2024-06-17

City of New York v. Goldman

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **Hon. James E. d'Auguste** **PART 55**

Justice

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THE CITY OF NEW YORK,

Plaintiff,

- v -

LLOYD GOLDMAN, BLDG MANAGEMENT CO. INC., BLDG EAST 38 STREET LLC, BESNICK ZIBA, SOPHIA LAMAS, THE LAND AND BUILDINGS THEREON KNOWN AS 597 AND 581 THIRD AVENUE, BLOCK 919, LOT 001, IN THE COUNTY OF NEW YORK, CITY AND STATE OF NEW YORK, and JOHN DOE AND JANE DOE NUMBERS 1 THROUGH 10, fictitious names, true names unknown, the parties intended being owners, operators, managers, lessees, employees, agents, and all other persons and entities claiming any right, title, or interest in the premises which is the subject of this action,

Defendants.

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INDEX NO. 452058/2020

MOTION DATE

MOTION SEQ. NO. 003

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document numbers (Motion 003) 105 through 135 were read on this motion to/for RENEWAL.

In this action to abate a public nuisance at the *in rem* defendant property on Third Avenue in the Murray Hill section of Manhattan (the "Premises"), defendants seek an order (based upon allegedly new facts) modifying the Court's decision and order entered February 27, 2024, and published as 2024 NY Slip Op 30492(U) (and the resulting settled order) in Motion Seq. No. 001 (hereinafter "February Decision") to permit the demolition of the Premises in lieu of permanently repairing them as previously directed. Defendants' motion is granted to the extent of granting defendants leave to renew but, upon renewal, the Court adheres to its prior decision.

The City correctly notes that the operative alleged facts asserted in defendants' papers regarding the condition of the Premises were at least knowable, if not actually known, while

Motion Seq. No. 001 was pending before the Court. However, even if defendants' failure to acquire and offer that information was inexplicable, it could still be a proper basis for renewal. *See, Trinidad v. Lantigua*, 2 A.D.3d 163, 163 (1st Dept. 2003); and *Barry v. Association des Senegalais d'Amerique, ASA, Inc.*, 78 Misc. 3d 1206(A), *3 (Civ. Ct., Bronx Co. 2023) (citing *Trinidad* in adhering to underlying decision upon renewal). Considering the strong public policy in the First Department in favor of resolving matters on their merits upon reconsideration rather than through procedural hurdles, the Court grants defendants leave to renew the Court's decision and order in Motion Seq. No. 001.

Upon that renewal, the Court adheres to its prior decision. "A landowner has a duty to exercise reasonable care under the circumstances in maintaining its property in a safe condition." *Kush v. City of Buffalo*, 59 N.Y.2d 26, 29 (1983) (citation omitted). As the Court noted in the February Decision, the Commissioner of Buildings has ordered defendants to make permanent repairs to the Premises to ensure that defendants comply with their statutory obligations to maintain the Premises in a code-compliant and safe manner, and that the Premises remains available as a safe residence for the remaining rent-regulated tenant. The Court notes that (as discussed in the February Decision) the record in this action contains a long history of defendants' efforts to vacate and demolish the Premises. The Court is hard-pressed to recall another circumstance where, as here, an owner asked City officials to *extend* a vacate order to more parts of a location, though it would seemingly support few of the public policy goals behind the state and local residential building regulations rather than defendants' bid to simply demolish the Premises for their benefit. *February Decision*, at *8. Indeed, defendants' seeming answer to every ailment of the Premises conveniently appears to be the very remedy it has sought for approximately fifteen years: demolition that eliminates the rent-regulated occupancy of the Premises.

The City officials charged with public protection from a position of professional expertise in building safety have issued orders directing the permanent repair of the Premises. They have determined that the Premises can be repaired and offered specifics as to the way those repairs can be made, and demolition that would deprive a rent-regulated tenant of their home is not a necessary remedy to protect public safety. That determination, especially as defendants have apparently not properly challenged that determination, is entitled to deference. *See, e.g., People v. Cherkowsky*, 150 Misc. 681, 683 (Mag. Ct., New York Co. 1934) (finding that Fire Commissioner's determination of a hazard was entitled to deference); and *February Decision*, at *14. Moreover, the City's power to order vacatur of buildings and, when necessary, their demolition, pursuant to state and local law, is intended for public protection rather than tenant-clearing.

That the Department of Buildings apparently approved demolition plans is not dispositive to this motion. As the City notes in opposition, agency "approval of demolition plans does not mean that the City or the agency believes that demolition is necessary, or even appropriate, as opposed to any other scope of work." (Aff. in Opp., ¶ 20). Rather, the City's affiant engineer, currently serving as a deputy borough commissioner of buildings, affirms that the demolition approval defendants rely upon is "but one of many steps" that defendants would need to complete, or approvals to obtain, before they would be permitted to actually commence demolition. (King. Aff. in Opp., ¶ 9). The fact that defendants have sought permission from the Division of Housing and Community Renewal to withhold renewal of the remaining tenant's rent-regulated lease does not mean that defendants' request will be granted or survive challenge if granted. Even if the Department of Buildings' approval had represented something more, "the mistaken or erroneous issuance of a permit does not estop a municipality from correcting errors, even where there are harsh results." *Parkview Assocs. v. City of New York*, 71 N.Y.2d 274, 282 (1988). In any event,

the record supports the City's view that its consideration of demolition plans does not itself justify or authorize full-scale demolition of the residential structures at issue.

The Court is particularly troubled by the allegations in this motion, which would seem to indicate that defendants have not complied with the Court's orders in this action to the end goal of driving conditions at the Premises to the point where demolition would actually be necessary. Years have elapsed since defendants were first ordered to complete the permanent repairs necessary to make the Premises permanently safe and livable for, at the least, the sole remaining rent-regulated tenant. Defendants' refusal to comply with the Commissioner of Buildings' orders is seemingly contrary to the Court's directives and the compelling public interests in safe buildings and available affordable housing in the City. Even assuming *arguendo* that defendants' apparent disagreement with the Commissioner of Buildings' orders (and the Court's mandate to comply with them) were well-founded, defendants' obligation to comply with the Court's mandate unless and until relieved from it is longstanding hornbook law in New York. *See, New York v. New York & Staten Isl. Ferry Co.*, 64 N.Y. 622, 624 (1876) (holding that "the [court's] orders, even if irregular...were not void and that the point could not be considered upon appeal, as while the orders were in force, defendants and their officers were bound to obey them") (quotations and citations omitted). "Indeed, a party may be held in contempt for violating an order later found to be unlawful." *People v. Trump*, 2024 NY Slip Op 24148, *2 (Sup. Ct., New York Co. Apr. 30, 2024) (punishing criminal defendant for contempt). As part of this motion, defendants sought an interim order staying enforcement of the February Decision, which the Court denied as part of its order to show cause commencing this motion, and there is no indication in the record that defendants have sought (let alone obtained) a stay from the Appellate Division. There is no indication in the record that defendants sought review of the Commissioner of Buildings'

administrative determinations. Accordingly, defendants are obligated to obey and perform the permanent repairs as ordered.

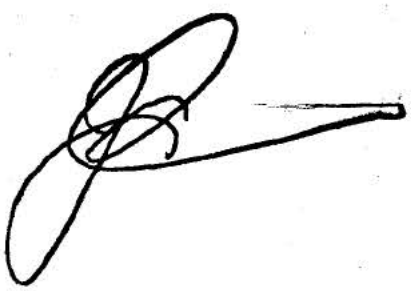
The common will of the people of New York, as reflected in the Administrative Code, "takes the failure to comply with the building code rather seriously." *Acquino v Balester*, 37 Misc. 3d 705, 708 (Civ. Ct., Richmond Co. 2012). The City is afforded broad powers to protect New Yorkers from unsafe building conditions, including the ability to complete ordered repair work itself and seek reimbursement from recalcitrant owners. *See,* N.Y.C. Admin. Code §§ 28-215.8 and 28-216.7. The Judiciary Law permits punishment to "protect the dignity of the judicial system and to compel respect for its mandates." *McCormick v. Axelrod,* 59 N.Y.2d 574, 583 (1983). The City can, and has, obtained orders making contempt findings and appointing receivers to restore residential buildings to code-compliant conditions. *See, e.g., City of New York v. NYC Midtown LLC*, 2017 NY Slip Op 31596(U) (Sup. Ct., New York Co.), *stay pending app. denied, sub nom. City of New York v. Assa,* 2017 NY Slip Op 90169(U) (1st Dept. 2017). That said, the same common will also establishes "broad discretion conferred upon those officials, subject to the will of the electorate," in enforcing the City's building regulations. *Tyson v. Haskins*, Index No. SC-68-23/BX, 2023 N.Y. Misc. LEXIS 4041, *2 (Civ. Ct., Bronx Co. Aug. 7, 2023), *citing, Hassan v. Magistrate's Court*, 20 Misc. 2d 509, 513-514 (Sup. Ct., Queens Co. 1959). Accordingly, while the Court is concerned, the Court will not order further action by City agencies or officials without additional motion practice specifically seeking City authorization to perform the ordered repairs itself or any other relief the facts support. This decision is expressly without prejudice to the City seeking such relief.

Accordingly, it is

ORDERED that defendants' motion (Motion Seq. No. 003) is granted to the extent of granting defendants leave to renew Motion Seq. No. 001 but, upon renewal, the Court adheres to its prior decision and order determining that motion; and it is further

ORDERED that this Order is without prejudice to plaintiff seeking an order enforcing the orders of the Commissioner of Buildings as set forth in this Order.

This constitutes the Decision and Order of the Court.



6/17/2024
DATE

James d'Auguste, J.S.C.

CHECK ONE:		CASE DISPOSED			X	NON-FINAL DISPOSITION	
		GRANTED		DENIED	X	GRANTED IN PART	OTHER
APPLICATION:		SETTLE ORDER				SUBMIT ORDER	
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN				FIDUCIARY APPOINTMENT	REFERENCE