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Abalu v. Gibson

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CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF KINGS: PART Q

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PAMELA ABALU,

L&T Index No. 302391/22

Petitioner,

-against-

POST TRIAL
DECISION AND ORDER

CURTIS WORTH GIBSON, SR.

Respondent-tenant,

CURTIS GIBSON, JR., JEROME GIBSON,
"JOHN DOE" and/or "JANE DOE,"

Respondents-Undertenants.

-----X

HONORABLE DAVID A. HARRIS, J.H.C.:

After the service of a Thirty (30) Day Notice of Termination (Notice) (NYSCEF Doc. No. 3) dated November 22, 2021, and expiring on December 31, 2021, petitioner commenced this summary proceeding to terminate the tenancy of Curtis Worth Gibson, Sr. of apartment #2 (Apartment) in the building located at 223 Hancock Street, in Brooklyn (Building). Petitioner's counsel filed the petition in this proceeding (NYSCEF Doc No. 1) on February 11, 2022. Curtis Worth Gibson, Sr. died on November 25, 2021 (NYSCEF Doc. No. 20). The affidavit of service of the Notice indicates that that the process server attempted personal delivery of the Notice on November 26, 2021, November 29, 2021, and November 30, 2021. After several attempts the Notice was conspicuously posted and mailed.

The proceeding first appeared on the court's calendar on March 4, 2022, and the court adjourned it. On April 4, 2022, counsel appeared on behalf of Jerome Gibson (Jerome). Counsel

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interposed an answer on October 4, 2022 (NYSCEF Doc. No. 14).

The answer, *inter alia*, set forth various admissions and denials of elements of the petition, and various affirmative defenses. Among them is a defense that petitioner's sole cause of action is against Curtis Worth Gibson Sr., who died prior to the service of the Notice, and that even if petitioner proves its claims, it cannot establish a cause of action against Jerome.

The answer further asserts that the sole behavior alleged as a basis for termination is the behavior of Curtis Gibson, Jr., (Curtis Jr.), that he is mentally ill, not under the control of Jerome, that he has not been permitted in the Apartment in decades, that his behavior occurs on the stoop and sidewalk in front of the Building, rather than in the Building itself, and, finally, that respondents have repeatedly called the police and ambulances without effect.

Trial commenced on January 23, 2023, resumed April 13, 2023, and concluded on April 24, 2023. The parties thereafter executed a stipulation (NYSCEF Doc. No. 24)¹ enumerating 27 exhibits to be admitted for petitioner, and four on behalf of respondent. Petitioner uploaded to NYSCEF a list containing hyperlinks to all of its exhibits, and respondent uploaded all exhibits to NYSCEF. After due deliberation and consideration of the testimonial and documentary evidence adduced at trial, the court makes the findings of fact and reaches the conclusions of law set forth below.

The testimonial and documentary evidence admitted at trial evinces alarming and egregious conduct by Curtis Jr. In various surveillance footage admitted into evidence, he accosts residents of the Building, relieves himself on the stoop, splays out across it blocking ingress and egress, yells and screams both words and unintelligibly, appears naked or mostly with most of his buttocks

¹ The parties also stipulated that Curtis Jr. moved from the Building in 2021.

uncovered, eats, and smokes. On occasion, Jerome gives food and money to Curtis Jr.

Pamela Abalu (Abalu), in addition to offering documentary evidence necessary to petitioner's prima facie case, offered extensive documentary evidence of the conduct of Curtis Jr. described above in the form of video and audio recordings, as well as still images. She noted that his disruptive behavior could last as little as ten minutes or all night. The video recordings Abalu offered included Curtis Jr. with his pants and underwear around his ankles, in shorts half-covering his otherwise bare buttocks, Curtis Jr. accosting and yelling at a tenant as he took garbage from the Building, and, again moments later as he walked past. That tenant, Dwight Aitkins, later testified that although he wanted to return to the Building he did not do so because Curtis Jr. blocked his path. Abalu stated Curtis Jr.'s behavior worsened with the passage of time.

Further video showed Curtis Jr. obstructing half the stoop, and sitting in front of the Building's door at the top of the stoop, eating and smoking until another person joins him. Further video evidence showed Curtis Jr. outside the building at approximately 10:00 PM, preceding what petitioner characterized as a confrontation. Abalu presented further video evidence of Curtis Jr. obstructing ingress and egress, and testified about unproductive calls to the Police Department. She noted that Curtis Jr. had not physically harmed anybody, and was released when he passed psychological examinations.

Abalu described difficulties obtaining an order of protection. The record includes an order of protection that she did obtain based on a description of an intimate relationship with Gibson that described Curtis Jr. as a family friend, but Abalu expressed her belief that it would be vacated. She further noted that Jerome would not seek an order of protection in Family Court. Abalu asserted that Jerome encourages Curtis Jr.'s behavior.

Viet Chu (Chu), a former short-term tenant of the Building, testified primarily about an

incident in April 2021, when Curtis Jr. used a racial slur and said he was going to “mess up” the witness. Curtis Jr., he said, came up the front stairs of the Building, and accosted and threatened his wife. Chu said he had seen Jerome yelling at Curtis Jr., telling him to get out of the trash, and noted that he was unaware that Jerome and Curtis Jr. were related. Chu also testified about a recording of Jerome and Curtis Jr. outside the doorway of the Building, where Jerome hands Curtis Jr. a plastic bag.

Dr. Prithvi Ram Hotul (Hotul) testified that, from January 2022 to February 2022, he had lived at the Building during a fellowship. He testified that he had met Jerome. Hotul did not really know Curtis Jr., but frequently had seen him outside the Building.

At the close of its prima facie case, petitioner asked to amend the pleadings to conform to the proof and requested judgment against Jerome and Curtis Jr., as well as a money judgment for \$12,000 from January 2022 through the date of trial.

To prevail at trial, petitioner must establish the elements of its prima facie case. The petition asserts that Curtis Worth Gibson Sr. is the tenant, who entered into possession pursuant to an oral agreement, and remained as a tenant subject to rent control. The Notice, also addressed to Curtis Worth Gibson, Sr. as tenant, and to Curtis Jr., Jerome, “John Doe,” and “Jane Doe” as occupants, appears to terminate the tenancy of Curtis Worth Gibson Sr. because:

“you are allowing your son CURTIS GIBSON, JR. to conduct himself in a manner which is illegal, disturbing, lewd and lascivious, dangerous, intimidating and harassing to residents and passers by. Furthermore, your son’s conduct greatly interferes with tenants’ rights to a safe, quiet and peaceful enjoyment of their apartments and to the management of the building by the landlord.”

The tenant of record, however, died before petitioner’s first attempt to serve the Notice. While the affidavits of service document adequate conspicuous service on Jerome, the Notice as served upon him sought to terminate the tenancy of someone already deceased. That notice is not susceptible to

amendment (*Chinatown Apartments v Chu Cho Lam*, 51 NY2d 786 [1980]). There is no proof in the record that petitioner has recognized Jerome as successor.

The Notice addresses Jerome only in its caption as an occupant. In its substance, is the Notice is plainly addressed only to Curtis Worth Gibson Sr., referring to Curtis Jr. as “your son.” Even if amendment of the pleadings to conform to the proof were construed as amendment to substitute Jerome as tenant, there remains the Notice, not susceptible to amendment, that only seeks to terminate the tenancy of Curtis Worth Gibson Sr.

If Curtis Jr. resided in the Building, his conduct would unquestionably constitute a nuisance. But, as the parties have stipulated, he does not reside there, notwithstanding the fact that he is named in the Notice as an occupant. This court finds his conduct deeply disturbing and disruptive to the lives, safety, and comfort of the occupants of the Building. While no physical harm has yet occurred, this court cannot say that petitioner and the occupants of the Building are uninjured by his conduct. This court is deeply concerned that Jerome, by providing assistance to Curtis Jr. in monetary and other forms, encourages his continued presence at the Building, fostering his grossly unacceptable conduct that may well constitute a private nuisance.

But the issue before this Court is not solely whether Curtis Jr. has engaged in conduct that constitutes a nuisance, but whether petitioner has proven a cause of action by a preponderance of the evidence. Here, the unamendable Notice seeks the termination of the tenancy of Curtis Worth Gibson Sr., deceased before service of Notice.

Where, as here, the tenant of record died before the predicate notice was served, “the proceeding was a nullity from its inception” and “the defect could not be cured by [amendment] of the void petition to substitute [the occupant] for the deceased respondent” (*356-358 SJP v Stewart*, 68 Misc 3d

132[A] [App Term 2d, 11th & 13th Jud Dists 2020]). This is not a situation in which a tenant died during the pendency of a proceeding, or after the service of a notice.

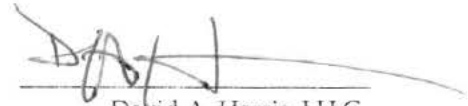
While the Court recognizes the abhorrent conduct of Curtis Jr., and Jerome's support for him as fostering his ongoing presence at the Building, this proceeding does not afford petitioner a remedy against Jerome, because of the Notice addressed to the tenancy of a decedent.

Accordingly, it is

ORDERED that the court dismisses this proceeding in its entirety.

This is the decision and order of the court.

Dated: Brooklyn, New York
July 14, 2023



David A. Harris, J.H.C.

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