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| <b>Stellweg v Welch</b>                                                                                                                                                                                                                                          |
| 2013 NY Slip Op 33157(U)                                                                                                                                                                                                                                         |
| December 13, 2013                                                                                                                                                                                                                                                |
| Sup Ct, New York County                                                                                                                                                                                                                                          |
| Docket Number: 105398/11                                                                                                                                                                                                                                         |
| Judge: Anil C. Singh                                                                                                                                                                                                                                             |
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| This opinion is uncorrected and not selected for official publication.                                                                                                                                                                                           |

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

**PRESENT:** HON. ANIL C. SINGH  
SUPREME COURT JUSTICE  
Justice

**PART** 61

STELLWEG, CARLA

**INDEX NO.** 105398/11

**MOTION DATE** \_\_\_\_\_

**MOTION SEQ. NO.** 002

WELCH, WILLIAM ROGER

The following papers, numbered 1 to 3, were read on this motion to/for COMPEL PAYMENT OF RENT

Notice of Motion/Order to Show Cause.— Affidavits — Exhibits \_\_\_\_\_ **No(s).** 1

Answering Affidavits — Exhibits \_\_\_\_\_ **No(s).** 2

Replying Affidavits \_\_\_\_\_ **No(s).** 3

Upon the foregoing papers, it is ordered that this motion is decided in accordance  
with the annexed memorandum opinion.

**DECIDED IN ACCORDANCE WITH  
ACCOMPANYING DECISION / ORDER**

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE  
FOR THE FOLLOWING REASON(S):

**Dated:** 12/13/13

*Ans*, J.S.C.  
**HON. ANIL C. SINGH**  
**SUPREME COURT JUSTICE**

1. CHECK ONE: ..... ☐ CASE DISPOSED ☒ NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: ..... MOTION IS: ☒ GRANTED ☐ DENIED ☐ GRANTED IN PART ☐ OTHER
3. CHECK IF APPROPRIATE: ..... ☒ SETTLE ORDER ☐ SUBMIT ORDER
- ☐ DO NOT POST ☐ FIDUCIARY APPOINTMENT ☐ REFERENCE

5/0

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 61

-----X  
CARLA STELLWEG,

Plaintiff,

DECISION AND  
ORDER

-against-

WILLIAM ROGER WELCH and N.H. LYONS &  
COMPANY, INC.,

Index No.  
105398/11

Defendants.  
-----X

HON. ANIL C. SINGH, J.:

At issue in this case is whether plaintiff/co-tenant Carla Stellweg may compel defendant/co-tenant William Welch to pay his portion of past-due rent and one-half of the ongoing monthly rent for the parties' residential loft unit during the pendency of disposition of the instant partition action. The second issue is whether Stellweg may partition or physically divide a residential loft unit.

Plaintiff commenced the instant action by filing a summons and verified complaint on May 6, 2011.

The complaint alleges that plaintiff Carla Stellweg and defendant William Welch are tenants of unit #4 at 87 East Houston Street in Manhattan. The subject building is an interim multiple dwelling pursuant to Article 7-C of the Multiple Dwelling Law (the "Loft Law"). The managing agent for the owners of the subject premises is defendant N.H. Lyons & Company, Inc. ("Lyons").

Mr. Welch and Ms. Stellweg executed a stipulation of settlement with Lyons dated June 26, 2009, in a proceeding before the Loft Board (Motion to Compel Payment of Rent, exhibit "B"). The stipulation states that Ms. Stellweg and Mr. Welch are co-tenants of the unit. The stipulation specifies further that commencing August 1, 2008, the maximum legal monthly rent for the unit was the sum of \$1,200 (Motion, exhibit "B," p. 2, para. 3). Stellweg and Welch each paid half the rent for the subject premises.

Stellweg contends that Welch physically and verbally assaulted her inside the unit in June 2009.

On June 2, 2009, Supreme Court Justice Abraham Clott issued a temporary Order of Protection directed Mr. Welch to stay away from Ms. Stellweg. Specifically, the protection order stated that Welch was to stay away from Ms. Stellweg at home, school, business, and place of employment (Motion to Compel Payment of Rent, exhibit "C"). The Order of Protection was extended by eight subsequent orders dated June 9, 2009; July 28, 2009; September 29, 2009; November 16, 2009; December 11, 2009; January 20, 2010; February 5, 2010; and April 19, 2010 (Id., exhibit "D").

Welch stopped making any payments towards rent for the loft in November 2009 on the ground that Stellweg falsely accused him of a physical assault which

never occurred. Based on her accusation, he was ousted from the loft where he had an art studio. As a result, he lost income.

On November 21, 2011, the landlord commenced a nonpayment summary proceeding against Welch and Stellweg in the Housing Part of the Civil Court of New York City as Stellweg tendered only her half of the rent, resulting in a \$4,800 shortfall.

The summary proceeding was consolidated with this Supreme Court action. Stellweg paid the outstanding arrears.

On February 27, 2013, Mr. Welch was found guilty in Criminal Court of harassment in the second degree under section 240.26 of the Penal Law. Section 240.26 states in pertinent part:

A person is guilty of harassment in the second degree when, with intent to harass, annoy or alarm another person:

1. He or she strikes, shoves, kicks or otherwise subjects such other person to physical contact, or attempts to do the same; or
2. He or she follows a person in or about a public place or places; or
3. He or she engages in a course of conduct or repeatedly commits acts which alarm or seriously annoy such other person and which serve no legitimate purpose.

(Penal Law section 240.26)

Plaintiff's complaint asserts three cause of action against the defendants: 1)

partition and division of the subject premises; 2) conversion of personal property; and 3) intentional torts, including assault and battery.

Ms. Stellweg's motion to compel Mr. Welch to pay rent, and Lyons' cross-motion to dismiss the cause of action for partition of the loft unit, are now pending before the Court.

#### Discussion

Plaintiff asserts that this Court should, as a matter of equity, direct defendant Welch to pay all of the rent arrears and one-half of the ongoing rent for the subject premises. She contends that she has at all times paid her share (\$600.00) of the total (\$1,200.00) rent for the premises; that the currently outstanding rent arrears balance is \$9,600.00; and that Welch, as a co-tenant, was required to pay his portion of the rent, and failed to do so, resulting in the alleged outstanding balance.

"In the exercise of its equitable jurisdiction, the court may effect whatever remedy is necessary to do justice to the parties and the subject matter" (55 N.Y.Jur.2d Equity section 76). "A court of equity will not do an inequitable thing or lend its aid to a clever attempt by a litigant to escape a just obligation" (Id.).

In the instant matter, defendant Welch as a named tenant has an unambiguous legal obligation to pay rent. Contrary to Welch's contention, the Order of Protection was entered as a direct result of Welch's own wrongful conduct against

plaintiff, as he was found guilty of harassment in the second degree. Under such circumstances, it would be unjust to relieve Welch of his obligation to pay his share of the back rent and his obligation to pay one-half of the rent going forward.

“The courts recognize two classes of implied contracts, those implied in fact, and those implied in law, which are contracts created by law where none in fact exist – quasi or constructive contracts unrelated to the intentions of the parties” (22A N.Y.Jur. 2d Contracts section 522).

Here, the Court finds that a quasi-contract exists obligating Welch and Stellweg to each pay one-half of the rent. An implied contract of this nature makes it possible for Stellweg to remain in the loft, while preserving Welch’s right to return to the loft when the Order of Protection expires.

Next, we turn to the cross-motion to dismiss the cause of action for partition of the loft unit.

Defendant Lyons asserts that Stellweg has no legal interest or right in the loft unit that may be partitioned. According to Lyons, the tenants have only a pecuniary interest in “improvements” they may have made to the premises, for which the Loft Law provides the exclusive remedy. If Stellweg and Welch do not wish to live together in the loft anymore, they may propose a sale of improvements and divide the proceeds between themselves as they see fit. In addition, Lyons asserts that a

physical partition would contravene the parties' stipulation of settlement in the 2009 Loft Board proceeding, pursuant to which the tenants are collectively the protected occupants of the subject premises, which premises is registered as a single loft unit, for which the tenants agreed to pay a single monthly rent of \$1,200.

"Partition is any division of real or personal property between co-owners, resulting in individual ownership of the interests of each" (24 N.Y.Jur.2d Cotenancy and Partition section 116).

The decisive fact in the instant matter is that Ms. Stellweg and Mr. Welch are not "co-owners" of the loft unit. They are mere renters. Because they do not own the loft unit, they cannot have any legal right whatsoever to partition or physically divide the space.

The complaint states a cause of action only for partition of any improvements that are owned jointly. However, the Court finds that the complaint fails to state a cause of action for partition of the loft unit itself. Accordingly, the first cause of action is dismissed to the extent that it seeks partition of the loft unit.

Settle order on notice.

Date: 12/13/13  
New York, New York

  
\_\_\_\_\_  
Anil C. Singh  
**HON. ANIL C. SINGH**  
**SUPREME COURT JUSTICE**