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Butler v. Thomas

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CIVIL COURT OF THE CITY OF NEW YORK
HOUSING PART, COUNTY OF KINGS

Sherma Butler,

Petitioner,

L&T 989/20-KI

- against -

DECISION & ORDER
AFTER TRIAL

Chinelle C. Thomas and Crystal P. Thomas,

Respondents,

-and-

New York City Department of Housing Preservation and
Development,

Respondent.

Zhuo Wang, J.:

Petitioner Sherma Butler (Butler) and her eleven-year-old daughter are the lawful occupants of one of the bedrooms in the basement apartment of the building located at 250 East 93rd Street in Brooklyn. It is undisputed that the building is a three-family unit subject to the Multiple Dwelling Law. It is also undisputed that the Certificate of Occupancy lists the basement apartment as having only two bedrooms. However, until July 2020, a portion of the living room was partitioned to create a third, illegal bedroom.

Respondents Chinelle C. Thomas (Chinelle) and Crystal P. Thomas (Crystal, collectively, the Thomases) are co-owners who purchased the building on or about December 27, 2019. On April 5, 2020, without giving Butler notice or obtaining her consent, the Thomases entered and began occupying the second and third bedrooms within the subject premises.

By order to show cause in lieu of a petition, dated April 22, 2019, Butler commenced the instant proceeding against Respondents claiming harassment as defined under Title 27, Chapter 2 of the New York City Administrative Code, hereinafter referred to as the "Housing Maintenance Code" (HMC). As a result of the alleged harassment, Butler seeks civil penalties, "damages," punitive damages, and reasonable attorneys' fees and costs. Significantly, Butler also seeks to enjoin Respondents from, among other things, residing in the subject premises.

Co-respondent The New York City Department of Housing Preservation and Development (HPD) joins in Butler's prayer for relief in her petition, including the injunction sought against the Thomases from residing in the subject premises.

The Thomases answered the petition and counterclaimed for an order compelling Butler to share the apartment with them and for a money judgment for unpaid rent. Counsel for the Thomases did not argue the merits of the counterclaim in his written summation; accordingly, this Court deems the counterclaim to be withdrawn without prejudice.

A trial was held which concluded on June 30, 2020. The following constitutes this Court's findings of facts and conclusions of law after trial.

Findings of Fact

The uncontroverted testimony establishes that, in or around November 2017, Butler entered into an oral lease with the prior owner, Easton Griffith (Griffith), to occupy

a bedroom at the subject premises. Her rent was initially \$130.00 per week but later increased to \$180.00 per week.

In late October 2018, HPD issued a "B" violation against the subject property for an illegal alteration due to the premises' conversion from a two-bedroom into a three-bedroom apartment without a permit and in violation of Multiple Dwelling Law. In order to correct the violations, HPD required the then-owner, Griffith, to either legalize or restore the premises. Griffith did not correct the violation; however, in or around May 2019, the individuals residing in the second and third bedrooms moved out. Butler and her daughter then became the sole occupants in the basement unit.

At trial, Butler claimed that Griffith thereafter granted her exclusive possession of the second and third bedrooms. Respondents called Griffith as a nonparty witness to rebut this assertion. When asked whether he ever consented to Butler moving into the other rooms, Griffith credibly answered in the negative.

Butler and the Thomases have somewhat divergent accounts of whether Butler used the second and third bedrooms after the other occupants moved out. But this Court finds the testimony by nonparty Britany Dutes, who is Butler's social worker, to be the most credible on this issue. Specifically, Dutes testified that after approximately 20-30 visits to the premises within the last three years, Butler did utilize these rooms, albeit the credible proof indicates that they were used primarily for storage.

On December 27, 2019, the Thomases purchased the building from Griffith. That same day, they introduced themselves to Butler as the new owners. Crystal admitted that, at the time of purchase, they were aware of Butler and her daughter's occupancy of the unit.

Two days later, on December 29, 2019, the Thomases spoke with Butler at the premises about moving out. Butler claimed that, during the December 29th discussion, the Thomases asserted that HPD would "throw her out" because the apartment was illegal. Another two days later, on December 31, 2019, the Thomases' real estate broker for the sale of the subject building, Tristen DeFalco, came to speak with Butler. DeFalco, who testified at the trial, recalled that he was accompanied by Nikka Brookes, considered a "housing specialist" because she was knowledgeable about public housing programs and vouchers. DeFalco credibly testified credibly that Butler was amenable to working with Brookes to qualify for a housing voucher in order to move.

Following the December 31st visit, Chinelle then began calling Butler two to three times a week to inquire about the status of applications, if any, to affordable housing programs. Additionally, it was uncontroverted that the Thomases served Butler with a termination notice at the end of January. The credible evidence, however, shows that it was Butler who requested that such a notice be served on her in order to qualify for certain housing assistance programs. The termination notice, according to Butler, was defective

based on a subsequent conversation with CAMBA Legal Services. The parties spoke again on March 10, 2020 but had no contact until early April 2020.

On April 5, 2020, the Thomases and a relative arrived at the premises. After knocking on the door, and without prior notice to Butler, they proceeded to enter the apartment with the intent to move in. Crystal testified that the Thomases gave Butler advanced notice of their move during their December 29th discussion and that Butler had given her permission to move in. Crystal's testimony was not only lacking in credibility based on her tone, it was also flatly contradicted by Chinelle's testimony. Specifically, Chinelle admitted that they did not ask for Butler's consent and she did not give it. The assertion that Butler consented to this occupancy is also belied by the fact that she called the police after the Thomases entered the premises. Upon moving in, the Thomases and the relative immediately began moving Butler's furniture out of the second and third bedrooms and into the hallway.

Within a few days, the Thomases demanded that Butler share one-half of the refrigerator space, bathroom, and common areas. Indeed, it is not meaningfully disputed that the Thomases resorted to self-help in this regard. Butler also points to the fact that the Thomases removed light bulbs from the hallway areas adjacent to Butler's bedroom, but the interference with her tenancy was unclear because Butler also conceded that the light bulbs were soon thereafter replaced with motion-sensing bulbs. During this period, however, Chinelle did admit to Butler that "[w]e are going to stress you until you leave."

On the afternoon of April 15, 2020, Butler stepped out to pick up groceries. Upon her return, she discovered NYPD present at the premises in response to an allegation of parental neglect against her daughter. Butler asserts, and neither Crystal nor Chinelle disputed at the trial, that it was the Thomases who made the complaint.

This Court also takes judicial notice of its July 1, 2020 order granting a temporary injunction against the Thomases. Specifically, Butler filed an emergency order to show cause asserting that, during the pendency of this trial, Respondents undertook to demolish – without a permit – the partition wall that separated the third bedroom from the living room. The area was cordoned off with thick plastic sheets that blocked off portions of the living room and kitchen.

The Thomases also set up in the construction area video surveillance cameras in a decoy smoke detector that continuously recorded the kitchen and living room area. Indeed, the Thomases submitted a video recording of Butler, in visible frustration, tearing down the plastic sheets. Respondents claimed that this construction work was necessary to address the existing HPD violation. But the timing, manner, and extent of the work rendered their assertions of the work's necessity and urgency - performed during the Covid-19 pandemic - to be dubious. After finding that the Thomases' conduct likely constituted harassment, this Court then issued a temporary injunction prohibiting them from performing further construction work or surveillance at the premises.

Butler credibly testified as to the deleterious effects on her quality of life at the subject premises since the Thomases moved in. Namely, because the Thomases would tamper or otherwise destroy food that she left in the refrigerator, Butler now cooks only one meal at a time for her and her daughter. Butler also testified that she was "scared" and "shaken." Butler also claimed that the Thomases' presence threatens her daughter's health, who is now confined to their bedroom. However, in this regard, Butler failed to proffer any documentation of her daughter's alleged respiratory condition.

For Respondents' part, Chinelle explained that she and her sister were tenants when they purchased the subject building. Because they could no longer afford both the rent and the mortgage, the Thomases claimed they were compelled to move into the basement apartment with Butler. In view of the attendant circumstances, however, Crystal's assertion that she gave Butler prior notice of their intention to move-in was not credible.

At the close of the trial, this Court sought written summations. In her brief, Butler contends that the Thomases' conduct from the time they purchased the subject building until the present meets the definition of harassment under the HMC. Namely, Butler argues that the aggregate acts by the Thomases, most notably their moving in on April 5th, amounts to a "self-help" eviction that was intended to cause Butler to vacate or surrender her tenancy rights and substantially disturbed her comfort and repose at the subject premises.

In their brief, the Thomases contend that Butler had no occupancy rights to the second and third bedroom in the unit and, therefore, they were entitled to move into those rooms. In support, the Thomases rely on HMC § 27-2078 to contend that they permissibly entered as boarders. Additionally, the Thomases emphasize Butler's role in seeking to relocate as an absolute defense to her harassment claim.

In its brief, HPD contends that Butler necessarily has exclusive possession of the entire basement apartment because it is undisputed that the premises may not be used as a rooming house in violation of the certificate of occupancy. Therefore, HPD contends that the Thomases' mere act of moving into the premises without Butler's permission constitutes harassment as a matter of law.

Conclusions of Law

"The owner of a dwelling shall not harass any tenants or persons lawfully entitled to occupancy of such dwelling as set forth in [HMC § 27-2004(A)(48)]" (*see* HMC 27-2005[d]). As relevant here, the aforementioned section provides that:

"Except where otherwise provided, the term "harassment" shall mean any act or omission by or on behalf of an owner that (i) causes or is intended to cause any person lawfully entitled to occupancy of a dwelling unit to vacate such dwelling unit or to surrender or waive any rights in relation to such occupancy, and (ii) includes one or more of the following acts or omissions, provided that there shall be a rebuttable presumption that such acts or omissions were intended to cause such person to vacate such dwelling unit or to surrender or waive any rights in relation to such occupancy . . . other repeated acts or omissions of such significance as to substantially interfere with or disturb the comfort, repose,

peace or quiet of any person lawfully entitled to occupancy of such dwelling unit and that cause or are intended to cause such person to vacate such dwelling unit or to surrender or waive any rights in relation to such occupancy ..." (HMC § 27-2004[a][48][g]).

The credible testimony adduced at trial shows that, after purchasing the subject building, the Thomases as new owners sought to have Butler move out of her bedroom. But the record also reveals that the parties engaged in a joint effort to find Butler and her daughter alternative housing. Indeed, it was Butler who asked to be served with a termination notice in order to qualify for a housing voucher. Butler was also willing to speak with De Falco and Brookes in assisting her to move. Because the record is unclear to which acts to relocate Butler were consented to by her and which were not, Butler does not meet her burden of proof that her occupancy was "substantially" disturbed from the time the Thomases purchased the property to the date of the termination notice. To the extent Butler contends that certain statements or acts during this period constituted harassment, her role as a willing participant to find alternative housing rebuts this argument.

But what began as a cooperative effort to relocate Butler turned into a pressure campaign ultimately intended to cause Butler to vacate the premises. The credible evidence shows that, following unsuccessful efforts to have Butler move out voluntarily, the Thomases grew increasingly frustrated. But for the eviction moratoriums imposed in response to the Covid-19 pandemic, the Thomases were bent on dispossessing Butler.

Indeed, Chinelle admitted as much when she told Butler that she was going to “stress” her until she left.

Unable to remove Butler from the premises through the proper legal channels and under financial strain, the Thomases made the decision in or about early April to move into a portion of the basement apartment. This act is significant as it relates to Butler’s harassment claim but not for the reasons stated by the parties.

Importantly, the credible proof establishes that neither Griffith nor the Thomases conveyed to Butler anything more than one bedroom and the common areas of the basement apartment. Contrary to HPD’s assertion, which is unsupported by any legal authority, the fact that Butler used the second and third bedroom did not give her legal possession of that portion of the subject premises. This Court therefore rejects the argument that harassment lies as a matter of law by virtue of the Thomases’ mere act of entering and occupying a portion of the apartment for which Butler held no occupancy rights. While moving into the premises without Butler’s permission may constitute a separate violation of the Housing Maintenance Code, *e.g.*, an illegal SRO, the act alone is not harassment *per se*.

At the same time, this Court is also unpersuaded by Thomases’ argument that their entitlement to enter and occupy the premises entirely precludes Butler’s harassment claim. Rather, the harassment statute looks at the respondent’s intent and the effect on the occupant from the predicate acts. In this respect, the manner by which the Thomases

entered and began occupying the premises, that is, their unannounced arrival at the premises with their belongings, immediate removal of Butler's belongings in the other bedrooms, and nonconsensual partition of the kitchen, bathroom, and common areas evince both an intention to cause Butler to vacate and an utter disregard for her comfort, peace, and quiet at the subject premises. The credible testimony by Butler of feeling "shaken" and "scared" also establishes that these acts substantially disturbed her occupancy.

The Thomases' newly aggressive campaign continued. Ten days after they moved in, while Butler left to purchase groceries, the Thomases contacted the authorities to accuse Butler of neglecting her daughter. The intent of this act was to intimidate Butler into moving out and the clear effect was an interference with her peace and quiet at the subject premises.

Thirdly, the construction work by the Thomases in the now-shared living area of the premises constitutes the most recent substantial act constituting harassment. Specifically, the Thomases performed this work without notice to Butler or the Court. Indeed, the thick plastic sheets cordoning off the majority of the living space adjoining the kitchen area rendered most of the common areas unusable. Moreover, the installation of surveillance equipment and constant surveilling of Butler clearly disturbs the comfort and repose that any tenant should have within the confines of an apartment (*see e.g. T &*

G Realty Co. v Hawthorn, 64 Misc 3d 1214(A) [Civ Ct 2019] [finding 24-hour surveillance video recording to constitute harassing conduct])

The record indicates that the Thomases' pattern of conduct following their abrupt entry into and occupancy of the premises was calculated to and did substantially disturb Butler's occupancy. Thus, a finding of harassment is warranted based on these predicate acts during the period from April 5, 2020 through July 1, 2020.

A finding of harassment constitutes an immediately hazardous violation of the Housing Maintenance Code (*see* § 27-2115[m][1]) and subjects the owner to a mandatory civil penalty of not less than two thousand dollars and not more than ten thousand dollars (*see* § 27-2115[m][2]). Moreover, this Court may award where appropriate compensatory damages, reasonable attorneys' fees and costs, as well as punitive damages (*see* § 27-2115[o]). Lastly, this Court may "issue an order restraining the owner of the property from harassing and direct the owner to ensure that no further violation occurs" in accordance with HMC § 27-2121. Specifically, the aforementioned section grants this Court the power to issue "preliminary, temporary, and final orders requiring the owner of property or other responsible person to abate or correct violations of this code, or to comply with an order or notice of the department, or to take such other steps as the court may deem necessary to assure continuing compliance with the requirements of this code" (*see* HMC § 27-2121).

To the extent the Thomases challenges the power of this Court to issue an injunction excluding them from the basement apartment, it is well-established that the

New York City Civil Court Act "grants the Civil Court broad powers in landlord-tenant proceedings" (*Prometheus Realty Corp. v City of New York*, 80 AD3d 206, 210 [1st Dept 2010]). Specifically, and in contrast to Civil Court's limited equitable jurisdiction in other matters, "[Civil Court Act] 110[a][4] authorizes the Housing Part to issue equitable relief such as restraining orders and injunctions in order to enforce housing standards" because the court has "specifically been granted the authority to hear such matters and award such relief" (*Prometheus Realty Corp.*, 80 AD3d at 212). Indeed, this applies specifically to harassment claims because the "legislative declaration in the Housing Maintenance Code indicates an intent to protect tenants' actual *occupancy*, as well as the physical condition of the premises ..." (*id* [emphasis added]).

Based on the finding of harassment above, it is appropriate to issue civil penalties against the Thomases in the amount of four thousand dollars. Specifically, the duration that Butler had to endure the Thomases' conduct totaled four months, albeit not continuously. Although Butler's counsel in her written summation seeks unspecified "damages," she fails to submit any proof in support of this item. Because "[compensatory damages] cannot be remote, contingent or speculative" (*see E.J. Brooks Co. v Cambridge Sec. Seals*, 31 NY3d 441, 448 [2018]), Butler fails to establish her entitlement to such damages. Moreover, this Court is unpersuaded that the above conduct is equivalent to a "self-help" eviction and that punitive damages are warranted as a deterrence measure. Indeed, after the issuance of the TRO on July 1, 2020, Butler has not moved for further

injunctive relief based on new allegations of harassment. Butler is, however, entitled to an award of attorneys' fees and costs, to be determined at a hearing.

Finally, this Court is asked to issue an order enjoining Respondents from residing in the basement unit. In other words, Butler and HPD contend that a *de facto* eviction of the Thomases from the premises is the only equitable remedy available to ensure that harassment does not occur. Upon a review of the record, this Court does not find it absolutely necessary to exclude the Thomases in order to enjoin the harassment that has occurred to date.

Generally, "a court of equity has an obligation to go no further than absolutely necessary to protect the rights of the complaining parties. The injunction must be framed as narrowly as possible" (*Zutt v State*, 80 AD3d 758, 759 [2d Dept 2011]). It bears noting that the Thomases' mere presence in an apartment, the entirety of which Butler does not have exclusive possession of, does not meet the definition of harassment. Rather, it is the Thomases' conduct during their occupancy, *e.g.*, removing/discarding Butler's food and belongings without notice or consent, making frivolous complaints to agencies, denying her access to common areas, or surveilling her at all times, that aggregate to a finding of harassment. Were they to desist in this and other behavior substantially interfering with the comfort and repose of Butler's occupancy, the harassment would cease.

In issuing this decision, this Court is mindful that this factual scenario and the application of the harassment statute to it may be a matter of first impression. And while

the current living arrangement is not *per se* harassment, conduct that substantially interferes with Butler's occupancy may give rise to a motion for contempt or a further order pursuant to HMC § 27-2121. Accordingly, the instant petition is:

ORDERED, ADJUDGED, and DECREED in favor of Sherma Butler and against Respondents Chinelle C. Thomas and Crystal P. Thomas in that the aforementioned Respondents have harassed Sherma Butler in violation of NYC Admin Code § 27-2005 (d) and that a "C" violation existed at the time the harassment occurred; and it is further

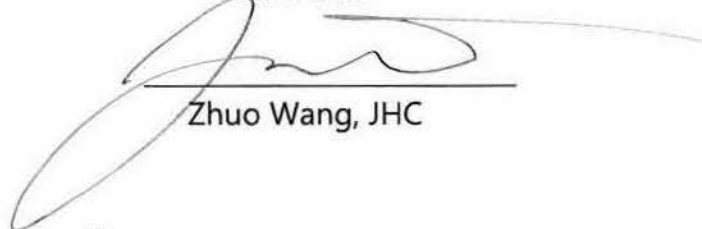
ORDERED, ADJUDGED, and DECREED that a civil penalty in the amount of \$4,000.00 is assessed against Respondents Chinelle C. Thomas and Crystal P. Thomas payable to the New York City Commissioner of Fiance; and it is further

ORDERED, ADJUDGED, and DECREED that that Respondents are enjoined from engaging in any harassment prohibited by N.Y.C. Admin. Code §27-2005(d) and defined in N.Y.C. Admin. Code §27-2004(a)(48); and it is further

ORDERED, ADJUDGED, and DECREED that the Petitioner's prayer for attorneys' fees is granted to the extent of calendaring the matter for a hearing to be held on a date that the parties and this Court shall mutually arrange.

Dated: August 19, 2020

ENTER:



Zhuo Wang, JHC