

**Sisters of Charity Health Care Sys. Nursing  
Home, Inc. v Jack Miceli, D.D.S., P.C.**

2008 NY Slip Op 31797(U)

June 10, 2008

Supreme Court, Richmond County

Docket Number: 0103896/2006

Judge: Joseph J. Maltese

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**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF RICHMOND PART DCM 3**

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**Index No.: 103896/06  
Motion No.: 6, 7**

**SISTERS OF CHARITY HEALTH CARE SYSTEM  
NURSING HOME, INC., d/b/a BAYLEY SETON HOSPITAL  
and SAINT VINCENT'S CATHOLIC MEDICAL CENTERS  
OF NEW YORK,**

*Plaintiffs,*

*against*

**DECISION & ORDER**

**HON. JOSEPH J. MALTESE**

**JACK MICELI, D.D.S., P.C.,**

*Defendant.*

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The following items were considered in the review of this motion for contempt, sanctions and costs:

<b><u>Papers</u></b>	<b><u>Numbered</u></b>
<b>Order to Show Cause and Affidavits Annexed</b>	<b>1</b>
<b>Notice of Cross Motion and Affidavits Annexed</b>	<b>2</b>
<b>Answering Affidavits</b>	<b>3, 4, 5</b>
<b>Exhibits</b>	<b>Attached to Papers</b>

Upon the foregoing cited papers, the Decision and Order on this Motion is as follows:

This Court finds that the Sisters of Charity in operating Bayley Seton Hospital have acted in a contemptuous manner in failing to correct a mold condition and providing air conditioning to a community medical dental clinic which services low income, Medicaid recipients and military service members, which may create a health hazard.

In motion number 6, defendant Jack Miceli, D.D.S., P.C., makes a motion for contempt by way of order to show cause. In motion number 7, plaintiffs, Sisters of Charity Health Care System Nursing Home, Inc., d/b/a Bayley Seton Hospital ("Baley Seton") and Saint Vincent's Catholic Medical Centers of New York ("St. Vincent's") make a cross-motion for costs and sanctions.

## Background

The defendant, Dr. Miceli, has operated a dental clinic, whose patients are active and retired military service members and low income Medicaid patients for over sixteen (16) years, in a building owned and operated by the plaintiff Bayley Seton at its campus in Staten Island, New York. In January 1992, the defendant entered into a lease with the plaintiff for rental of commercial space for his dental clinic. Subsequently, the 1992 lease was modified to extend the terms for an additional five years through December 31, 2006. In addition, the modification granted the defendant the right to renew the lease for an additional three (3) years commencing January 1, 2007 to December 31, 2009, and for an additional six (6) months to June 2010.

In late 2006, Bayley Seton commenced this lawsuit against the defendant for failure to pay rent since November 1, 2003 and argued that the renewal option was void due to Dr. Miceli's continuing uncured default for failing to pay rent. Dr. Miceli argued that the plaintiff's failure to maintain the premises has resulted in his partial actual eviction. Dr. Miceli claims that the windows, walls and ceiling tiles of the building have sustained extensive water damage, which has produced a mold condition.

This court, in a decision dated August 21, 2007, denied Bayley Seton's application for a declaratory judgment and held that Dr. Miceli lawfully exercised the third renewal option, and was therefore, a rightful tenant on the premises. This court further held that the defendant does have a right to withhold rents for the partial eviction caused by the flooding and mold condition as a result of the plaintiff's failure to maintain the premises.

In a decision dated November 21, 2007, this court granted the defendant's preliminary injunction forcing Bayley Seton to make the following repairs: (1) repair the premises' air compressor system; (2) repair structural aspects of the building to abate flooding; and (3) contract with a mold abatement company to address mold in the premises.

This court's August 21, 2007 decision is currently on appeal to the Second Department and by order dated January 31, 2008, the Second Department stayed enforcement of the November 21, 2007 order pending appeal.

The defendant now brings this motion for contempt alleging that (1) plaintiffs have refused to repair under this court's November 21, 2007 order, (2) plaintiffs have removed the security force causing an air conditioning unit to be stolen and (3) plaintiffs have removed the freight elevator. In opposition, plaintiffs argue that they have not defaulted on any obligations under the November 21, 2007 order since the Appellate Division stayed enforcement. As to the security, plaintiffs argue that they have not reduced the contracted scope of security services provided to defendant's building or to the external common areas of the campus since the filing of court documents in 2007 in any way, and when contacted about inadequate security service, Bayley Seton claims they have always taken immediate steps to remedy the situation, including exploring its options to replace the air conditioning.

Furthermore, as to the freight elevator, plaintiffs argue that they are not in violation because although this court has signed the order granting defendant's second injunctive order that Bayley Seton repair the freight elevator, the order has not yet been entered by the clerk. In addition, defendants argue that the loss of freight elevator services has no adverse effect on the defendant because defendant has no space in the basement and has no right to place his equipment in the basement.

The plaintiffs also seeks an order imposing sanctions against Dr. Miceli for his frivolous motion practices pursuant to 22 NYCRR §130-1.1. Moreover, plaintiffs seek an order forcing Dr. Miceli to pay rent due from November 2003 to the present and all future rent as it comes due. Lastly, plaintiffs seek an order requiring Dr. Miceli to post a bond in the amount of \$52,105 to secure the plaintiffs for services provided since January 1, 2007 and an additional bond if an order is entered for plaintiffs to enforce repairs, in the amount required to effectuate such repairs, and to indemnify Bayley Seton for its expenses.

## **Discussion**

### ***Defendant's Motion for Contempt***

Defendant seeks to enforce sanctions because the plaintiffs failed to adhere to this court's November 21, 2007 order. It is uncontested that plaintiffs have not carried out the repairs outlined in the November 21, 2007 order. Specifically, the court ordered plaintiffs to (1) repair the premises' air

compressor system; (2) repair structural aspects of the building to abate flooding; and (3) contract with a mold abatement company to address mold in the premises. These specific repairs were ordered because they are material in Dr. Miceli's operation of the dental clinic, which provides services to the low income and Medicaid patients as well as the active duty service members of the Coast Guards assigned to Staten Island, who provide harbor defense, as well as other active and retired military members. This dental facility is unique in that plaintiffs have no other dental clinics to utilize when it operated a hospital at Bayley Seton and continues to be an integral part of the health care services on Staten Island. Rather than implementing the changes, that is undeniably imperative from a health and safety perspective, plaintiffs commend themselves for allowing the defendant to have electricity, water, security and a telephone.

This Court finds that the Plaintiffs have acted in a contemptuous manner in not attending to the mold condition and in not providing air conditioning and thus, contributing to a health hazard in a community health facility. Instead, the plaintiffs have chosen to hide behind the procedural stay by the Appellate Division. This Court finds that position to be unconscionable and a danger to the health and welfare of the patients and dental staff who have no other place to go. Accordingly, Dr. Miceli's motion is granted, however, inasmuch the Second Department stayed enforcement of this injunction on January 31, 2008 pending the outcome of the August 2007 judgment, this court cannot enforce sanctions at this time against the plaintiffs pursuant to CPLR §5519, which creates an automatic stay of all proceedings to enforce the judgment or order appealed from.<sup>1</sup>

It is no secret that the Sisters of Charity Health Care System as part of St. Vincent's Catholic Medical Center of New York have undergone much trouble in the past few years having recently come out of bankruptcy and having sold off the former St. Vincent's Hospital on Staten Island, now Richmond University Medical Center. This Court has been made aware of the proposed sale of the Bayley Seton Hospital campus to the Salvation Army which appears to be imminent according to recent newspaper reports.<sup>2</sup>

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<sup>1</sup>*Gerard v Barry*, 407 NYS2d 609 [Sup Ct 1977].

<sup>2</sup>Phil Helsel, *Salvation Army closer to community center construction: The group expects to purchase 8 acres of the Bayley Seton Hospital campus*, Staten Island Advance, June 6, 2008.

This Court is also aware that the Salvation Army, which is well known for providing the basic necessities of life to include food and shelter to many low income persons is poised to establish several low income senior citizen housing units as well as a community youth facility on the Bayley Seton campus. Maintaining a long standing community based dental clinic, which is not in the physical area where the new construction would be located would appear to be a symbiotic relationship with the new landlord. Thus, maintaining this dental facility, which services the poor and the military and which still has a lease until 2010 of the Bayley Seton Campus is essential.

***Plaintiffs' Motion for Costs and Sanctions***

Plaintiffs' motion for sanctions, is denied. Although a court may impose sanctions against a party pursuing a frivolous conduct, this situation does not warrant sanctions as defendants' conduct does not rise to the level of disrespect or callous disregard for the burden placed upon the court.<sup>3</sup>

Similarly, plaintiffs' motion for costs and an order to secure a bond for expenses incurred as a result of defendant's holdover tenancy is denied. As plaintiffs eloquently mentioned in their cross-motion papers, this court's August 21, 2007 judgment held that defendant validly exercised its right to renew the lease. Ordering the defendant to pay for the proposed holdover rent from January 1, 2007 and future rent into escrow in the sum of \$52,105 as well as securing a bond for any repairs that may be ordered by this court, would not be a "reasonable measure" as this matter is still pending before the Appellate Division.

Accordingly, it is hereby:

ORDERED, that the defendant Jack Miceli, D.D.S., P.C.'s motion for a finding of contempt, is granted; and it is further

ORDERED, that plaintiffs, Sisters of Charity Health Care System Nursing Home, Inc., d/b/a Bayley Seton Hospital and Saint Vincent's Catholic Medical Centers of New York cross-motion for costs and sanctions, is denied; and it is further

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<sup>3</sup>*Kramme v Town of Hempstead*, 474 NYS2d 108 [2d Dept 1984].

ORDERED, that all parties appear at DCM Part 3 on **July 23, 2008 at 9:30AM** for a conference.

ENTER,

DATED: June 10, 2008

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Joseph J. Maltese  
Justice of the Supreme Court