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[*1]

29 Flatbush Assoc., LLC v Cain
2022 NY Slip Op 50780(U)
Decided on July 22, 2022
Appellate Term, Second Department
Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431.
This opinion is uncorrected and will not be published in the printed Official Reports.

Decided on July 22, 2022

SUPREME COURT, APPELLATE TERM, SECOND DEPARTMENT, 2d, 11th and 13th
JUDICIAL DISTRICTS

PRESENT: : MICHELLE WESTON, J.P., DONNA-MARIE E. GOLIA, CHEREÉ A.
BUGGS, JJ
2021-196 K C

29 Flatbush Associates, LLC, Respondent,

against

Ileen Cain, Also Known as Makeeba Cain, Appellant, et al., Undertenants.

Ileen Cain, appellant pro se. Rose & Rose (Lance Luckow of counsel), for respondent (no brief filed).

Appeals from a final judgment of the Civil Court of the City of New York, Kings County (Eleanora Ofshtein, J.), entered July 12, 2019, and from an order of that court dated July 29, 2019. The final judgment, after a nonjury trial, awarded landlord possession in a holdover summary proceeding. The order denied tenant's motion to stay the execution of the warrant of eviction.

ORDERED that the final judgment is affirmed, without costs; and it is further,

ORDERED that the appeal from the order dated July 29, 2019 is dismissed as moot.

Landlord commenced this holdover proceeding to recover possession of a rent-stabilized apartment on the ground that tenant had created a nuisance at the premises (*see* Rent Stabilization Code [RSC] [9 NYCRR] § 2524.3 [b]) by making numerous unfounded noise

complaints and engaging in abusive conduct toward landlord's employees. Following a nonjury trial, a final judgment of possession was entered in favor of landlord. On July 19, 2019, tenant moved to stay the execution of the warrant of eviction pending the determination of her appeal from the final judgment. The Civil Court denied tenant's motion in an order dated July 29, 2019. [*2] Tenant was evicted from the premises on October 16, 2019. Tenant appeals from both the final judgment and the July 29, 2019 order.

RSC § 2524.3 (b) provides for a tenant's eviction where "[t]he tenant is committing or permitting a nuisance in such housing accommodation or the building containing such housing accommodation." "A nuisance is a condition that threatens the comfort and safety of others in the building" (*Frank v Park Summit Realty Corp.*, 175 AD2d 33, 35 [1991], *mod on other grounds* 79 NY2d 789 [1991]; [accord *Mautner-Glick Corp. v Tunne*, 38 Misc 3d 126\[A\], 2012 NY Slip Op 52320\[U\] \[App Term, 2d Dept, 2d, 11th & 13th Jud Dists 2012\]](#)). To constitute a nuisance, the tenant's use of property "must interfere with a person's interest in the use and enjoyment of land," which "encompasses the pleasure and comfort derived from the occupancy of land and the freedom from annoyance" ([Domen Holding Co. v Aranovich](#), 1 NY3d 117, 123-124 [2003]).

The determination of a trier of fact as to issues of credibility is given substantial deference, as a trial court's opportunity to observe and evaluate the testimony and demeanor of the witnesses affords it a better perspective from which to assess their credibility (*see Northern Westchester Professional Park Assoc. v Town of Bedford*, 60 NY2d 492, 499 [1983]; [Hamilton v Blackwood](#), 85 AD3d 1116 [2011]; [Zeltser v Sacerdote](#), 52 AD3d 824, 826 [2008]). Here, the record supports the Civil Court's determination that tenant's conduct constituted a nuisance. Multiple witnesses testified to a consistent pattern of tenant making unsubstantiated noise complaints and using harassing or derogatory language toward landlord's employees, which conduct had a detrimental effect upon landlord's employees. Indeed, tenant admitted that she had made numerous noise complaints to landlord's employees. Though tenant argues on appeal that the Civil Court erred in crediting the testimony of landlord's witnesses, the record contains voluminous documentary evidence supporting their testimony, and tenant's own testimony and evidence also support landlord's allegations.

Tenant's remaining contentions lack merit or are unpreserved for appellate review.

As the warrant of eviction has been executed, the appeal from the July 29, 2019 order is moot.

Accordingly, the final judgment is affirmed and the appeal from the order dated July 29, 2019 is dismissed as moot.

WESTON, J.P., GOLIA and BUGGS, JJ., concur.

ENTER:

Paul Kenny

Chief Clerk

Decision Date: July 22, 2022

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