

Pavia v Couri

2007 NY Slip Op 31811(U)

June 25, 2007

Supreme Court, New York County

Docket Number: 0124625/2002

Judge: Joan Madden

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: HON. JOAN A. MADDEN
Justice

PART 11

GEORGE PAVIA and ANTONIA PAVIA,
Plaintiffs,

- v -

JAMES COURI and MARELENE COURI,
Defendants.

INDEX NO. 124625/02

MOTION DATE: 6-7-07

MOTION SEQ. NO.:039

MOTION CAL. NO.

The following papers, numbered 1 to _____ were read on this motion to _____

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits _____

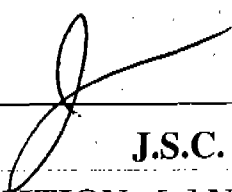
Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

It is ordered that part of the motion seeking a stay pending appeal and an order setting the undertaking is decided in accordance with the annexed Memorandum, Decision and Order.

Dated: June 8, 2007



J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

FILED
JUN 25 2007
NEW YORK
COUNTY CLERK'S OFFICE

PAPERS NUMBERED

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 11

-----X
GEORGE PAVIA and ANTONIA PAVIA,

DECISION AND ORDER

Plaintiffs,
-against-
JAMES COURI and MARLENE COURI,
Defendants.

INDEX NO. 124625/02

-----X
JAMES COURI,

Plaintiffs,
-against-
18 EAST 73RD STREET CORP., 18 EAST 73RD STREET
CO., GEORGE PAVIA, ANTONIA PAVIA, JULIAN
PAVIA , PHILLIPA PAVIA, JAY ITKOWITZ,
SHARI LASKOWITZ and ITKOWITZ & HARWOOD,
Defendants.

INDEX NO. 10170003

FILED
JUN 25 2007
NEW YORK
COUNTY CLERKS OFFICE

-----X
JOAN A. MADDEN, J.:

Defendant James Couri (“Couri”), who is pro se,¹ moves pursuant to CPLR 5519(a)(2) and (6) for an order staying the judgment and order dated May 23, 2007 entered against him after a jury trial.² Plaintiffs George Pavia and Antonia Pavia oppose the motion.

Background

These actions arise out of a landlord tenant dispute in which plaintiffs George Pavia and his wife, Antonia Pavia (“the Pavias”) sued, inter alia, to eject defendants Couri and his wife,

¹Although he is pro se, Couri has extensive litigation experience representing himself and has been involved in multiple law suits. His experience is evident from the manner in which he has conducted this litigation, including the numerous motions he has made in these actions. Couri’s wife, defendant Marlene Couri, has an attorney, Jon Paul Robbins, Esq. of McLaughlin & Stern, LLP.

²Couri also seeks an order setting aside the verdict. This aspect of the motion will be decided separately.

Marlene Couri (together “the Couris”) on the grounds that Couri engaged in conduct constituting a nuisance.³ Couri alleged that the Pavias initiated the ejectment action as retaliation for his commencement of proceedings before New York State Division of Housing and Community Renewal (“DHCR”) and sued the Pavias for claims based on breach of the warranty of habitability related, in part, to an enclosed glass area in the Apartment, fraud in the inducement, and malicious prosecution.⁴

The Pavias own a brownstone at 18 East 73rd Street, New York, NY (the “Building”) , and reside there, as do their adult children, Julian Pavia and Phillipa Pavia. Several small apartments in the brownstone are leased to non-family members, including Apartment 3B (“the Apartment”) which the Pavias leased to Couri pursuant to two- year lease dated September 27, 1996.

After a three week trial, on May 9, 2007, the jury rendered a verdict in favor of the Pavias and against Couri. The jury found that Couri’s conduct constituted a nuisance, rejecting Couri’s claim that the Pavias brought the action in retaliation for Couri’s initiation of the DHCR proceeding. The jury also found that Couri breached the lease in not providing the Pavias access to the Apartment to repair a water leak and in not providing the Pavias with a set of keys and the

³The Pavias also sued for breach of the lease alleging that Couri failed to comply with lease provisions requiring him to give the Pavias access to the Apartments for repairs (here in connection with a water leak) and to provide a set of keys and the access code to the Apartment.

⁴Couri alleged, inter alia, that the Pavias breached the warranty of habitability in connection with a glass enclosed area which he claims constituted a dangerous condition; that the Pavias fraudulently induced him to enter into the lease based on misrepresentations regarding the use of the glass enclosed area; and that George Pavia maliciously prosecuted him when he had Couri arrested for aggravated harassment and harassment in connection with numerous faxes and telephone calls discussed below.

access code to the Apartment. As to Couri's claims, the jury found against Couri and for the Pavias, determining that the Pavias did not breach the warranty of habitability, nor did the Pavias commit fraud in the inducement in connection with the lease, nor did George Pavia maliciously prosecute Couri in connection with Couri's arrest for sending numerous harassing letters by fax to George Pavia and others and for making numerous harassing telephone calls to the Pavias.

At trial, in support of their claims for nuisance, the Pavias presented evidence of conduct directed at the Pavias and at a tenant who leased the apartment above the Couris. This evidence indicated that sometime during 2000, the Pavias' relationship with the Couris deteriorated,⁵ and that Couri began a course of conduct which resulted in the commencement of this action seeking his ejectment.

The Pavias testified that Couri made repeated and numerous telephone calls to them of a harassing nature, frequently as early as 6:00 am, made repeated and groundless complaints regarding the Apartment, and engaged in conduct which interfered with their quiet enjoyment of their apartment. Most significantly, the Pavias presented evidence that Couri, in connection with their landlord tenant dispute, faxed about two hundred letters in which he described George Pavia in demeaning and derogatory language, accusing him, without substantiation, of illegal and unauthorized acts and threatened to, and did, complain to agencies and/or investigative bodies about the unsubstantiated allegations. Couri faxed these letters to George Pavia, who is an attorney, at his law firm, as well as faxing certain letters to the *New York Times*, *The New York Law Journal*, the Disciplinary Committee of the Appellate Division, First Department, the State

⁵George Pavia claimed that the relationship deteriorated after he refused to sell Couri the Apartment or the Building, while Couri claimed it resulted from the DHCR proceedings he initiated.

Inspector General, and the Internal Revenue Service.

Evidence regarding similar conduct by Couri directed at the tenant in the apartment above the Couris was also introduced. There was evidence that Couri made numerous telephone calls to the tenant complaining about activities in his apartment and evidence that he faxed 40-50 letters to the tenant's various workplaces containing unsubstantiated allegations and derogatory language.⁶

Additionally, evidence was introduced that Couri faxed a similar type of letter containing derogatory and demeaning language and unsubstantiated allegations about Antonia Pavia to a well-known New York hospital where Couri mistakenly believed she was employed.

The Pavias argued that not only were the number and content of the faxes outrageous, but that by sending the faxes to George Pavia's law firm and to the tenant's places of business, Couri intended to harass, threaten and intimidate the Pavias and the tenant to accede to Couri's demands regarding his complaints about his tenancy.

Based on the jury's verdict in the Pavias' favor, on May 23, 2007, an order and judgment was entered (i) awarding possession of the Apartment to the Pavias within 10 days of entry, (ii) directing Couri to deliver a full and complete set of keys to the Apartment and the access code for an alarm system installed for the Apartment to Pavias' attorney, (iii) vacating an interim partial abatement of rent granted to Couri before trial⁷ and awarding the Pavias the sum of

⁶Evidence was also introduced that Couri sent harassing letters to the tenant's lawyers, and made unsubstantiated complaints about the tenant's lawyers to the First Department disciplinary committee.

⁷Before trial, the court held two extensive hearings regarding certain violations issued by the Department of Building regarding the glass enclosed area. After the first of these hearings, the court in its decision dated March 8, 2006, found that even if Couri succeeded at trial, he

\$16,659.06, which includes interest as calculated by the Clerk from September 1, 2006, (iv) directing Couri to pay rent or use and occupancy for the months of March, April and May 2007, in the sum of \$4,320.76⁸, which includes interest as computed by the Clerk from April 1, 2007, and (v) directing Couri to pay use and occupancy in the amount of \$1,820 per month beginning on June 1, 2007. The total amount of the judgment, including costs and disbursements, is \$22,259.89.

Couri now moves to stay the judgment and order pursuant to CPLR 5519(a)(2) and (6). The Pavias oppose the motion, asserting that based on Couri's "vexatious and dilatory conduct in this extended litigation" this court should deny the application for a stay as there are no non-frivolous grounds for an appeal. The Pavias further argue that a stay should be denied in the interest of justice, since 79 year-old George Pavia and his family should not be forced to reside in the same brownstone as Couri in view of the personal hostility evidenced by Couri's actions, and in his words and writing before and during this litigation. The Pavias also note that since the jury verdict, Couri has brought another action against the Pavias and the New York City Department of the Buildings, and certain of its employees (Couri v. City of New York, et al.; Index No. 106513/07), involving the issues litigated here.

With respect to the amount of any undertaking set in connection with the appeal, the Pavias point out that the order and judgment directs Couri to pay a total amount of \$22,259.89

would only be entitled to a partial rent abatement, and granted an interim rent abatement until the issues regarding the enclosed glass area were determined at trial. The abatement was in the amount of \$400.40 per month beginning in February 2004.

⁸This sum represents rent or use and occupancy at a rate of \$1,419.60 per month, excluding the \$400.40 abatement awarded in the proceeding paragraph of the order and judgment.

and that interest at the statutory rate of 9% would accrue at a rate of \$2,003.38 per year, and that Couri failed to pay use and occupancy for March, April, and May 2007 and now June 2007, despite outstanding court orders requiring him to pay these amounts. The Pavias also argue that in accordance with CPLR 5519(a)(6), any undertaking must be sufficient to so that Couri “will not commit or suffer to be committed any waste” and cover use and occupancy, and point to outstanding judgments against Couri, and Couri’s testimony during trial that he does not have a checking account or assets in his own name.

Discussion

Pursuant to CPLR 5519(a)(2) and (6), upon service of a notice of appeal and posting an undertaking in the amount fixed by the court, Couri is entitled to an automatic stay of the enforcement of the judgment and order dated May 23, 2007, insofar as it directs the payment of a money judgment and awards possession of the Apartment to the Pavias. The only issue is the appropriate amount of the undertaking.

With respect to the money judgment, CPLR 5519(a)(2) requires Couri to obtain an undertaking “in the amount directed to be paid by the judgment,” which, in this case, is \$22,259.89. In addition, to this amount, the undertaking should include post-judgment interest of approximately \$2,000 per year. See HGCD Retail Services, LLC v. 44-45 Broadway Realty Co., 12 Misc3d 1166 (A)(Sup Ct NY Co. 2006).

Next, insofar as the order and judgment directs that the Apartment be transferred to the possession of the Pavias, CPLR 5519(a)(6) provides the relevant standard for fixing the undertaking. It provides that where:

the appellant or moving party is in possession or control of real

property which the judgment or order directs to be conveyed or delivered, and an undertaking in a sum fixed by the court of original instance is given that the appellant or moving party will not commit or suffer to be committed any waste and if the judgment or order appealed from, or any part of it, is affirmed or the appeal is dismissed, the appellant or moving party shall pay the value of the use and occupancy of such property, or the part of it as to which the judgment or order is affirmed from the taking of the appeal until the delivery of possession of the property....

The above provision is “designed to stay the surrender of possession of real property while at the same time protecting the respondent against the commission of waste against the property.” 12 New York Practice, Weinstein, Korn & Miller, at ¶ 5519.09, at 55-165. In addition, “[t]he undertaking ensures that the appellant or moving party will pay use and occupancy of the premises from the taking of the appeal to the delivery of possession of the property in the event that the judgment or order is affirmed or the appeal is dismissed.” Id.

Under the circumstances of this case, Couri’s course of conduct which constituted the nuisance and his course of conduct during this action impacts on the court’s determination assessing the waste that may occur. Significantly, Couri’s course of conduct in litigating this action mirrors his course of conduct underlying the nuisance. Specifically, like his unsubstantiated allegations against George Pavia, the upstairs tenant, and the tenant’s attorney, Couri has repeatedly made unsubstantiated allegations regarding those involved in this litigation, including the court, the attorneys representing the Pavias, and employees of the Department of Buildings. Furthermore, like his campaign of sending harassing faxes, during this litigation Couri has sent numerous faxes and letters and made numerous ex parte telephone calls to the court,⁹

⁹The number and content of these communications was such that it was necessary to issue several orders barring Couri from ex parte communications and requiring that, with the exception of telephone calls to the Clerk of Part 11 regarding scheduling matters, that all applications and

opposing counsel, employees of the Department of Buildings and others.

Moreover, Couri has violated orders of this court requiring him to pay use and occupancy or rent. Specifically, Couri failed to pay use and occupancy from November 2002 until 2006, despite a court order directing him to deposit the money with the clerk of the court.¹⁰ It was only after this court directed that Couri pay directly to the Pavias' attorney past and future use and occupancy based on a partial interim abatement, and then only after he was threatened with eviction, that Couri complied with the court's order. In addition, throughout the course of this action, Couri has made numerous and repetitive motions in attempt to relitigate the issues already decided by this court, and as indicated above, following the jury verdict, he initiated an action against the Department of Buildings, its employees and the Pavias in an attempt to relitigate certain of the claims already resolved against him.

Couri's conduct in this litigation and his conduct underlying the nuisance, his failure to comply with court orders, his repetitive litigation tactics and his commencement after the verdict of another action against the Pavias and the Department of Buildings involving the issues litigated herein demonstrates a fundamental disrespect for the legal process, and a willingness to make baseless attacks on the integrity of any individual or institution involved in his disputes.¹¹

communications be made by motion.

¹⁰Significantly, pursuant to a motion by the Pavias, the court found that Couri wilfully and intentionally disobeyed a court order to pay use and occupancy and ordered a hearing to determine whether he was financially able to make the payments. In opposition papers, Couri alleged that he was unable to pay, and at the hearing Couri alleged he could not go forward due to his health.

¹¹While this motion was pending, the Pavias moved for an order increasing any undertaking set by the court based on Couri's removal of numerous boxes of belongings from the Apartment, including what appeared to be a marble top to a sink. Although Couri has not as of

Thus, while Couri has a right to appeal, his conduct underlying the nuisance and during and after this litigation raises serious concerns as to whether he will respect and maintain the Pavias' property during the appellant process.

Under these circumstances, an undertaking is set in the amount of \$50,000, to protect the Pavias from any waste committed on the Apartment while the appeal is pending, and \$1,820 shall be added to this amount for use and occupancy due but not paid on June 1, 2007.

As indicated above, under the CPLR 5519(a)(6), in setting the amount of the undertaking, the court may also consider the value of use and occupancy of the property during the appeal in the event the judgment or order is affirmed. However, where, as here, the appellant has possession of the premises under a lease, which pursuant to the verdict has been terminated, the appellant should pay use and occupancy on an ongoing basis during the pendency of the appeal.

Thus, Couri will be required to pay use and occupancy to the Pavias on the first day of each month during the pendency of the appeal as directed in the order and judgment, and this aspect of the judgment and order is not stayed. In the event Couri fails to timely pay use and occupancy, the Pavias may move on three days notice provided by overnight mail or courier, to vacate the stay of the judgment of possession pending appeal.

This condition is necessary to ensure that Couri pays use and occupancy or rent throughout the pendency of the appeal since, as indicated above, Couri has during this litigation violated prior orders of this court requiring him to pay use and occupancy or rent. Moreover, when the Pavias moved to hold Couri in contempt for failing to pay use and occupancy, Couri

this date filed opposition papers, in letters he denies that he removed anything other than personal items from the Apartment and claims he has contacted the police about an attempted assault by George Pavia while the boxes were being removed.

maintained that he had no assets and, at trial, testified that he had no checking account and no assets in his name. Furthermore, the Pavias have submitted proof that Couri has an outstanding judgment docketed against him in December 1994, for \$57,817.50 in a case brought against him in 1993 by his former landlord Carlton House Inc. (Index No. 103106/93). Although Couri signed a confession of judgment agreeing to pay \$57, 817.50 for a debt owed by him to Carlton House for rent and additional rent and various other expenses, the submissions indicate that he never paid these amounts.¹²

Finally, insofar as the judgment and order directs Couri to provide full and complete set of keys to the Apartment and the access code for an alarm system installed for the Apartment to Pavias' attorney, it is not stayed and Couri must comply with this aspect of the judgment and order.

Conclusion

In view of the above, it is

ORDERED that enforcement of the money judgment is stayed conditioned upon James Couri filing an undertaking in the amount of \$24,250¹³ with the Clerk of this Court on or before June 29, 2007 and upon the failure to comply with this condition the stay of the money judgment will be vacated; and it is further

ORDERED that the judgment granting possession of the Apartment to the Pavias is

¹²Thus, the \$57,817.50 does not include the 9% interest accruing on the judgment since 1994.

¹³This sum is based on the amount of the money judgment, and one-year of post-judgment interest.

stayed conditioned upon James Couri filing an undertaking in the amount of \$51,820, to protect the Pavias from the commission of waste to the Apartment and for payment of use and occupancy due as of June 1, 2007, with the Clerk of the Court on or before June 29, 2007 upon the failure to comply with this condition the stay of the judgment of possession will be vacated; and it further

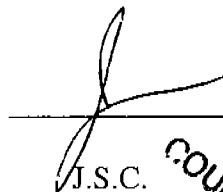
ORDERED that James Couri shall pay use and occupancy to the Pavias in the amount of \$1,820 per month on the 1st day of each month until the further order of this court; and it is further

ORDERED that in the event James Couri fails to comply with the immediately preceding paragraph, the Pavias may move on three days notice to vacate the stay of the judgment of possession pending appeal; and it is further

ORDERED that James Couri shall have until January 8, 2008 to perfect his appeal after which time the stay will be vacated;¹⁴ and it is further

ORDERED that the stay of the execution of the judgment contained in this court's interim order dated June 7, 2007 is hereby vacated

DATED: June 25, 2007


J.S.C.
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JUN 25 2007
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¹⁴In order to perfect his appeal, Couri must obtain the transcript of the proceeding and deposit a sufficient sum with the court to pay the fee for the transcript. See 5525(a). Here, the trial transcript was approximately 2,200 pages in length and at a rate of \$5.30 per page and original and copy would cost an estimated \$11,660.