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Brown v. Food First HDFC Inc.

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

-----X
CRYSTAL BROWN, APRIL CHEEKS,
OLIVIA D'ANGELO, MARCY GARCIA, AND
REBECCA MACCALA,

Petitioners-Tenants,

- against -

DECISION/ORDER
Hon. Remy Smith, J.H.C.

Index No. HP 006143/19
Motion Seq. No.: 1

FOOD FIRST HDFC INC., NEW START GROUP
INC., AND ROSE LAGUER,

Respondent(s)-Owner(s),

-and-

THE DEPARTMENT OF HOUSING PRESERVATION
AND DEVELOPMENT,

Co-Respondent.

-----X
Recitation, as required by CPLR §2219(a), of the papers considered in the review of petitioners-tenants' motion.

Papers	Numbered
Petitioners-tenants' motion with affirmation, affidavits, amended affirmation, memorandum of law and exhibits.....	<u>1</u>
Respondents-owners' opposition with affidavit and exhibits.....	<u>2</u>
Petitioners-tenants' reply with affirmation, affidavits and exhibits.	<u>3</u>
Court File.....	<u>passim</u>

Upon the foregoing cited papers, the decision and order on this motion is as follows:

This is petitioners-tenants' ("petitioners") motion to find respondents-owners ("respondents") in civil contempt for failure to comply with the August 2, 2019 consent order ("order"), to impose civil penalties for failure to timely correct violations, and to direct respondents to correct all outstanding violations of the Housing Maintenance Code, Building Code, and Multiple Dwelling Law that exists in petitioners' apartments and public areas of the subject building, and attorney's fees. Petitioners' motion is granted to the extent that the court finds

respondents in contempt of the court's order dated August 2, 2019 and this matter is set for a hearing for calculation of civil penalties and to assess petitioners' damages including attorney's fees as discussed infra.

Petitioners are a group of tenants¹ who live in a building located at 201 Pulaski Street aka 199 Pulaski Street aka 326 Throop Avenue, Brooklyn, New York 11206. Respondents are owners and/or agents of the premises. On April 30, 2019, petitioners commenced this instant HP proceeding by an order to show cause with verified petition. The issues were bifurcated and an order for respondents to correct all outstanding violations listed on the Department of Housing Preservation and Development ("DHPD") inspection reports² was entered on August 2, 2019. The issue of whether respondents were in violation of the Housing Maintenance Code ("HMC") §§27-2053 and 2054 was set for trial on a later date.³ In the August 2, 2019 order, respondents were mandated to correct all "C" violations within 14 days, "B" violations within 30 days, and "A" violations within 90 days of the date of service of the order. The order also annexed an exhibit wherein respondents inter alia, agreed to engage a licensed mold assessor, an exterminator or other professional to abate fly infestation, and inspect above the ceiling in apartment 3A and remove dead animal if any found. The order also listed specific access dates and time for each apartment.⁴ Thereafter, petitioners filed this instant motion alleging respondents are not in compliance of the order.

¹ Petitioners are tenants of the following apartments: Crystal Brown 3A, April Cheeks 1B, Olivia D'Angelo 2B, Marcy Garcia 4B, and Rebecca McCalla 3B.

² Inspection reports were dated 07/26/2019, 07/22/2019, 07/13/2019, 05/24/2019, 05/21/2019, 05/15/2019, 05/05/2019, 05/04/2019, 04/29/2019, 04/22/2019, 04/21/2019, 04/15/2019, 03/29/2019, 03/28/2019, 03/02/2019, 12/29/2018, 10/16/2018, 04/22/2018, 12/04/2017, 07/22/2017, 02/28/2017, 09/20/2016, 02/24/2016, 02/11/2016, 09/01/2015, 06/13/2015, 06/08/2015, 06/02/2015, 04/30/2015, and 07/13/2012.

³ After trial, on December 17, 2019, this court issued a decision/order finding respondents in violation of §§27-2053 and 2054 and directed DHPD to record a "B" violation and ordered respondents to correct same by February 28, 2020.

⁴ 1B: 08/15/2019 and 08/12/2019, 2B 08/18 and 08/09/2019, 3A 08/05 (9am to 1pm) and 08/17/2019 (9am to 1pm), 3B: 08/05/2019 (morning), 08/06/2019 (morning), 4B 08/08/2019 and 08/09/2019.

Pursuant to relevant parts of section 753(A)(3) of the Judiciary Law, “a court of record has power to punish, by fine and imprisonment, or either, a neglect or violation of duty, or other misconduct, by which a right or remedy of a party to a civil action or special proceeding, pending in the court may be defeated, impaired, impeded, or prejudiced, in any of the following cases...(3) a party to the action or special proceeding . . . for any other disobedience to a lawful mandate of the court”. See McCain v. Dinkins, 84 N.Y.2d 216, 616 N.Y.S.2d 335, 639 N.E.2d 1132 (1994). To prevail on a motion to hold another in civil contempt, the moving party must prove by clear and convincing evidence “(1) that a lawful order of the court, clearly expressing an unequivocal mandate, was in effect, (2) that the order was disobeyed and the party disobeying the order had knowledge of its terms, and (3) that the movant was prejudiced by the offending conduct”. El-Dehdan v. El-Dehdan, 114 A.D.3d 4, 978 N.Y.S.2d 239 (App Div 2nd Dept, 2013) (internal quotation omitted), affd. 26 N.Y.3d 19, 19 N.Y.S.3d 475, 41 N.E.3d 340 (2015).

The August 2, 2019 order is an unequivocal mandate of this court directing respondents to correct violations listed in the order. Respondents appeared by counsel, the order was with consent and as such there is no question that respondents were without knowledge of the order. Hence, the only inquiry this court must make is whether respondents by a reasonable certainty disobeyed the order. See In re McCormick v. Axelrod, 59 N.Y.2d 574, 466 N.Y.S.2d 279, 453 N.E.2d 508 (1983) (for civil contempt proof of disobedience is required only to a reasonable certainty) (internal quotations omitted). If respondents disobeyed the court order, then the court must inquire whether respondents’ conduct prejudiced the petitioners. See id.

Here, petitioners’ affidavits allege existence of violations in their apartments despite providing access as agreed and respondents being ordered to correct violations pursuant to the August 2, 2019 order. Petitioners’ affidavit is corroborated by the existence of violations DHPD

issued. In support of respondents' opposition, the principal of Food First Housing Development Fund Company, Inc.'s submitted an affidavit and allege lack of access to correct violations. However, the record reflects multiple attempts and access arrangement between parties through their counsel. As such, this court is also unconvinced by respondents' argument that the violations exist because of the petitioners' conduct and lack of access. Respondent's affiant, Alfred Thompson, had no personal knowledge concerning access. Also, the remaining submissions annexed to respondents' affirmation in opposition were not in admissible form, nor were they germane as to whether respondents complied with the consent order.

Weighing evidence put forth by petitioners and respondents' opposition, this court finds respondents in civil contempt and existence of violations in petitioners' apartments establish prejudice. The affidavit submitted in support of respondents' position is inadequate as same are mere conclusions from a party without personal knowledge. See Vartwin Investments, Ltd. v. Aquarius Media Corp., 295 A.D.2d 216, 743 N.Y.S.2d 492, (1st Dep't 2002) (finding that conclusory statements are insufficient to rebut contempt allegation), appeal dismissed, 99 N.Y.2d 637, 760 N.Y.S.2d 91, 790 N.E.2d 264 (2003); Garbitelli v. Broyles, 257 A.D.2d 621, 684 N.Y.S.2d 292, (2d Dep't 1999) (finding accused contemnor may not contradict contempt allegations without affidavit from someone with personal knowledge). A respondent-owner that does not repair violations, at least hazardous and immediately hazardous violations, necessarily prejudices, impedes, impairs, or defeats a tenant's rights. See Various Tenants of 446-448 W. 167th St., v. Dep't of Hous. Preservation & Dev., 153 Misc.2d 221, 588 N.Y.S.2d 840 (App. Term 1st Dep't 1992).

For the reasons stated supra petitioners' motion for contempt is granted and parties are directed to return to Kings County Housing Court, Part B, Room 409 on March 9, 2020 at 9:30AM

for settlement or to schedule a hearing to determine civil penalties and damages, including but not limited to the statutory fine provided by the Judiciary Law as well as actual damages and/or costs and expenses.

This constitutes the decision and order of the court.

Dated: Brooklyn, New York

February 4, 2020

SO ORDERED



HON. REMY SMITU
J.H.C.

Hon. Remy Smitu
Judge, Housing Court