2022-05-19

Matsia Properties Corp. v. Dupont

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

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MATSIA PROPERTIES CORP.,

Petitioner,

-against-

DOROTHY DUPONT,

Respondents,

"JOHN DOE" and "JANE DOE",

Respondents-Occupants.

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Index No.
L&T 52637/18

Present:
Hon. Christel F. Garland

DECISION/ORDER AFTER TRIAL

Petitioner commenced this summary holdover proceeding on or about October 5, 2018, seeking to recover possession of Apartment #5E, a rent stabilized apartment, on the ground that Respondent is committing or permitted a nuisance on the premises.

Respondent appeared by counsel and interposed an answer challenging the allegations in the petition. Following many delays in this proceeding, the matter was set down for a trial on Petitioner's claims.

At trial, Petitioner's first witness, Cesar Torres, the managing agent for Langsam Properties, the company that manages the subject property, testified in support of Petitioner's prima facie case[1]. Mr. Torres testified that he has been the managing agent for the subject building for approximately 15 years, and that in his capacity as the managing agent he supervises various buildings, handles tenant complaints, arranges for contractors to address repairs, handles leasing, and interacts with city agencies.

Mr. Torres testified that he was familiar with Respondent and that Petitioner commenced this proceeding because of complaints Petitioner received a number of years ago about a leak entering Respondent's apartment. Mr. Torres testified that he learned of the leak from the building superintendent, and that sometime in 2019 he went to the apartment but found an accumulation of things which prevented the plumber from making the necessary repairs[2]. Mr. Torres testified that it was difficult to move around in the apartment because of the clutter. He described the apartment as follows: every room in the apartment had bags, articles of clothing, pans, items in the sink, and in the

[1] The court took judicial notice of the stipulation of settlement dated February 15, 2022, pursuant to which the parties agreed to the admission of certain documents into evidence.

[2]Mr. Torres also testified to photographs he took of the condition of the apartment sometime in August of 2018.

tub. He testified that the plumbers were eventually able to gain access to the apartment and repaired the leak. He added that he had also been in the apartment before 2019 but did not recall exactly when, and that he has been in Respondent's apartment approximately 2 to 3 times since she has been a tenant in the building.

Mr. Torres further testified that Petitioner received a violation for the conditions in the apartment and that following receipt of the violation he made attempts to correct the violations by assigning contractors to do the work.[3] However, according to Mr. Torres, Petitioner was unable to gain access despite several attempts by the contractors. He testified that Respondent was made aware of the violations as well and that the apartment would need to be decluttered. But that despite Petitioner's efforts, the violations remain uncorrected even after attempts to coordinate with Respondent's counsel to declutter the apartment.

Petitioner's next witness, Pedro Martinez, is the building superintendent. Mr. Martinez testified that he is employed by Langsam Properties and that he has been employed as the building superintendent for approximately 25 years. In this capacity, his duties include maintaining the building, cleaning, and dealing with complaints received from the building manager. Mr. Martinez testified that he is familiar with Respondent, and that he occupies the apartment next door to hers ("2H"). Mr. Martinez testified that he has lived in this apartment for a long time and knows everyone in the building including Respondent. Mr. Martinez recalled having gone to Respondent's apartment because of a leak coming from her apartment. He testified that water had traveled all the way down to the lobby area and that he went to Respondent's apartment and told her that he would put in a service request. According to Mr. Martinez, he never received a response from Respondent and that each time he has made attempts to access the apartment she is almost never at the apartment. He testified about a time when he gained access to the apartment and Respondent showed him the bathroom. During this visit he observed items in the tub made of metal and observed that there was no room. However, he acknowledged not having been in the apartment for a long period. He testified that he also observed a lot of things against the walls in the apartment and remembered that he could barely move around but could not recall specifically what the items were. After inspecting the apartment that time, Mr. Martinez testified that he contacted management and informed management about the leak and the nonworking toilet. He testified that management did not instruct him to return to the apartment and that he has not attempted to go back to the apartment because Respondent is never at the apartment. He testified that what prompted him to go to the apartment this time are the six month inspections Petitioner is required to conduct to assess any maintenance issues in need of attention. He testified that he has knocked on Respondent's door for these required inspections every year since 2016 but did not recall the specific dates on which he made those attempts. He also testified that he has seen Respondent in the evenings with a shopping cart and bottles but could not recall the exact dates.

At the close of Petitioner's case, Respondent moved for the entry of a judgment in her favor dismissing the petition pursuant to CPLR § 4401 on the ground that Petitioner failed to establish its prima facie case and establish that she has created a nuisance.

Pursuant to CPLR § 4401, any party may move for judgment with respect to a cause of action or issue upon the ground that the moving party is entitled to judgment as a matter of law, after the close

[3] The court took judicial notice of the "Class C" violation issued by the Department of Housing Preservation and Development ("HPD") on March 12, 2016 (no. 11153807) which as of the date of trial continued to appear on the HPD database.

of the evidence presented by an opposing party with respect to such cause of action or issue, or at any time on the basis of admissions.

It has been held that "a motion for a directed verdict pursuant to CPLR 4401 should not be granted unless there is no rational process by which the fact-finder could base a finding in favor of the nonmoving party" (*145 East 16th Street, LLC v Spencer*, 49 Misc 3d 128 [A] [App Term, 1st Dept 2015] citing *Szczerbiak v Pilat*, 90 NY2d 553 [1997]). And, "that in assessing the motion, the court must afford the party opposing the motion every inference that may be properly drawn from the evidence presented, and the evidence must be viewed in the light most favorable to the nonmoving party (*Spencer* at *1).

In order to assess and determine whether Petitioner met its initial burden of establishing that Respondent created a nuisance, it is essential to understand what Petitioner must show in order to meet that initial burden.

The Rent Stabilization Code ("RSC") provides a cause of action for eviction where the tenant has created a nuisance at the premises (*see* RSC [9 NYCRR] § 2524.3(b). A nuisance has been defined as "a condition that threatens the comfort and safety of others in the building" (*Frank v Park Summit Realty Corp*, 175 AD2d 33, 35, 573 NYS2d 655 [1st Dept 1991]). Courts have defined a nuisance as "a recurring or continuing pattern of objectionable conduct threatening the comfort and safety of others in the building" (*Domen Holding Co v Aranovich* (1 NY3d 117, 125, 769 NYS2d 785 [2003]). "To obtain a judgment of possession in an eviction proceeding based on nuisance or objectionable conduct, the petition must plead, and the petitioner must prove at trial, more than an isolated instance of objectionable conduct; the conduct must be recurring, frequent, continuous, or extremely dangerous" Scherer*, Residential Landlord-Tenant Law in New York* § 8:92 at 618 [West Prac Guide] [Note: online version]; *see also Frank v Park Summit Realty Corp*., 175 AD2d 33, 573 NYS2d 655 [1st Dept 1991] and *CHI-AM Realty, Inc v Guddahl*, 7 Misc3d 54, 794 NYS2d 778 [App Term, 2nd Dept 2005). This is such that "mere annoyance" will not suffice to grant a judgment of possession (Scherer at § 8:94). In addition to the above, a "probing inquiry into the *present* condition of the apartment [is] required" (*see Gazivoda v Sherman*, 6 Misc3d 66, 791 NYS2d 263 [App Term, 1st Dept 2005]) (emphasis added).

Applying these principles here, this court finds that Petitioner failed to meet its burden of proof and failed to establish that Respondent committed a nuisance in the subject apartment. To begin, Petitioner's basis for its claim that Respondent created a nuisance is that she has accumulated within the apartment numerous large and tall piles of various chattels, clothing, paper goods, rubbish and other things that are piled up several feet high and cover most of the furniture, occupy most of the floor space, cover most of the kitchen and bathroom which appears unusable, are piled on top of the stove, the cabinetry, kitchen sink, the bathtub, the bathroom sink and toilet. In addition, Petitioner's notice of termination states that Respondent has created a fire hazard by piling these items on top of the stove, that Respondent has failed to maintain the apartment in a clean and orderly fashion which is a breeding ground for insects and vermin. The notice further states that there is at least one leak coming from the apartment as a result of which the lobby below sustained damage to the walls and ceilings and that the leak could not be repaired due to the fact that these items cover almost all of the apartment which makes it impossible to work and make the needed repairs.

However, the trial testimony at best established that there were chattels as referred to in Petitioner's notice of termination within the subject apartment at some point in August 2018 or 2019, almost four

years ago. But there was no testimony that Respondent's apartment remains in the condition depicted in the photographs nor was there any evidence that it is indeed a breeding ground for insects and vermin or that any conditions in the apartment presently pose a danger. Petitioner argues that HPD issued a "Class B" violation for roaches in the apartment. However, at trial the court took judicial notice of the "Class C" violation issued by HPD on March 12, 2016 for the excessive storage of household materials and bags. The court did not take judicial notice of all the violations of record for the subject apartment nor was there a request that the court do so. Notwithstanding, were the court to take this violation into account, without more, the violation is insufficient for the court to conclude that Respondent has created a nuisance in the subject apartment. The court notes that these violations were issued six years ago at this point and there was no testimony or evidence that the conditions continue to exist. Although Petitioner complained about not being able to address the conditions in the apartment because of the accumulation of items in the apartment, the witnesses testified that Petitioner was able to gain access to the apartment and repaired the leak.

Further, the witnesses, although credible, did not testify with detail about the dates and times access to the apartment was attempted and not granted. The superintendent testified that he was not able to gain access because for the most part Respondent is never home not that she refused to grant access. He did not testify about when he made attempts to access the apartment nor if Petitioner had given Respondent notice that it would need to access the apartment on specified dates and times. In addition, the superintendent testified that he is Respondent's next-door neighbor but did not testify about how the conditions in the apartment, if they still exist, adversely impacted him or other residents of the building or how they posed a danger to anyone. The court also notes that the "Class C" violation issued by HPD was to show the presence of chattels in the apartment not that the violation in and of itself established nuisance. But, this violation, issued so long ago, coupled with these two witnesses' testimony which was limited is insufficient to establish nuisance.

Based on the foregoing, Respondent's motion seeking an order dismissing the petition is GRANTED as this court finds that Petitioner failed to establish by a preponderance of the evidence that Respondent created a nuisance. There is no rational basis by which this court can find in favor of Petitioner. As a result, the petition is hereby dismissed.

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

DATED: May 19, 2022

Christel F. Garland, JHC

Appearances of Counsel

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