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Brown v. Messam

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Brown v Messam
2022 NY Slip Op 50990(U)
Decided on October 4, 2022
Civil Court Of The City Of New York, Queens County
Guthrie, J.
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This opinion is uncorrected and will not be published in the printed Official Reports.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 October 4, 2022

Civil Court of the City of New York, Queens County

<p>Alicia K. Brown, Petitioner,</p> <p>against</p> <p>Anthony Messam, Respondent,</p> <p>DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT, Respondent.</p>
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Index No. L & T 309205/21

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Clinton J. Guthrie, J.

PROCEDURAL HISTORY

This HP action for an order to correct and for a finding of harassment and related relief was commenced in December 2021. On February 9, 2022, petitioner (represented by counsel) [*2] and respondent Anthony Messam (hereinafter "Mr. Messam") consented to an order to correct. The order provided for access and repairs of open DHPD violations. The action was adjourned for resolution of petitioner's harassment claims. Following additional adjournments, petitioner's attorney appeared on May 16, 2022 and acknowledged that all repairs were completed. The action was set for trial on the harassment claims on June 30, 2022. On June 30, 2022, the trial commenced. Mr. Messam was present on June 30, 2022 and petitioner testified. The trial continued and was adjourned to July 14, 2022. On July 14, 2022, Mr. Messam failed to appear. Petitioner concluded her case and rested. Petitioner's attorneys requested leave to submit a memorandum of law, which was granted. The memorandum was filed on July 29, 2022 and the court reserved decision.

TRIAL

At petitioner's request, the court took judicial notice of the initiating order to show cause and petition, which were marked as Exhibit 1. The court also admitted subpoenaed DHPD documents as petitioner's Exhibit 2 without objection and took judicial notice of the court file for Index No. HP 212/19 (a prior case involving the parties). Petitioner Alicia Brown testified that she moved into the subject apartment in April 2018. Ms. Brown then testified about the execution of her lease with Mr. Messam and the lease was admitted as petitioner's Exhibit 3.

Ms. Brown next testified that she lives in the subject premises with her 2 children. She testified that her landlord is Anthony Messam and that she knows this based on her rental agreement with him. She also testified that there are 3 units in her building; she explained that she is on the first floor, another unit is on the second floor, and a third unit is in the basement. When asked why she brought the 2019 case (HP 212/19), she testified that her son got sick in 2019 and that she had continuous conversations with her landlords about maintenance and repairs. She testified to text exchanges with Petagaye Messam, who represented that she was Mr. Messam's wife. Ms. Brown testified that she raised issues of windows, insects, and a leak in the bathroom with Petagaye Messam. The specific problems

with the windows were that they were unable to open and shut, and that the window in the master bathroom was nailed shut. She acknowledged that her windows were finally repaired only in 2021.

Ms. Brown testified to a text message exchange with Petagaye Messam in August 2019, which was identified as petitioner's Exhibit 4. The exchange involved references to repairs needed in Ms. Brown's apartment and to her Section 8 rent share. Over respondent's objection, Exhibit 4 was admitted. Ms. Brown testified that her son getting sick in 2019 caused her to revisit the issue of the windows and led to her commencing the HP case in 2019. She testified that repairs were not completed pursuant to an order to correct and that she had to restore the case; after bringing the case back in October 2019, a repair person boarded the windows in her son's bedroom. Thereafter, Ms. Brown was served with a 60-day notice terminating her tenancy. The notice stated that her tenancy would terminate in January 2020.

Ms. Brown next testified about the hot water and heat being turned off. The police were called and a report was made. She also reached out to respondent's then-attorney, but nothing was done. In October/November 2019, the electricity was turned off and the inspector also came to check the heat and hot water. She testified that she left temporarily left the apartment in December 2019, when she had no electricity. At the time, she had one child who was 12-13 years old. At the time that she had no electricity on the first floor, there was still electricity on [*3]the second floor. Ms. Brown testified that through the winter of 2019-2020, she had no electricity and no heat; the electricity was restored in February 2020. The court admitted as petitioner's Exhibit 5 a text message exchange between Ms. Brown and Mr. Messam from December 2019, wherein she advised him of the lack of electricity and the continued problems with the windows.

Ms. Brown testified that when she returned to the apartment in February 2020, she continued to have the same problems with the windows and that the refrigerator would power down and defrost on its own. She testified that when she first raised the issue of the refrigerator with Mr. Messam, he asked her to move. Admitted as petitioner's Exhibit 3 was a text message exchange between Ms. Brown and Mr. Messam from October 2019, where the issues with the refrigerator were discussed. Admitted as petitioner's Exhibit 6 was a receipt for a small refrigerator that Ms. Brown testified that she purchased after she could not get her refrigerator repaired. [\[EN1\]](#) Ms. Brown explained that the new refrigerator was purchased because food had spoiled in the malfunctioning refrigerator.

Ms. Brown testified that she also notified Mr. Messam that she did not have heat and would purchase heaters. The court admitted as petitioner's Exhibit 8 a Walmart receipt for a space heater that Ms. Brown testified that she purchased. [\[FN2\]](#) Ms. Brown testified that she purchased the space heater after she tried to communicate with Mr. Messam several times about the lack of heat. She further explained that she did not have issues with heat until after she brought the 2019 HP case.

Ms. Brown next testified about garbage piling up at the subject premises in February 2020. She testified that she contacted Mr. Messam and also called 311. Admitted as petitioner's Exhibit 9 was a text message between Ms. Brown and Mr. Messam from May 2020, wherein Ms. Brown advised Mr. Messam of the need for garbage removal. In June 2020, Mr. Messam responded and advised Ms. Brown instead to pay for an exterminator (presumably related to the insect infestation caused by the garbage accumulation) and deduct it from her rent (which she did).

Ms. Brown testified that in October 2020, she brought another HP case after her water was turned off. She called the police and communicated with Mr. Messam. She called a plumber 2 days after Mr. Messam stated that he would have a plumber. Although she hired multiple plumbers, they could not get access to restore the water. Admitted as petitioner's Exhibit 10 was a receipt for one of the plumbers hired by Ms. Brown. [\[FN3\]](#) Ms. Brown testified that she was pregnant with her second child at the time of the water outage and was without water for 24 hours before she called the first plumber. Admitted as petitioner's Exhibit 11 was a receipt for a second plumber hired by Ms. Brown. [\[FN4\]](#) The receipt acknowledged that the plumber unclogged a toilet.

Ms. Brown testified about the 2020 HP case (Index No. 658/20). She explained that she made a stipulation with Mr. Messam and that she agreed to give access for repairs. She testified to problems with the access, which required the police to be called. She also testified that Mr. [\[*4\]](#)Messam continued to turn off her utilities thereafter. After she gave birth to her daughter in October 2020, the heat was turned off (in November 2020). She again called the Mr. Messam, as well as the fire department and plumbers. The plumbers once more failed to get access to the basement to check the boiler. Admitted as petitioner's Exhibit 12 was a photo of Ms. Brown's thermostat from December 8, 2020, showing a temperature of 49 degrees Fahrenheit. She testified that she took the photograph to document the temperature, as Mr. Messam had accused her of creating the issue with the heat. Admitted as petitioner's Exhibit 13 was a receipt from a plumber who made a service visit in November 2020 (though

Ms. Brown testified that the plumber could not get access to the boiler). [\[EN5\]](#)

When asked if the heat was restored in December 2020, Ms. Brown testified that it was on but to an unbearable degree. She believed that the temperature was near 100 degrees Fahrenheit. She testified that the heat was on and off through the winter of 2020-2021. She called 311 several times. The court took judicial notice of the DHPD violations recorded pursuant to Multiple Dwelling Law § 328(3).

Ms. Brown next testified about an electricity shutoff in her apartment in June 2021. She made a police report and called 311. She testified that the electricity was off for one month. She also testified about a leak from upstairs that caused a collapsed ceiling. The court admitted as petitioner's Exhibit 14 a video documenting the lack of electricity in Ms. Brown's apartment. Ms. Brown testified that her daughter was only 5-6 months old at the time of the electricity outage and that she had to store milk for her at her mother's home.

Ms. Brown next testified about an inspection by NYCHA Section 8 in the summer of 2021. The court admitted as petitioner's Exhibit 15 a notice from NYCHA Section 8, dated July 8, 2021, informing Ms. Brown of Housing Quality Standards (HQS) violations in her apartment. She testified that the HQS violations were not immediately repaired and that repairs were only begun when she brought the instant HP case. She testified that she brought this HP case because "issues were taking forever to get resolved." She also explained that Mr. Messam wanted her to move and described an incident where he kicked in her door and was arrested. Additionally, she had problems with her kitchen sink, which would not drain. She described another incident where Mr. Messam had installed a hose to suction water from the sink outside; on one occasion, he turned the hose into her face and told her she needed to move.

With regard to the incident where the door was kicked in, Ms. Brown testified that she took a photograph of the door because a detective who had responded to the incident had asked her for one. The photograph as admitted as petitioner's Exhibit 16. She also testified that she was issued an order of protection against Mr. Messam as a result of the incident. A copy of the criminal order of protection was admitted as petitioner's Exhibit 17. She explained that she pressed charges against Mr. Messam because the door incident was a continuation of other provocations by Mr. Messam.

Ms. Brown concluded her testimony by describing the ongoing issues with garbage not being properly disposed at the premises. She explained that the garbage attracted flies and other bugs. The court admitted as petitioner's Exhibits 18 and 19 two photographs of garbage

piled up in front of Ms. Brown's apartment building.

When Ms. Brown concluded her testimony on July 14, 2022, Mr. Messam was not [*5]present; therefore, there was no cross-examination of Ms. Brown. No other witnesses were called on behalf of petitioner.

DISCUSSION AND CONCLUSION

The trial testimony and evidence established that respondent Anthony Messam engaged in harassment against petitioner in violation of NYC Admin. Code § 27-2005(d). Specifically, the testimony and evidence established acts and omissions by Mr. Messam that constituted "force against any person lawfully entitled to occupancy of such dwelling unit" (NYC Admin. Code § 27-2004(a)(48)(ii)(a)), "repeated interruptions [and] discontinuances of essential services" (NYC Admin. Code § 27-2004(a)(48)(ii)(b)), and "repeated failures to correct hazardous [and] immediately hazardous violations of [the Housing Maintenance Code] within the time required for such corrections" (NYC Admin. Code § 27-2004(a)(48)(ii)(b-2)). Ms. Brown's credible testimony, as supplemented by the exhibits, described frequent interruptions of electricity service, periods of lack of heat (and also of excessive heat), hot water, and water generally, lack of garbage collection, infestations of insects, defective windows, a defective refrigerator, and plumbing problems, including a clogged kitchen sink and a leak in the bathroom. The DHPD records confirm that hazardous and immediately hazardous violations were issued for these conditions (and others in addition) and were not corrected within the time required for their correction under the Housing Maintenance Code. [\[FN6\]](#)

Additionally, the credible testimony and evidence demonstrated that Mr. Messam used force to intimidate and harass Ms. Brown and her family by kicking in her door and turning a hose in her face. [See *Berg v. Chelsea Hotel Owner, LLC*, 203 AD3d 484](#), 485 [1st Dept 2022]. Although the subject premises is a private dwelling where the rebuttable presumption that the aforementioned acts of harassment were intended to cause Ms. Brown to vacate or otherwise surrender or waive her rights does not apply (*see* NYC Admin. Code § 27-2004(a)(48)(ii)), the trial testimony and evidence established the requisite intent. [\[FN7\]](#) The numerous interruptions of essential services and failures to timely correct multiple hazardous and immediately hazardous violations, coupled with the instances of outright force employed by Mr. Messam against Ms. Brown and Mr. Messam's messages and statements to Ms. Brown asking her to move exhibited a clear intent to cause Ms. Brown to vacate and surrender her

rights as a tenant. Since Mr. Messam did not appear to cross-examine Ms. Brown or testify on his own behalf, the evidence of intent was unrebutted.

Having determined that Mr. Messam engaged in harassment against Ms. Brown under the Housing Maintenance Code, the court hereby ORDERS following relief pursuant to NYC [*6]Admin. Code §§ 27-2115(m) and § 27-2115(o):

(A) The court finds that a class "C" violation existed as a result of the harassment and that such violation existed at the time that this action was commenced (December 29, 2021). The court further finds that the violation is not deemed a continuing class "C" violation;

(B) The court restrains Anthony Messam from violating NYC Admin. Code §§ 27-2005(d) and 27-2004(a)(48), and is directed to ensure that no further violation occurs;

(C) The court imposes a civil penalty against Anthony Messam in the amount of \$9,000.00, which shall be subject to a judgment in favor of DHPD;

(D) The court awards statutory compensatory damages in the amount of \$1,000.00 to petitioner, which shall be subject to a judgment in favor of petitioner and against Anthony Messam; although petitioner put forth evidence of actual losses at trial, they totaled less than \$1,000.00, so the statutory amount is imposed;

(E) The court awards statutory punitive damages in the amount of \$5,000.00 to petitioner, which shall be subject to a judgment in favor of petitioner and against Anthony Messam, as the testimony and evidence established flagrant and egregious conduct on the part of Mr. Messam by frequently interrupting essential services, failing to correct hazardous and immediately hazardous violations in a timely manner, and using direct force against petitioner (*see e.g. Leung v. Zi Chang Realty Corp.*, 74 Misc 3d 126[A], 2022 NY Slip Op 50034[U] [App Term, 1st Dept 2022]; *Caban v. Silver*, 2019 NYLJ LEXIS 458, *17 [Civ Ct, Kings County, January 9, 2019, Index No. 3383/18]); and

(F) The court will award petitioner reasonable attorneys' fees, in accordance with NYC Admin. Code § 27-2115(o). The fees hearing will be scheduled for November 7, 2022 at 2:30 PM, in Part C, Room 407, 89-17 Sutphin Boulevard, Jamaica, New York 11435. Any pre-marked exhibits for the fees hearing shall be emailed to the court (qn-housing-407@nycourts.gov) on or before November 3, 2022.

This Decision/Order will be filed to NYSCEF, mailed to Mr. Messam, and emailed to the attorneys for DHPD. The parties are directed to pick up their exhibits within 35 days or

they will be sent to the parties or destroyed at the court's discretion in accordance with DRP-185.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

Dated: October 4, 2022

Queens, New York

HON. CLINTON J. GUTHRIE, J.H.C.

Footnotes

Footnote 1: The cost of the refrigerator with tax was \$118.67.

Footnote 2: The cost of the heater was \$82.24.

Footnote 3: The service fee on the receipt was \$85.00.

Footnote 4: The service fee on the receipt was \$260.00.

Footnote 5: The service fee on the receipt was \$85.00.

Footnote 6: The court also observes that although petitioner acknowledged repairs relevant to this action were completed before the trial, the DHPD website's open violations report for the subject premises (reviewed on October 4, 2022 pursuant to Multiple Dwelling Law § 328(3)) confirms that several of the hazardous and immediately hazardous violations remain uncertified as corrected. *See Dept. of Hous. Preserv. & Dev. v. Knoll*, 120 Misc 2d 813, 814 [App Term, 2d Dept 1983]

Footnote 7: While Ms. Brown testified about there being 3 units, this was not corroborated by any evidence.

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