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**Department of Hous., Preserv. & Dev. of the City of
N.Y. v Jones**

2022 NY Slip Op 33589(U)

October 18, 2022

Civil Court of the City of New York, Kings County

Docket Number: Index No. 301626/21

Judge: Sergio Jimenez

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This opinion is uncorrected and not selected for official publication.

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF KINGS: HOUSING PART B

-----X

DEPARTMENT OF HOUSING, PRESERVATION AND
DEVELOPMENT OF THE CITY OF NEW YORK,

Index No. 301626/21

Petitioner,

-against-

DECISION AND ORDER

LAMAR JONES, GILMER HOLDING CORP., and
LYNNE CALLENDER,

Respondents.

-----X

Present:

Hon. Sergio Jimenez
Judge, Housing Court

Recitation, as required by CPLR § 2219(a), of the papers considered in the review of petitioner’s motion (Seq. 3) for contempt any other relief as the court may find appropriate:

Papers Numbered

Notice of Motion with affidavits and exhibits (Seq. 3).....1 (NYSCEF #39-51)

In this Housing Part (HP) proceeding, the parties settled the dispute with a consent order dated June 15, 2021, which required the fixing of DHPD violations within a certain time frame. On November 10, 2021, the parties entered into a second consent order, which required the fixing of DHPD violations within a certain time frame and awarded DHPD \$12,000.00 in civil penalties. Petitioner, in the instant motion seeking civil contempt, alleges that the conditions remain. On August 23, 2022, DHPD, through counsel, and respondent pro se, appeared, and the court heard argument. Upon hearing argument, the court reserved decision.

Motion for Contempt

Petitioner now moves for contempt and costs/fees against the respondent pursuant to Judiciary Law §774, the Housing Maintenance Code §27-2124 and CPLR §5104. The moving party bears the prima facie burden of proof to obtain the relief sought (See *Gravel v. Cicola*, 297 AD2d 620 [App Div 2d Dep't, 2002]; *Matter of Stop & Shop Cos. Inc. v. Assessor of the City of New Rochelle*, 32 Misc3d 496 [Sup Ct Westchester County 2011]). 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 NYS2d 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 NYS2d 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 NYS2d 508 [App. Div. 3d 2010]).

The court accepted the consent order to correct in June 2021. The court subsequently accepted a second consent order to correct in November 2021. It was not disputed that both orders were lawful, gave an unequivocal mandate, and were in effect. Respondents' knowledge of the orders are not disputed as both consent orders were entered into while respondents had counsel. Respondents now pro se did not submit opposition to DHPD's motion for contempt and civil penalties. Petitioner has attached DHPD's violation report showing 182 outstanding violations.¹

¹ Petitioner's Exhibit I. See NYSCEF #49.

Petitioner has met their burden to show actual prejudice as the continued existence of HPD violations constitutes prejudice as a matter of law. (*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]). The court finds that petitioner has made a prima facie showing that service of the instant motion was appropriate, and respondent did not challenge service nor submit opposition papers.

The court finds that the repairs have not been completed, that the conditions remain as per DHPD's current violation report, of which the court is authorized to take judicial notice. The time frame for the violations have run since the consent orders from June and November 2021.

Conclusion

The motion is granted to the extent of finding respondent in civil contempt of this court's order. Each respondent to pay petitioner \$250.00 by November 30, 2022. Upon default, petitioner may restore by order to show cause for appropriate relief, including moving for a judgment. Petitioner, through counsel, did request legal fees but did not present any proof/testimony as to this request. As such, the request is denied without prejudice.

The court credits DHPD's math calculation and grants a \$2,045,390.00 judgment consisting of 262 days of the forty-eight (48) C violations for \$125 each day; 87 days of the twenty-two (22) C violations for \$125 each day; 239 days of the eighty-six (86) B violations at \$10 per day; and 110 days of the twenty-six (26) B violations at \$10 per day. Judgment is to be entered in favor of DHPD against Lamar Jones, Gilmer Holding Corp., and Lynne Callender in the amount of \$2,045,390.00. The amount to be paid by January 31, 2023. Respondent may seek an extension of time to pay by order to show cause, which the court will entertain on good cause. If respondent fails to do so within the allocated timeframe, the judgment may be taken by DHPD as a lien against the subject premises at Block 1851/Lot 63.

The previous orders remain in effect, and this is without prejudice to seeking further civil penalties as well as further contempt. This constitutes the Decision and Order of the Court.

Dated: October 18, 2022
Brooklyn, New York



Sergio Jimenez
Judge, Housing Court

Sergio Jimenez, JHC

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