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Jusino v. Myers

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[*1]

Jusino v Myers
2022 NY Slip Op 50779(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This opinion is uncorrected and will not be published in the printed Official Reports.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
2021-195 K C

James Jusino, Petitioner-Respondent,

against

**Gayther Myers and Carole Myers, as Trustees of the Myers Living Trust, Appellants, New
York City Department of Housing Preservation and Development, Respondent.**

Law Offices of Lee M. Nigen (Lee M. Nigen of counsel), for appellants. Mobilization For Justice (Justin R. La Mort of counsel), for petitioner-respondent. Housing Litigation Bureau (Julia Lynn Wilson of counsel), for respondent (no brief filed).

Appeals from orders of the Civil Court of the City of New York, Kings County (Michael L. Weisberg, J.), dated April 8, 2021 and September 23, 2021, respectively. The order dated April 8, 2021 granted tenant's motion to hold Gayther Myers and Carole Myers, as Trustees of the Myers Living Trust, in civil contempt and for the assessment of civil penalties against them in an HP proceeding. The order dated September 23, 2021, insofar as appealed from and as limited by the brief, upon granting the branch of a motion by Gayther Myers and Carole Myers, as Trustees of the Myers Living Trust, seeking leave to renew their opposition to tenant's contempt motion, adhered to the original determination.

ORDERED that, on the court's own motion, the appeals are consolidated for purposes of

disposition; and it is further,

ORDERED that the appeal from the order dated April 8, 2021 is dismissed, as that order was superseded by the order dated September 23, 2021, made upon reargument and renewal; and [*2]it is further,

ORDERED that the order dated September 23, 2021, insofar as appealed from, is affirmed, without costs.

In this HP proceeding commenced by tenant against Gayther Myers and Carole Myers, as Trustees of the Myers Living Trust (respondents), tenant and respondents entered into a consent order of the Civil Court dated January 6, 2020 in which respondents agreed to repair all outstanding violations issued by the New York City Department of Housing Preservation and Development (HPD). Tenant subsequently moved, by order to show cause dated August 18, 2020, to hold respondents in contempt of court for failure to correct the outstanding violations listed in the HPD reports and require them to comply with all of the terms of the January 6, 2020 order, and for the assessment of civil penalties against them. In an order dated April 8, 2021, the court granted tenant's motion and set the matter down for a hearing on the amount of civil penalties. Respondents moved for leave to reargue and renew their opposition to tenant's motion. In an order dated September 23, 2021, the Civil Court granted the branches of respondents' motion seeking reargument and renewal and, upon reargument and renewal, adhered to the original determination. Respondents separately appeal from the April 8, 2021 order and from so much of the September 23, 2021 order as adhered to the original determination. In their brief submitted on the appeal from the September 23, 2021 order, they limit their arguments to why tenant's motion should be denied upon renewal.

Respondents did not initially submit any affidavits based on personal knowledge in opposition to tenant's motion (*see Matter of Garbitelli v Broyles*, 257 AD2d 621 [1999]). The allegations in the affidavit submitted by respondents on renewal were either too general to rebut the very specific allegations made by tenant in his motion (*see El-Dehdan v El-Dehdan*, 114 AD3d 4 [2013], *affd* 26 NY3d 19 [2015]; *Jaffe v Jaffe*, 44 AD3d 825 [2007]), or were irrelevant to the conditions that were the basis for tenant's motion. The affirmation submitted by respondents' attorney contained similarly insufficient allegations and, in any event, was made "upon information and belief," not personal knowledge.

Accordingly, the order dated September 23, 2021, insofar as appealed from, is affirmed.

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

ENTER:

Paul Kenny

Chief Clerk

Decision Date: July 22, 2022

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