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[*1]

Ferreira v Guillaume
2023 NY Slip Op 50323(U) [78 Misc 3d 1222(A)]
Decided on April 7, 2023
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This opinion is uncorrected and will not be published in the printed Official Reports.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 April 7, 2023

Civil Court of the City of New York, Queens County

<p style="text-align: center;">Stephania Ferreira, Petitioner,</p> <p style="text-align: center;">against</p> <p style="text-align: center;">Fritz Guillaume, Respondent, And NEW YORK CITY DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT (DHPD), Respondent.</p>

Index No. HP 311375/22

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Clinton J. Guthrie, J.

CIVIL CONTEMPT

I. Hearing.

Petitioner, through counsel, made a motion for civil and criminal contempt in September [*2]2022. By Decision/Order dated October 17, 2022, this court found that respondent Fritz Guillaume was in civil contempt of the court's August 10, 2022 order, which had required correction of all open "C" (immediately hazardous) DHPD violations at the subject premises. The court incorporates by reference all findings made in the October 17, 2022 Decision/Order and adopts them herein. On October 17, 2022, the court adjourned the civil contempt motion solely for a hearing on an appropriate fine/punishment under Judiciary Law § 773.

On November 16, 2022, this court held the fine/punishment hearing. [FN1] At the hearing, petitioner Stephania Ferreira and petitioner's attorney, Jennifer Akchin, Esq., testified (the latter only as to fees) on behalf of petitioner. Ms. Ferreira testified that she had been unable to reside at the subject premises since mid-August 2022 because of the conditions. She stated that she had been "tremendously impacted" financially. She has had to pay for rent to stay at another location (her sister's home in Long Island) and pay for Long Island Railroad (LIRR) and Uber fares for transportation to-and-from her sister's home. She testified that she had given her sister \$2,800.00 to \$2,900.00 in rent since she started staying with her. When asked if her living situation at her sister's home was comparable with her living situation at the subject premises, she replied that it was not. She stated that the typical trip each morning was 8 to 10 dollars. She also stated that she had additional food expenses of over \$100.00 per week since August 2022, since she had to buy food because she could not cook at her sister's home. When asked what the effect of the displacement was, she replied that it was hell. She further described it was being homeless with a home.

Ms. Ferreira also testified about the impact of the displacement on her children. She stated that her son, who is in college, has had to take on the role of his younger sister's babysitter while Ms. Ferreira is working and commuting.

Ms. Akchin testified as to her experience as an attorney. She testified that she is employed by TakeRoot Justice. She has worked at TakeRoot as a law graduate, then as a staff attorney. She testified that she was admitted to practice law in June 2021 and had solely done tenant-side representation. She testified that she is seeking a rate of \$275.00 per hour based on her experience.

The court marked for identification petitioner's Exhibit 1, a breakdown of Ms. Akchin's hours spent on the case (with time on the harassment and contempt portions of the case separately labeled). She testified that the breakdown is a spreadsheet created by Legal Server, a software used by TakeRoot for time recordkeeping. She testified that she had personal knowledge of the time recorded and that it was entered within a reasonable time of the tasks described. Exhibit 1 was admitted.

Upon the court's inquiry as to the basis for the rate of \$275.00 that was sought, Ms. Akchin replied that it reflected her rate based on case law of this court. The court takes judicial notice of its "amended decision/order" dated September 16, 2022, in *Williams et al. v. Prashad et al.*, Index No. L&T 301880/21 [Civ Ct, Queens County 2022 (NYSCEF Doc. 35)], which held that Ms. Akchin was entitled to an hourly rate of \$275.00 based on her experience and comparable rates charged by attorneys with similar experience levels in the community.

Mr. Guillaume appeared after the commencement of the hearing and after petitioner rested, he briefly testified. He testified that he "doesn't like problems" and said that there was hot and cold [*3] water 24 hours a day at the subject building. He stated that Ms. Ferreira causes problems and stated that her apartment is in "perfect condition." Mr. Guillaume then rested and the hearing concluded.

II. Appropriate fine/penalty (Judiciary Law §§ 770 and 773).

As stated previously, the October 17, 2022 Decision/Order found that Fritz Guillaume was in civil contempt of the August 10, 2022 order. There was no demonstration at the hearing by Mr. Guillaume that he has corrected any of the immediately hazardous violations at issue. As of the date of the hearing, the "C" violations ordered to be corrected in the August 10, 2022 order remained open and uncertified as corrected on the DHPD website. [FN2] Therefore, Mr. Guillaume remains in civil contempt upon his disobedience of an unequivocal mandate in a court order, which he had knowledge of via service, and which has resulted in prejudice to petitioner. [See *El-Dehdan v. El-Dehdan*, 26 NY3d 19, 29 \[2015\].](#)

Having determined that Fritz Guillaume is in civil contempt of the court's August 10, 2022 order, an appropriate civil contempt penalty must be imposed. *See* Judiciary Law § 753. A civil contempt penalty must be "designed not to punish but, rather, to compensate the injured private party or to coerce compliance with the court's mandate or both." *Dept. of Env'tl. Protection v. Dept. of Env'tl. Conservation*, 70 NY2d 233, 239 [1987]. Upon the facts and circumstances before the court, it is ORDERED AND ADJUDGED that both a fine and incarceration will be imposed. The violations at issue herein relate to the lack of multiple essential services in the subject premises: electricity, cold water, hot water, heat, and cooking gas. Mr. Guillaume's assertions that petitioner's apartment was in "perfect condition" were conclusory, unsubstantiated by evidence, and utterly failed to rebut the prima facie evidence of the open violations. In the absence of the essential services described, petitioner's apartment is not fit for human habitation and the conditions constitute a risk to petitioner's health and the health of her family. *See Dept. of Hous. Preserv. & Dev. v. De Bona*, 101 AD2d 875, 875-876 [2d Dept 1984]; *Cartagena v. Rhodes 2 LLC*, 30290[U] [Sup Ct, NY County 2020].

Petitioner described estimates of amounts spent on various items, including transportation, food, and alternative housing. However, these were not corroborated by any evidence. While petitioner was a credible witness, the court does not find that the losses were proven "with reasonable certainty." *See E.J. Brooks Co. v. Cambridge Sec. Seals*, 31 NY3d 441, 449-450 [2018]; *Roach v. 215 Sterling LLC*, 74 Misc 3d 1221[A], 2022 NY Slip Op 50193[U] [Civ Ct, Kings County 2022, Stoller, J.]. Accordingly, the court will impose the statutory amount of \$250.00, plus petitioner's attorney's fees, as a fine. *See* Judiciary Law § 773; *Barclays Bank, PLC v. Hughes*, 306 AD2d 406, 407 [2d Dept 2003]; [Jamie v. Jamie](#), 19 AD3d 330, 330 [1st Dept 2005].

Ms. Akchin's testimony and the evidence admitted supports her requested rate of \$275.00 per hour, based on her relevant experience and comparable rates charged by attorneys with similar experience levels in the community. *See e.g. Gamache v. Steinhaus*, 7 AD3d 525, 527 [*4][2d Dept 2004]; *Matter of Klenfner (Shahid)*, 71 Misc 3d 130[A], 2021 NY Slip Op 50298[U] [App Term, 2d Dept, 2d, 11th & 13th Jud Dists 2021]; [S.B.H. Realty v. Santana](#), 57 Misc 3d 1205[A], 2017 NY Slip Op 51280[U] [Civ Ct, Bronx County 2017]; [Drapala v. Pasan](#), 55 Misc 3d 1222[A], 2017 NY Slip Op 50738[U] [Civ Ct, Kings Count 2017]. The court notes that it previously found this rate to be reasonable in this case, in the November 16, 2022 Decision/Order granting fees on the harassment claim. The time spent by Ms. Akchin, as documented in Exhibit 1, is reasonable in light of the difficulty of the issues

involved, the skill required, and the result obtained by petitioner after inquest on the harassment claims. [*See Diaz v. Audi of Am., Inc.*, 57 AD3d 828](#), 830 [2d Dept 2008] [Listing factors to be considered in determining fees award]. The time documented by Ms. Akchin for work related to the contempt motion is 13.71 hours. The court will add an additional 0.5 hours for the civil contempt hearing on November 16, 2022. Accordingly, at a rate of \$275.00 for 14.21 hours, Ms. Akchin's fees total \$3,907.75.

The civil contempt fine totals \$4,157.75, of which \$250.00 is payable to petitioner and \$3,907.75 is payable to TakeRoot Justice. As further elaborated upon below, respondent shall have 14 days from service of a certified copy of this Decision/Order with notice of entry upon Fritz Guillaume and his attorney, to purge civil contempt (proof of service shall be filed to NYSCEF), with time for mailing added as per CPLR § 2103 if service is made by mailing. If the fine is paid in full and all "C" violations included in the August 10, 2022 order are corrected before the 14 days expire, Mr. Guillaume shall be purged of civil contempt. Petitioner shall not unreasonably deny access for repairs upon notice to her attorney. If Mr. Guillaume fails to purge civil contempt within the 14-day period after service of this Decision/Order, petitioner's attorney may file an ex parte application, supported by an attorney affirmation or affidavit, to NYSCEF requesting the entry of judgments in the amount of any unpaid portion of the civil contempt fine.

If Mr. Guillaume fails to purge contempt within the 14-day period following service of this Decision/Order, the court will also issue an arrest warrant directing the Sheriff of the City of New York to detain Fritz Guillaume and deliver him to the NYC Department of Corrections for commitment to civil jail. Respondent or his attorney must make an application to the court to purge civil contempt. The failure to do so in a timely manner shall not be a defense to the arrest warrant being issued and/or executed following the 14-day stay to permit a purge of contempt.

If Mr. Guillaume is incarcerated as a result of this Decision/Order and the execution of an arrest warrant, he shall continue to have the opportunity to purge civil contempt and be released from custody upon payment of the full fine amount and correction of all "C" violations in the August 10, 2022 order. [*See Matter of Rubackin v. Rubackin*, 62 AD3d 11](#), 16 [2d Dept 2009] ["[T]he civil contemnor is said to hold the keys to the prison."]; [*New York City Tr. Auth. v. Transport Workers Union of Am., AFL-CIO*, 35 AD3d 73](#), 86 [2d Dept 2006] ["Imprisonment during which the contemnor may 'purge' the contempt and obtain early release by committing an affirmative act, is a coercive, civil penalty."]. If no application is made to purge civil contempt by May 3, 2023, the court will schedule a compliance status

thereafter to assess whether a purge of contempt has occurred. *See Midlarsky v. D'Urso*, 133 AD2d 616, 617 [2d Dept 1987] ["The court is vested with broad discretion in determining appropriate conditions upon which a contemnor may purge the contempt."]. Notification of the compliance status will be given to the attorneys for the parties via NYSCEF. The court will direct the Department of Corrections to produce Mr. Guillaume for any compliance status.

[*5] CRIMINAL CONTEMPT

I. Hearing.

Respondent Fritz Guillaume was represented by counsel at the criminal contempt hearing. The hearing began on February 1, 2023 and concluded on March 1, 2023. A Haitian Creole interpreter was present on both dates. Ms. Ferreira testified first. She stated that she was not residing full-time at the subject premises because of the conditions. She stated, however, that she would visit three (3) times per week. She testified that since August 10, 2022, only lights had been restored but that the outlets were not working. She also testified that the cold water was restored, but only in the kitchen.

When asked if she had hot water, heat, or cold water in the bathroom, Ms. Ferreira stated that she did not. She stated that the cold water was restored in the kitchen and the lights were back on during the weekend following September 14, 2022. However, when she went back to the premises on September 19, 2022, the services were off again. She then confirmed during direct examination and later on cross-examination that the cold water in the kitchen and lights were restored again at a later time in September 2022. She stated that she has received no communication from Mr. Guillaume about the remaining services being restored.

When asked if Mr. Guillaume has the ability to restore the services, she replied yes. She stated that she has seen him flick the lights on from apartment to apartment, which demonstrated to her that he has the power to "do what he wants." When asked if Mr. Guillaume has been responsive to this proceeding, Ms. Ferreira responded in the negative. In reference to an affidavit of unavailability filed by Mr. Guillaume where he stated he was out of town, Ms. Ferreira testified that she saw him on the same date and that he cursed her out when he saw her. Ms. Ferreira also testified about an incident where Mr. Guillaume was screaming or cursing under her bathroom window in the middle of the night (although the video regarding the incident that Ms. Ferreira introduced was not admitted).

On cross-examination, Ms. Ferreira was asked again if Mr. Guillaume had the ability to correct the conditions and she replied yes. She also testified that Mr. Guillaume curses her out every time she is at the subject premises, specifically Mondays, Wednesdays, Fridays, and Saturday nights. She stated that her gas is off but that the tenant above her has gas. Asked if anyone was living in the basement with utilities, Ms. Ferreira responded that she did not know. Ms. Ferreira then confirmed again the restoration of the lights and cold water in the kitchen in September 2022. She recalled that the restoration occurred in the middle of the night on a Monday, Wednesday, or Friday.

When asked if she had made complaints to DHPD about the conditions, Ms. Ferreira replied that she had made several. When asked if she knows how many outlets are not working, she replied that she did not but did testify that all are not working.

On redirect, Ms. Ferreira was asked if she was ever contacted by a contractor about any repairs. She replied that she had not. When asked if any family member of Mr. Guillaume had contacted her about access, she replied in the negative. Finally, Ms. Ferreira testified that she had spoken to her attorney about providing access to Mr. Guillaume. Ms. Ferreira rested upon the conclusion of her testimony.

Mr. Guillaume testified in his defense. He testified that he is the owner of the subject premises, which is part of a 2-family house. When asked on direct if he was aware of the violations and complaints to DHPD, he replied that he was. He then testified about being [*6] arrested at the subject premises on August 31, 2022, which led to an order of protection being issued in favor of Ms. Ferreira against him. When asked if he had contact with Ms. Ferreira from August 2022 to December 2022, he replied that he did not because of the order of protection. When asked if it was his obligation to correct the violations of record, he replied it was not because he "did not cause" them. He testified that he desired to make repairs but that he was not given access to petitioner's apartment. When asked if dates were picked for access, he testified that he had to leave town to go to Pennsylvania for Christmas.

On cross-examination, Mr. Guillaume was asked if he is aware that there is no heat in Ms. Ferreira's apartment, he testified that he understood that it was a false allegation. When asked if he had hired an inspector to check the building's boiler, he replied that the boiler was new and was less than 2 years old. When asked if he had ever checked out the heat issues, he replied that there was no problem with heat and that Ms. Ferreira uses cold water all the time. Mr. Guillaume testified that he has a worker, a person named "Toto," who he has employed for 20 years to check the heating system every December.

To the next line of questions, Mr. Guillaume denied that he was the one responsible for there being no heat, hot water, or "anything else" in the subject premises. He testified unrelayedly about Ms. Ferreira flooding the basement unit. He then testified about attempting to get access for his plumber in December 2022. He stated that he had to give up his vacation and that his attorney tried to procure access from Ms. Ferreira's attorney but that this was unsuccessful. When asked if he had tried to get access before December 2022, Mr. Guillaume stated that he had put notices on Ms. Ferreira's door.

When asked if the basement where the boiler is located is locked, Mr. Guillaume confirmed that it was but that the tenant upstairs has a key to turn water off (in case of floods). He also acknowledged that he has access to the boiler. He later explained during cross-examination that someone must put water in the boiler every 3 hours for it to work. In response to a question about access to the circuit breaker, he stated that "they" (petitioner) overloaded the circuit and he had to shut it off for "security reasons." He further testified that an electrician told him in July or August 2022 that access was needed to fix the electrical problems in Ms. Ferreira's apartment and that he slid a note under her door because there is an order of protection in effect.

Mr. Guillaume testified that he shut off the gas for the subject premises in July 2022 because he suspected a leak. When asked if he had filed any permits in relation to the gas issue, he stated that a company filed for permits about a year before. He surmised that an old hose was the cause of the gas leak. When asked about the water, he stated that Ms. Ferreira has deliberately left it running "24/7" and that he was told by the police to shut it off. He further testified that the water was shut off at the end of July 2022, after he discovered that the water bills were going up and the meter was moving constantly.

Petitioner's attorney then asked Mr. Guillaume a series of questions about his whereabouts in the court dates for this case and the holdover case between the parties. On August 10, 2022 (the date of the order at issue), he stated that he was at a funeral in Canada and had a ticket for travel. When asked about August 24, 2022 court date, he could not remember if he appeared. He confirmed that he was arrested for violating Ms. Ferreira's order of protection on August 23, 2022 but that he went home on the same date. He could not recall if he appeared on the eviction case on August 25, 2022. When asked directly if he did not appear on 4 court dates in this case, he stated only that one time he came and the case was not on the [*7] calendar. Conversely, when asked if he appeared at the holdover case's court dates, he replied that as long as he knows about a court date, he will appear. When asked about an arrest at a court date for the holdover case on September 30, 2022, he stated

that Ms. Ferreira "lied" and that he was arrested and handcuffed.

On redirect, Mr. Guillaume was asked if he understood the nature of the questions that he had been asked on cross-examination. He stated that he understood some and was confused about some. He stated that he was 63 years old. When asked about the condition of the subject premises, he again stated that the apartment was in perfect condition and that Ms. Ferreira turned it into a "nightmare" after he filed the holdover case. He was then asked about the functioning of the boiler. He stated that it was working the day before the hearing and that he had checked it several times from October 2022 through January 2023 and that it was working and in excellent condition. He again testified that he had given notices to Ms. Ferreira but had received no response.

On re-cross, Mr. Guillaume confirmed that Ms. Ferreira's order of protection applied only to him and not to any other person. When asked if this meant that nothing in the order of protection would prevent someone else from doing the repairs, he confirmed that he could send workers.

II. Criminal contempt standard, findings, and mandate.

Under Judiciary Law § 750(a)(3), a "court of record has power to punish for a criminal contempt, a person guilty of wilful disobedience to its lawful mandate." Unlike civil contempt, "the aim in a criminal contempt proceeding is solely to punish the contemnor for disobeying a court order, the penalty imposed being punitive rather than compensatory." *Dept. of Env'tl. Protection vs. Dept. of Env'tl. Conservation*, 70 NY2d 233, 239 [1987]. To sustain a finding of criminal contempt, "there must be proof beyond a reasonable doubt that the contemnor willfully failed to obey an order of the court." *Matter of Rubackin*, 62 AD3d at 16; [see also *Rush v. Save My Home Corp.*, 145 AD3d 930](#), 931 [2d Dept 2016]. Additionally, personal service (CPLR § 308) of the order to show cause is required for criminal contempt to lie. *See Gouiran Holdings, Inc. v. McCormick*, 163 AD2d 44, 45 [1st Dept 1990].

The evidence at the criminal contempt hearing established that Fritz Guillaume willfully disobeyed this court's August 10, 2022 order, that Mr. Guillaume was personally served with the contempt order to show cause (*see* NYSCEF No. 34), and that the willful disobedience was proven beyond a reasonable doubt. The DHPD website confirms that the "C" violations included in the August 10, 2022 order remain open and uncertified. Thus, the violations are prima facie evidence of the continued existence of the conditions underlying them. *See Dept. of Hous. Preserv. & Dev. v. Knoll*, 120 Misc 2d 813, 814 [App Term, 2d Dept 1983]. Ms.

Ferreira's testimony about the conditions, namely the continued lack of cooking gas, heat, hot water, cold water in the bathroom, and working electrical outlets, was credible and was not refuted by Mr. Guillaume. Indeed, Mr. Guillaume admitted during his testimony that he voluntarily shut off the gas, water, and electricity. His stated reasons for doing so were unsubstantiated by any evidence and implausible. Mr. Guillaume's testimony about requesting access from Ms. Ferreira and her attorney were also not credible. In spite of Mr. Guillaume testifying that he had left several notes for Ms. Ferreira about access, no evidence of even one note was offered or admitted. Furthermore, Mr. Guillaume's explanations about seeking access [*8] around Christmas of 2022 were flatly contradictory. He first testified that he had to travel to Pennsylvania, then later testified that he had to miss his vacation because of the fruitless request for access.

Finally, Mr. Guillaume's testimony that he was hamstrung in gaining access and doing repairs because of Ms. Ferreira's order of protection was belied by his admission that the order of protection only applied to him and would not apply to any workers who would be hired to do repairs. Taken together, the evidence is overwhelming that Mr. Guillaume willfully disobeyed this court's order. As a result, it is ORDERED and ADJUDGED that Fritz Guillaume is in criminal contempt of the court's August 10, 2022 order. *See Rush*, 145 AD3d at 931 ["The purpose of criminal contempt is to vindicate the authority of the court."].

As the court is imposing incarceration in conjunction with civil contempt, the court finds that the appropriate punishment for criminal contempt is the statutory fine of \$1,000.00. *See* Judiciary Law § 751. Under governing Court of Appeals precedent and Judiciary Law § 791, the fine shall be made to the New York City Department of Finance within thirty (30) days of the service of this Decision/Order with notice of entry. *See Goodman v. State*, 31 NY2d 381, 385 [1972]. In the event that Mr. Guillaume fails to pay the fine in a timely manner, Corporation Counsel of the City of New York may seek the issuance of a monetary judgment in the amount of \$1,000.00 upon ex parte application to the court. The court will mail a copy of this Decision/Order to Sylvia O. Hinds-Radix, Corporation Counsel, 100 Church Street, New York, New York 10007. Fritz Guillaume shall be purged of criminal contempt upon payment of the fine in full.

This Decision/Order will be filed to NYSCEF and emailed to the attorneys for DHPD.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

Dated: April 7, 2023
So Ordered,

Queens, New York

CLINTON J. GUTHRIE, J.H.C.

Footnotes

Footnote 1: An attorney's fees hearing on the court's earlier harassment finding was also held on this date.

Footnote 2: The violations also remain open and uncertified as of the date of this Decision/Order. The court takes judicial notice of the open violations on the DHPD website pursuant to Multiple Dwelling Law § 328(3).

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