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Matter of Cordero
2022 NY Slip Op 30967(U)
April 4, 2022
Civil Court of the City of New York, Kings County
Docket Number: Index No. 1733-19/KI
Judge: Sergio Jimenez
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CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF KINGS: HOUSING PART B

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In the matter of the application of

MARIA CORDERO, et al.,

Petitioners,

Index No. 1733-19/KI

For a judgment pursuant to Article 7A of the Real
Property Actions and Proceedings and Law, appointing a
Court-designated administrator for the premises known as:
299 Troutman St., Brooklyn, NY 11237
Block 3175, Lot 45 (Kings County).

DECISION AND ORDER

----- X

SERGIO JIMENEZ, JUDGE:

Recitation, as required by C.P.L.R. § 2219(a), of the papers considered in review of this motion.

Papers Numbered

Notice of Motion with affidavits and exhibits (Seq. 1)..... 1 (NYSCEF #4-24)
Opposition with exhibits..... Oral (NYSCEF #27)

Petitioners commenced this special proceeding seeking appointment of an administrator (“7A administrator”) of the property located at 299 Troutman Street Brooklyn, New York 11237 (“premises”) pursuant to RPAPL Article 7(a) by petition and notice of petition, initially returnable July 19, 2019. This matter was settled by two-attorney¹ stipulation of settlement dated October 7, 2019². No further procedural activity took place until petitioners filed the instant motion alleging respondents had breached the stipulation of settlements in nearly all respects. The motion was first scheduled in Part B on January 4, 2022. On that date, respondents did not appear, and the matter was adjourned to February 25, 2022. On February 25, both sides appeared, and the court heard argument and testimony, and reserved decision on the motion.

1 The stipulation was interpreted for respondents in Mandarin with an official court interpreter, who also signed the agreement.

2 The matter was discontinued as against Capital Home Realty and Bank of New York Mellon by stipulation dated August 12, 2019.

Petitioners' instant motion seeks relief as outlined in the parties' October 2019 settlement agreement, alleging that respondents have breached the agreement in nearly all respects. Further, petitioners seek a finding of contempt, harassment and damages resulting therefrom, including attorneys' fees; and civil penalties. In addition, the motion seeks to join SZA 5 STARS REALTY LLC as a proper party to this case pursuant to CPLR § 1002(b) as the result of a sale of the premises that took place after the parties' October 2019 settlement agreement was filed.

At the February 25 hearing, respondents Xing Liang Shen and Irene Zhang f/k/a Young Ping Zhang appeared in person and informed the court that they had fired their attorney and wished to proceed in person. That application was granted, and Goldbuger & Dubin P.C. is hereby relieved as counsel for respondents.

In addition, the court denied respondents' application for an adjournment to sell the premises. Respondents did not inform the court that there is a pending contract of sale or closing date. Petitioners orally opposed the application, arguing the request was only a delay tactic of the instant matter, citing pending supreme court litigation between respondents and a purchaser, with plaintiff-purchaser seeking specific performance of a contract of sale. The court reviewed the NYSCEF filings in that matter, and it appears it is actively being litigated by respondents³.

Respondents orally opposed the motion, arguing that they had completed some work, that petitioners did not provide access and created some of the conditions, and that they wished to sell the building because of a lack of ability to maintain it. In support, the court accepted four documents from respondents⁴, an undated letter of intent for purchase of the premises, a 2019

³ The court takes judicial notice of the supreme court action *R.A. Troutman Residence LLC v. Xing Liang Shen et. al.* Index No. 515798/2018 and notes there is a currently pending *pro se* order to show cause by respondent Xing Liang Shen seeking a stay of a court-ordered closing for the premises. As of issuance of this decision, the motion and plaintiff's cross motion is scheduled for argument on March 25, 2022.

⁴ See NYSCEF document #27.

letter from a contractor seeking access from tenants during August 2019, a contractor's letter dated November 2019 stating recommendation that the premises be free of occupants while work was conducted, and a certificate of correction of violations dated July 16, 2019.

DHPD appeared at the February 25 hearing and expressed oral support of petitioners' applications. DHPD stated to the court that it is providing gas to maintain essential services at the subject premises. DHPD has a pending comprehensive case against the premises under *DHPD v. Xing Shen; Irene Zhang; SZA Five Stars Realty LLC*, L&T 308692-21/KI, heard at the same time as the instant matter, which was marked off the court's calendar pending issuance of this decision.

Adding SZA 5 STARS REALTY LLC as respondent-landlord

Petitioners seek to add SZA 5 STARS REALTY LLC (the corporation) as a respondent-owner to this matter pursuant to CPLR § 1002 and CCA § 110(d). In support, petitioners attach a deed to their moving papers showing conveyance of the premises on or about October 28, 2019, from Xing Liang Shen to the corporation⁵. Moreover, petitioners show the premises' multiple dwelling registration listing Xiang Liang Shen as the head officer of the corporation and both as the managing agents of the premises⁶. Respondents did not raise any opposition to petitioners' request to add the corporation as an owner-respondent.

The corporation is a proper party to this proceeding according to the housing maintenance code. *N.Y.C. Admin. Code* § 27-2004(a)(5). *Civil Court Act* § 110(d) provides that "any party, any city department or the court, on its own motion, may join any other person or city department as a party in order to effectuate proper housing maintenance standards and to

⁵ See petitioners' Exhibit 4.

⁶ See petitioners' Exhibit 5.

promote the public interest.” The corporation is intertwined with the individuals already named as respondents herein, as one is listed on the HPD registration as the head officer of the corporation. To give full relief to petitioners, the corporation must be added as a defendant as it is the current owner of the building. *See Civil Court Act* § 110(d). Respondents did not raise any arguments in opposition to petitioners’ request, and the court does not find any prejudice that could result therefrom. Thus, this branch of petitioners’ motion is granted, and all papers and pleadings are amended to reflect SZA 5 STARS REALTY LLC as a respondent.

Appointment of a 7A Administrator

Petitioners next seek to appoint a 7A administrator for the premises based on the respondents alleged default in the parties’ October 2019 settlement agreement. The settlement agreement required respondents to, among other things, correct all HPD violations within 120 days of the agreement’s effective date⁷, defined as October 7, 2019; rescind the vacate order within 120 days of October 7, 2019⁸; refrain from engaging in any harassment against petitioners⁹; within 15 days of October 7, 2019 offer rent-stabilized leases to petitioners, each for \$500/month statutory preferential rent¹⁰; and provide counsel with proof of DHCR registration within 35 days of October 7, 2019¹¹.

The default provisions of the two-attorney settlement agreement are clear and unequivocal. Respondents consented to petitioners’ *prima facie* case and waived all defenses except seven outlined by the parties: (1) denial of the allegations in the motion to restore, (2)

⁷ See parties’ settlement agreement at ¶6.

⁸ See parties’ settlement agreement at ¶7.

⁹ See parties’ settlement agreement at ¶16.

¹⁰ See parties’ settlement agreement at ¶18.

¹¹ See parties’ settlement agreement at ¶20.

conditions do not exist or were repaired, (3) violations were repaired/removed, (4) conditions were caused by the tenants, (5) landlord's good faith and due diligence in compliance with the agreement, (6) denial of access, (7) and force majeure¹². Should the landlord fail to establish one of the outlined defenses, the stipulation states the court *shall* appoint a 7A administrator¹³ (emphasis added). The agreement also contains a provision that allows petitioners to restore the proceeding based on an allegation of harassment, for a finding of harassment, damages, and attorneys' fees¹⁴. Petitioners conditionally withdrew their claim for civil penalties subject to respondents' compliance with the agreement¹⁵.

Petitioners allege, through their affidavits and photographs, that respondents have failed to make repairs, failed to comply with rescission of the vacate order, failed to offer rent stabilized leases, and failed to register rents with DHCR, and have harassed petitioners. Petitioners acknowledge that some work commenced, however recurrent conditions persisted after any repairs that have been made¹⁶, or work was left incomplete¹⁷. Petitioners allege that many additional violations have been issued since the parties settled the matter in October 2019, bringing the total violations at the premises to 177 through November 2021. Additionally, petitioners allege that the vacate order issued by DHPD for floors three and four of the premises has not been rescinded, and Dept. of Buildings has issued a new vacate order for the same floors. Further, Petitioners allege that the rent stabilized leases were never tendered in compliance with the parties' settlement agreement, and rents were never registered with DHCR. Finally, petitioners allege they have been harassed as defined by the settlement agreement.

¹² See parties' settlement agreement at ¶21.

¹³ See parties' settlement agreement at ¶23.

¹⁴ See parties' settlement agreement at ¶22.

¹⁵ See parties' settlement agreement at ¶24.

¹⁶ See Cordero Affidavit at ¶8.

¹⁷ See Rivas, Septimo and Vargas affidavits at ¶¶9, 10 and 10, respectively.

In opposition, respondents failed to raise any issue of fact that would necessitate a hearing on any of the defenses to appointment of a 7A administrator provided for in the parties' settlement agreement. Respondents testified that some violations were corrected, that petitioners had interfered with proper access to the apartments and had caused some of the violations. The court found respondents' testimony vague and unpersuasive, lacking in any detail. Respondents presented no testimony regarding who requested access, exactly which conditions were allegedly caused by respondents, nor any indication of the time period of alleged completion of work or requests for access. No documentation, such as contractors' receipts, bills, or completed work orders were submitted to substantiate the testimony. Moreover, the documents that were submitted to the court are not relevant to any possible defense allowed under the parties' settlement agreement. The certification of corrected violations is dated prior to the parties' October 2019 settlement agreement. The notice requesting access is similarly dated prior to October 2019. The contractor's assessment, dated November 2019, stating the premises must be vacant to complete repairs, was not followed up with any testimony that petitioners somehow did not comply with a reasonable request to vacate the premises. Finally, the offer of sale of the premises is undated, and the court weighs it negatively against the pending supreme court litigation. It appears to the court that respondents, while claiming to in good faith seek a sale of the premises, are actively opposing a court ordered closing of the premises with a buyer who entered into contract to purchase the building dated in 2012. Respondents failed to raise any issue of fact that would necessitate a hearing on any of the defenses to appointment of a 7A administrator provided for in the parties' settlement agreement.

Petitioners' moving papers, which include affidavits of personal knowledge and photographs, meet the burden of proof to show respondents breached the parties' settlement

agreement in several respects. Most significantly, respondents have failed to correct any violations, including numerous immediately hazardous “C” violations¹⁸, in the over two years since the parties settled this matter. The violations at issue during the time of settlement remain open, but even further many new violations have been issued by DHPD, and remain open, since October 2019. Moreover, not only have respondents failed to rescind the DHPD vacate order as required by the settlement agreement, but their unexplained delay has also caused a second vacate order, for the same conditions, to be issued by the Dept. of Buildings.

It is well settled law that courts treat stipulations agreements like binding contracts, and do not lightly relieve the parties of their consequences, absent circumstances sufficient to invalidate a contract such as fraud, collusion mistake or accident. *See Chae Shin Oh v. Jeannot*, 160 A.D.3d 701 [App. Div. 2d Dept. 2018] *citing Hallock v. State of New York*, 64 NY2d 224, 231-232, 474 NE2d 1178, 485 NYS2d 510 [1984]). The court looks to the plain language of the statute for guidance. Moreover, appointment of a 7A administrator is within the discretion of the court. RPAPL § 778(1) provides in pertinent part that:

The court is authorized and empowered, in implementation of a judgment rendered pursuant to section seven hundred seventy-six or seven hundred seventy-seven of this article, to appoint a person other than the owner, a mortgagee or lienor, to receive and administer the rent moneys or security deposited with such owner, mortgagee or lienor, *subject to the court's discretion*. (emphasis added).

The stipulation herein was clear and unequivocal, requiring the court to appoint a 7A administrator if respondents fail to establish a defense as set forth in the agreement. Respondents have failed to raise any defense to the appointment of a 7A administrator. Therefore, the court

¹⁸ The court takes judicial notice of HPD’s violation records at the premises, attached as exhibits to the motion, as *prima facie* evidence of proof of the conditions stated therein. MDL § 328(3)

enforces the two-attorney stipulation and finds that appointment of a 7A administrator is required, and this branch of petitioners' motion is granted.

Civil Contempt

The next branch of petitioners' motion seeks a finding of civil contempt pursuant to Judiciary Law § 753(A). Petitioners argue that here, all elements of civil contempt are met: that respondents have, with knowledge, disobeyed court-ordered mandate, causing petitioners significant prejudice. Respondents in opposition, as stated *supra*, allege that they had completed some work, that petitioners did not provide access and created some of the conditions.

Civil contempt has four elements. "First, it must be determined that a lawful order of the court, clearly expressing an unequivocal mandate, was in effect. Second, [i]t must appear, with reasonable certainty, that the order has been disobeyed. Third, the party to be held in contempt must have had knowledge of the court's order, although it is not necessary that the order actually have been served upon the party. Fourth, prejudice to the right of a party to the litigation must be demonstrated." *El-Dehdan v. El-Dehdan*, 26 N.Y.3d 19 [2015]; *citing, Matter of McCormick v. Axelrod* 466 N.Y.S.2d 279 [1983]. The movant bears the burden of establishing contempt with clear and convincing evidence. *El-Dehdan* 26 N.Y.3d 19 at 29; *citing, Graham v. Graham*, 543 N.Y.S.2d 735 [App. Div. 2d Dept 1989]; *Tener v. Cremer* 931 NYS2d 552 [App. Div. 1st Dept 2011]; *Town of Copake v. 13 Lackawanna Props., LLC*, 900 N.Y.S.2d 508 [App. Div. 3d 2010]. For a finding of civil contempt, a showing of willfulness is not required. *See Matter of McCormick v. Axelrod* 466 N.Y.S.2d 279 [1983]. "A hearing is not mandated in every instance where contempt is sought; it need only be conducted if a factual dispute exists which cannot be resolved on the papers alone." *Thimm v. Thimm*, 137 A.D.3d 775 (App. Div. 2nd Dept. 2015).

Here, petitioners have met their burden to show respondents are in civil contempt of court. First, the so-ordered two attorney stipulation is a lawful mandate of the court. The parties' October 2019 stipulation of settlement contains several clear and unequivocal mandates. Respondent Xing Liang Shen signed the agreement and therefore had notice of its contents. Respondent Irene Zhang f/k/a Young Ping Zhang appeared through her attorney, who signed the agreement, thus giving her notice. Further, it is undisputed a clear mandate was disobeyed. As stated *supra*, the court takes judicial notice of HPD's violation records, attached as exhibits to the motion, as *prima facie* evidence of proof of the conditions stated therein. MDL § 328(3); *see also, Dept. of Hous. Preserv. & Dev. of the City of N.Y. v. Knoll*, 120 Misc. 2d 813 [App Term, 2nd Dep't 1983]. Thus, the conditions are presumed to remain unabated. Moreover, respondents did not dispute that the HPD vacate order remains open at the premises, nor did they dispute those leases had not been issued to petitioners, and that the units were not registered with DHCR, all requirements under the parties' settlement agreement. Finally, petitioners' papers sufficiently demonstrate prejudice. As a matter of law, a landlord's failure to correct violations necessarily prejudices a tenant, *See Various Tenants of 446-448 W. 167th St. v. N.Y.C. Dep't of Hous. Pres. & Dev.*, 153 Misc.2d 221, 222, [App. Term 1st Dept. 1992].

Moreover, respondents failed to raise any issue of fact that would necessitate a hearing on this matter. *See Thimm* 137 A.D.3d 775 For the reasons stated *supra*, the court finds respondents' testimony to be vague and unpersuasive, lacking in any detail, and the documents presented to be both irrelevant and lacking in any contextualizing testimony.

Therefore, the branch of petitioners' motion seeking a finding of civil contempt is granted. The portion of petitioners' motion seeking a hearing on damages and reasonable attorneys' fees is denied without prejudice to renew by motion.

IT IS ORDERED AS FOLLOWS:

All papers and pleadings are amended to reflect SZA 5 STARS REALTY LLC as a respondent-owner herein.

The court shall appoint a 7A Administrator for the premises located at 299 Troutman St., Brooklyn, NY 11237.

Respondents XING LIANG SHEN and IRENE ZHANG F/K/A YOUNG PING ZHANG are found in civil contempt of court pursuant to Judiciary Law § 753.

The branch of petitioners' motion seeking a finding of harassment is denied without prejudice to renew the requests by motion seeking a hearing.

The branches of petitioners' motion on the issue of actual, punitive, and compensatory damages and attorneys' fees pursuant to Judiciary Law 753, N.Y.C. Admin. Code 27-2115, and the parties' stipulation agreement are denied with leave to renew the requests by motion seeking a hearing.

The branch of petitioners' motion seeking civil penalties is denied without prejudice to renew with proposed calculations of penalties.

The branches of petitioners' motion seeking to compel respondents to comply with the parties' settlement agreement is denied as academic as management of the building will be handled by the appointed 7A administrator.

This constitutes the Decision/Order of the Court, which is uploaded to NYSCEF and mailed to the parties.

Dated: Brooklyn, New York
April 4, 2022


Sergio Jimenez
Judge, Housing Court
SERGIO JIMENEZ, J.H.C.