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G&M REALTY I LLC v. MONELL

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

G&M REALTY I LLC

L&T Index No.: 7139/2020

Petitioner

DECISION/ORDER

-against-

MARYSHELL MONELL;
JOHN DOE; JANE DOE

Respondents.

Recitation, as required by CPLR § 2219 (a), of the papers considered in the review of the respective motions.

PAPERS	NUMBERED
Petitioner's Notice of Motion	1 (NYSCEF Docs. # 15)
Respondent's Cross-Motion; Memorandum of Law; & Affirmation	2 (NYSCEF Docs. #'s 29 - 33)
Petitioner's Opposition & Reply	3 (NYSCEF Docs. #'s 35 -36)

Upon the foregoing cited papers, the Decision and Order on Petitioner's Notice of Motion and Respondent's Cross-Motion is as follows:

BACKGROUND

G&M Realty I LLC ("Petitioner") commenced this holdover summary eviction proceeding to recover possession of the premises located at 1268 Stratford Ave., Apartment E-6, Bronx, New York. The proceeding and the underlying predicate notice was based upon the termination of the named Respondents tenancy pursuant to Rent Stabilization Code 2524.3(d); RPL 231; and RPAPL 711(5) and 715(1). In short, on the basis that the Respondents were utilizing the premises to facilitate trade in illegal drugs. On August 12, 2021, following inquest, the Court granted Petitioner a final judgment of possession against Maryshell Monell, John Doe, and

Jane Doe. The proceeding was discontinued, at Petitioner's request, against Respondents Ian Carty, Rupert Blake, and William Santana-Pena.

Petitioner thereafter moved this Court for a finding that all requirements of AO/261/21 have been satisfied and for an order permitting execution of the warrant of eviction. Respondent Maryshell Monell ("Respondent Monell"), represented by counsel, filed a cross-motion seeking, *inter alia*, an order 1) appointing a *guardian ad litem* pursuant to CPLR 1201 and 1202 over Respondent Monell by reason that she was suffering under a disability; 2) vacating the default judgment and warrant; 3) permitting Respondent Monell to file a late answer pursuant to CPLR 3012(d); and 4) denying Petitioner's motion. The respective motions are consolidated for disposition herein.

MERITS

The primary question before this Court (and that which will decidedly resolve the remaining prongs on all of the respective motions) is whether Respondent Monell was (and continues to be for that matter) a person incapable of adequately defending her interest in this proceeding such that she was in need of a *guardian ad litem* prior to the entry of the default judgment. If the Court answers this question in the affirmative, then it follows naturally that no default judgment should have been entered against her. And, in finding a need for the appointment of a *guardian ad litem* at or before the time that such default was entered, such judgment should be vacated; Petitioner's motion, in turn, denied; and the remaining prong seeking permission to file a late answer would positively follow suit provided the requisite criteria have been met.

The stated disability which Respondent espouses in her motion is that she is suffering from drug addiction and its negative effects. At the outset, the Court must acknowledge that certain negative attitudes exist and continue to persist in the public realm as it pertains to those individuals who suffer from drug and alcohol addiction. These negative attitudes generally hold that drug and alcohol addictions are moral failings and a voluntary and conscious choice among those engaging in such behavior: with such attitudes intensifying the individual's own shame or guilt that is associated with the addiction and their efforts at recovery. The Court, however, is further aware of a large, long-standing, and growing body of medical literature that negates the general view. In contrast to the general public perception, the medical field now views addiction as a complex disease whose origin includes a variety of factors including but not limited to individual differences in a person's brain function; the role of genetics; and environmental and epidemiologic factors. This understanding of alcohol and drug addiction is not strictly limited to the medical profession but has, in fact advanced into the legal field. For example, under the New York City Human Rights Act, in the case of alcoholism, drug addiction or other substance abuse, the term "disability" applies to a person who is recovering or has recovered and is free of such abuse (Administrative Code of City of

N.Y. § 8–102[16][c]). The General Regulations of the New York State Division of Human Rights similarly provide that drug addiction is a disease (9 NYCRR 466.11[h][1]). The Court admits that the view of a person suffering from drug or alcohol addiction is more nuanced and complex than the limited citations provided herein. Reference, however, is made to the aforementioned statutes to acknowledge that an individual suffering from an addiction can be considered disabled from a legal standpoint.

Here, by Respondent Monell's own admission, she is in recovery for substance abuse issues and receives ongoing drug treatment through a program at the Ramon Velez Health Care Center. Respondent Monell further admits that she has been enrolled in this program for at least three (3) years (or before the commencement of the instant holdover proceeding). As part of her treatment, Respondent Monell receives medication, including methadone, which she avers has negative side effects on her cognitive functions: a disability which existed at the outset of the proceeding and was maintained throughout. Therefore, based on the facts before the Court and in the record, Respondent's motion is granted to the extent of vacating the default judgment against her and appointing a *guardian ad litem*. To be clear, the Court is not espousing a blanket statement that all individuals suffering from addiction require a *guardian ad litem*. However, given the level of addiction suffered by the Respondent herein; the negative effects of the treatment which reduce cognitive functioning and require a third-party person (social worker) to manage Respondent's medical appointments and affairs, the Court finds the appointment appropriate. The diminished cognitive functioning directly resulted in the defaults which occurred prior to and leading up to the entry of the judgment following inquest and impeded Respondent's ability to present a defense.

In affording the relief herein, the Court is similarly cognizant of the nature of the underlying allegations; the current climate; and the increased rate of crime in this City. The Court, however, notes that the relief afforded herein should not endanger the safety and health of other residents in the building. Although it not a defense to the proceeding, the criminal charges against Respondent Monell were dismissed and Petitioner abandoned its claims against the other named Respondents who were subject to arrest and criminal prosecution given that the same no longer have any possessory interest in the subject premises. It is the Courts view that the case should decided on the merits not withstanding Respondent's disability and that Respondent should be entitled to assert her defenses to Petitioner's claims. Specifically, to challenge that the subject premises were used for "ongoing" illegal activity. To that end, Respondent's remaining prong seeking permission to serve a late answer is similarly granted. The answer, which is annexed as Exhibit "G" to Respondent's motion, shall be deemed served and filed, *nunc pro tunc*.

CONCLUSION

Accordingly, it is hereby:

ORDERED, that Petitioner's motion is DENIED in its entirety; and it is further

ORDERED, that Respondent's cross-motion is GRANTED in its entirety; and it is further

ORDERED, that the default judgment against Respondent Monell is hereby vacated; and it is further

ORDERED, that the Court shall appoint a *guardian ad litem* over Respondent Monell; and it is further

ORDERED, that Respondent's Answer annexed to the moving papers as Exhibit "G" shall be deemed interposed, served, and filed, *nunc pro tunc*; and it is further

ORDERED, that this matter is restored to the Court's calendar in Part L, Room 450 on February 1, 2023 @ 2:45p.m.

This constitutes the Decision/Order of this Court.

Dated: Bronx, New York
December 28, 2022



HON. KRZYSZTOF LACH
Judge, Housing Court