: IT IS THE SAME WEED THAT YOU ARE SMOKING UP THERE, WITH YOUR KIDS. ARE YOU READY TO PAY YOUR RENT NOW?!!!!!!

After some back and forth about who will call the police, the texts continue:

Mr. Foster at 4:44 P.M.: Are you ready to pay YOUR rent now

Mr. Foster at 4:45 P.M. Steve you going to move out

Ms. Negron at 4:46 P.M. Who's Steve wrong person don't text my phone anymore

Mr. Foster at 4:53 P.M.: You prefer Shana!!!! and the plac is not good for you anymore, So you know what to do

Ms. Negron at 4:54 P.M.: U want to keep harassing me? Stop texting me

Mr. Foster at 5:03 P.M.: What plan to you have for your rent, Now

Mr. Foster at 5:07 P.M.: Should I need to call the police

Mr. Foster at 5:18 P.M.: HIS IT CORONA OR MENTHOL CASE,???

Mr. Foster at 9:19 P.M.: So What else going to be your

Mr. Foster at 9:40 P.M.: ARE YOU READY TO PAY YOUR RENT

Also relevant to this proceeding are texts from June 15, 2020:

Mr. Foster: [unknown time]: This is to inform you that my back yard, driveways and the front lawn is off limits to you the tenant You rent a 2 bedroom apartment and no recreational access is allowed by you

Ms. Negron testified she believed the respondent was smoking in the building. She suffers from asthma and let the respondent know. She believes the respondent was trying to trigger her asthma.

Ms. Negron testified that on or about June 9, 2020, the respondent cursed at her, and called her nasty and disgusting after he found some milk leaking in the garbage. She called the police. The police report narrative dated the same day restates petitioner's allegations.² That complaint [no. 2020-047004892] is noted "closed."

Ms. Negron further testified that on June 15, 2020, her children were playing in a "blow-up" pool in the yard outside of the home. Respondent yelled at the children, attempted to flip the pool over with the children still in it, and threw it over the gate thereafter. He hit the petitioner

² Petitioner's exhibit 3.

also told petitioner and her children to “get the fuck out of here.” Petitioner called the police. The narrative of that complaint [no. 2020-047005103] indicates petitioner was struck on the left temple and ear and was taken by EMS to Montefiore. It also indicates respondent was arrested. Petitioner testified she fears for her safety now. The parties acknowledge that an order of protection was issued in petitioner’s favor against respondent.

Petitioner testified she was treated for head pain and a bleeding ear lobe. She received an x-ray and was given Tylenol and anti-biotics.

Petitioner testified that later in the summer [of 2020] the respondent put the heat on in the house all day when it was 80 degrees outside. She called the police and the heat was turned off about two (2) hours later. Petitioner alleged that the hot water was turned off three or four (3 or 4) times after the June 15, 2020 incident.

On cross-examination, petitioner stated she had called the police more than ten (10) times since the petitioner purchased the subject premises. She had also called DHPD around ten (10) times.

Melissa Lopez Testimony

Melissa Lopez (“Ms. Lopez”) testified she is petitioner’s partner. Though she lives elsewhere, she visits the subject premises almost daily. She was present at the June 15, 2020 incident. Ms. Lopez corroborated petitioner’s testimony. She also corroborated petitioner’s testimony regarding the heat being turned on in the summer and the lack of hot water at different times.

Boris Foster Testimony

Mr. Foster testified he is a sixty-six (66) year old transit worker who purchased the subject property in October 2019. Ms. Negron was already a tenant there. He claims he is regularly drug-tested as part of his job.

Mr. Foster testified about the June 15, 2020 incident. He heard kids splashing water. He went outside and saw Ms. Negron’s children splashing water. He told them to stop and to get out. They listened and got out. Ms. Negron then ran up to him and slapped him in the chest with both hands. He did not retaliate. Ms. Negron called the police and he was arrested.

Mr. Foster testified he does not smoke weed. He sees petitioner smoke by the apartment door every day. He smells marijuana smoke. Mr. Foster felt like he was being harassed by the petitioner.

On cross-examination, Mr. Foster acknowledged he has lived in the basement prior to DHPD placing a vacate order. It was Ms. Negron who called DHPD. Mr. Foster described signing a lease with Ms. Negron as a “big mistake.” He does not understand why she is still living at the subject premises since the lease expired in October 2020. Mr. Foster testified he has not started a case against the petitioner to regain possession of the premises.

The court notes that petitioner was called as a rebuttal witness and testified she did not hit Mr. Foster and she was not arrested on June 15, 2020. She also states she does not smoke marijuana and she does not smoke inside the apartment. She smokes cigarettes outside.

Closing Statements

Petitioner contends the harassment by respondent is clear: Mr. Foster shortly became unhappy with Ms. Negron as his tenant so he embarked on a campaign to interfere with her tenancy so that she would vacate. His texts were insulting and intimidating. On June 15, 2020, respondent physically attacked petitioner and her children. Petitioner notes that respondent did not deny the allegation he had turned the heat on in the summer, nor did he deny turning the water off as petitioner alleged.

Respondent argues he gave petitioner a lease when he did not have to and had no problem with her. He posits that the petitioner is not credible. In any case, respondent claims petitioner did not prove a pattern of harassment.

The Law and Its Application

HMC § 27-2004(48) defines “harassment” as any act or omission by or on behalf of an owner that (i) causes or is intended to cause any person lawfully entitled to occupancy of a dwelling unit to vacate such dwelling unit or to surrender or waive any rights in relation to such occupancy and (ii) includes one or more of the following acts or omissions... a. using force against, or making express or implied threats that force will be used against, any person lawfully entitled to occupancy of such dwelling unit;... g. other repeated acts or omissions of such significance as to substantially interfere with or disturb the comfort, repose, peace or quiet of any person lawfully entitled to occupancy of such dwelling unit and that cause or are intended to cause such person to vacate such dwelling unit or to surrender or waive any rights in relation to such occupancy,...

Here, the preponderance of the credible evidence established that respondent harassed petitioner, as defined in the HMC. Petitioner credibly testified that respondent was verbally abusive on multiple occasions. The text messages in evidence support this finding. For example, Mr. Foster twice on April 3, 2020 texted petitioner implying she was either suffering from Coronavirus or was mentally ill.³ In another text, respondent states that petitioner is smoking “weed,” with her kids, while also demanding rent.⁴ Indeed, the texts reveal that respondent demanded rent at least (6) times on April 3, 2020 alone. Respondent demanded rent in response to complaints about the living situation and even after the petitioner requested that respondent stop harassing her. The insulting texts, “in the words of the statute, disturb” petitioner’s “comfort.” (see *T & G Realty Co. v Hawthorne*, 64 Misc. 3d 1214[A] at *6 [Civ Ct, New York County 2019]).

³ Petitioner’s exhibit 2 at pages 6 and 9.

⁴ Id at page 4.

The court notes that though respondent argued the text messages in evidence were incomplete or just part of a wider text chain, he did not attempt to introduce his own text messages.

Furthermore, while petitioner and her partner both credibly testified that the heat was turned on in the summertime and only turned off when they called the police, respondent failed to deny the allegations altogether. He also failed to deny that the water was turned off four or five times after the June 15, 2020 incident.

Turning to the June 15, 2020 incident, petitioner and her partner credibly testified that petitioner's children were playing outside in a "blow-up" pool when respondent became irate and attempted to flip the pool with the children still in it. Respondent acknowledges he was upset that the children were splashing water and making noise. Indeed, he sent a text to petitioner that very day informing her that "my back yard, driveways and front lawn is off limits to you the tenant. You rent a 2 bedroom apartment and no recreational access is allow by you..."⁵ This court is convinced that, despite his denial, respondent was the aggressor toward petitioner and her children on June 15, 2020.

Petitioner's testimony was credible. Her recollection of events is supported by the police report in evidence. She clearly sought medical attention for her injuries. It is also no small matter that respondent was arrested on June 15, 2020 and charged with assault in the third degree. On October 13, 2020, petitioner obtained an order of protection against respondent. There was no proof offered that petitioner had ever been arrested despite respondent's claims Ms. Negron had struck respondent. There was no proof offered that the respondent ever complained to anyone regarding petitioner becoming "violent."⁶

Given the timing of these events, the court concludes that respondent acted with the intent of causing the petitioner to vacate the subject apartment. No other explanation was offered; no other explanation makes sense.

As such, respondent harassed the petitioner by using force against her and the totality of the circumstances establishes repeated acts of such significance that substantially disturbed petitioner's comfort, repose, peace or quiet.

Harassment constitutes an immediately hazardous violation of the New York City Housing Maintenance Code. (NYC Admin. Code § 27-2115(m)(1)). It gives rise to injunctive relief against an owner, a mandatory civil penalty payable to the City of New York in an amount not less than two thousand dollars and not more than ten thousand dollars, and "such other relief as the court deems appropriate" (NYC Admin. Code § 27-2115(m)(2)). In addition to such relief, the Court "*shall*, in addition to any other relief such court determines to be appropriate, award to [a tenant who has been subject to harassment] compensatory damages or, at the election of such occupant, one thousand dollars and reasonable attorneys' fees and costs." (NYC Admin.

⁵ Id at page 7.

⁶ See answer at 4.

Code § 27-2115(o) [emphasis added]; *see Hawthorne, supra; Butler v Thomas*, 69 Misc. 3d 736, 744, 131 NYS3d 500 [Civ Ct, Kings County 2020]).

Given the totality of the circumstances, two thousand dollars (\$2,000.00) as civil penalties are appropriate. As to compensatory damages, Ms. Negron is awarded \$1,000.00 pursuant to HMC § 27-2115(o). No actual damages were proven. (*see Allen v 219 24th Street LLC, supra* at *20, *citing E.J. Brooks Company v Cambridge Security Seals*, 31 NY3d 441, 80 NYS3d 162 [2018]).

Consequently, it is,

Ordered and Adjudged, that respondent, Boris Foster, has harassed petitioner, Kassandra Negron, in violation of NYC Admin. Code § 27-2005(d) and that a class “C” violation existed at the time the harassment occurred; and it is further

Ordered and Adjudged, that a civil penalty in the amount of \$2,000.00 is assessed against respondent, Boris Foster, payable to the New York City Commissioner of Finance; and it is further

Ordered and Adjudged, that respondent is enjoined from engaging in any harassment prohibited by NYC Admin. Code § 27-2005(d) and defined in NYC Admin. Code § 27-2004(a)(48); and it is further

Ordered and Adjudged, that petitioner is awarded a money judgment in the amount of \$1,000.00 as damages.

Ordered and Adjudged, that the petitioner's prayer for attorneys' fees⁷ is granted to the extent of calendaring the matter for a virtual hearing to be held on April 7, 2021, at 10:00 A.M.

This constitutes the Decision and Order of the court. The court will email copies to counsel.

Dated: February 17, 2021
Bronx, NY

SO ORDERED,

/S/

SHORAB IBRAHIM, JHC

⁷ See NYC Admin Code § 27-2115(o).

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