

<b>New Horizons Preserv. L.P. v Korngay</b>
2015 NY Slip Op 30184(U)
February 9, 2015
Civil Court of the City of New York, New York County
Docket Number: 56833/2014
Judge: Sabrina B. Kraus
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CIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF NEW YORK: HOUSING PART L  
\_\_\_\_\_  
NEW HORIZONS PRESERVATION L.P. X

Petitioner-Landlord

-against-

**DECISION & ORDER**  
**Index No.: L&T 56833/2014**

**HON. SABRINA B. KRAUS**

BELINDA KORNGAY  
200 West 111<sup>th</sup> Street, Apt. 1D  
NEW YORK, NY 10026

Respondent-Tenant

\_\_\_\_\_  
X

**BACKGROUND**

The underlying summary holdover proceeding was commenced by **NEW HORIZONS PRESERVATION L.P.** (Petitioner) against **BELINDA KORNGAY** (Respondent) the tenant of record of the Subject Premises, as well as Darren Melvin (Melvin), Walter Melvin a/k/a Melvin Harley (Walter), Donnell Hillard (Hillard), and Eric Mitchell based on the allegations that Respondent has allowed unauthorized occupants to reside in the Subject Premises and has created a nuisance by the behavior of the occupants of the Subject Premises. The subject building is a project based Section 8 Subsidized premises governed by HUD.

**PROCEDURAL HISTORY**

Petitioner issued a ten day notice to cure dated December 27, 2013 alleging that:

Unauthorized occupants resided in the Subject Premises who were not listed on income re-certifications and in violation of Respondent’s lease; and

Respondent had failed to accurately report all incomes and family composition information to Petitioner; and

Walter had represented to police on November 4, 2013, that he resided in the Subject Premises and showed identification supporting that claim and is an unauthorized occupant; and

Other unauthorized occupants were in the Subject Premises; and

On November 4, 2013, Walter threatened to shoot the property manager, and that he had thrown rocks at the building and broken glass on two other occasions; and

Respondents guests or family members have loitered in common areas of the building disturbing other residents and have played music loud at inappropriate hours.

The notice required Respondent to cure the conduct on or before January 12, 2014. Petitioner issued a notice of termination on January 21, 2014, terminating Respondent's tenancy as of February 9, 2014.

The petition is dated March 4, 2014, and the proceeding was initially returnable on March 17, 2014.

Respondent appeared *pro se* and the file does not indicate any other named respondents appeared. On May 23, 2014, the parties entered into a stipulation of settlement.

The Stipulation was based on Respondent's representation that all other respondents had vacated the Subject Premises and been permanently excluded by Respondent. Based on this representation, Petitioner discontinued the proceeding against all other respondents.

Respondent also agreed, without any admissions, not to commit or permit any of the acts alleged in the notice of termination. The Stipulation provided for Respondent to pay arrears and that Petitioner could restore for "appropriate relief" within one year if Respondent defaulted.

On July 2, 2014, Respondent made an *ex parte* application for an Order to Show Cause seeking an extension of time to pay, which the court declined to sign.

On August 25, 2014, Petitioner moved for a money judgment based on Respondent's failure to have paid the arrears as agreed. That motion was resolved by a stipulation on the return date, wherein Respondent agreed to pay \$6009.52 by September 2014.

On December 18, 2014, Petitioner moved for an order restoring the case to the calendar and seeking a judgment of possession. The motion was supported by the affidavit of Marjorie Dan (Dan) who stated that "unauthorized occupants have been observed on the premises on numerous occasions at various times of the day." The affidavit asserted some occupants had keys and that on October 30, 2014, she observed a male she believed to be Melvin in the bathroom inside the Subject Premises.

The moving papers also alleged unidentified individuals were observed sleeping in the Subject Premises on two dates.

There were no opposition papers filed to the motion and on December 18, 2014, the court (Katz, J) granted the motion to the extent of setting it down for a hearing .

On February 9, 2014, the hearing was assigned to Part R. The hearing took place that morning and the court reserved decision.

### **FINDINGS OF FACT**

Dan testified at the hearing. Dan is a property manager who is usually on site on Tuesdays. Dan went to the Subject Premises on October 30, 2014. The door was opened by a

pregnant lady. Dan was allowed in to inspect the Subject Premises. Dan found Melvin hiding in the bathroom of the Subject Premises.

On November 10, 2014, Dan testified that she went to the Subject Premises and observed Melvin sleeping in one of the bedrooms, although this testimony conflicts with the affidavit Dan submitted in support of the motion which stated that on said date the Super observed an “unauthorized occupant” sleeping in the Subject P remises, and that she went later in the day and met a couple who refused to identify themselves. As such, the Court does not credit Dan’s testimony regarding observing Melvin in the Subject Premises on said date.

On January 21, 2015, Dan observed Melvin enter the Subject Premises with other individuals.

Carlos Castillo (Castillo) the super of the building also testified for Petitioner. Castillo lives in apartment 1C at the subject building. On February 4, 2015, Castillo observed three people jump out the window of the Subject Premises. Castillo then went into the building and saw police in the lobby and in the Subject Premises. Castillo observed that the police had taken someone into custody and was directed by police to leave the scene.

After Castillo’s testimony, Petitioner rested.

Reginald Kornegay (Kornegay) testified for Respondent. Kennedy is Respondent’s brother. Kornegay and his pregnant girlfriend were in the Subject Premises on November 10, 2014. Melvin was not in the Subject Premises on said date.

Kornegay was in the Subject Premises on February 4, 2015. Kornegay admitted into the Subject Premises, an individual known as Kellz, who was being chased by the police on that day. Kornegay denied that three people jumped out the window, but acknowledged at least one

person jumped out the window. Kornegay stated said person was his 13 year old cousin, Dada Hillard. Kornegay's testimony regarding the events of February 4 was evasive and lacked credibility.

Kornegay denied living in the Subject Premises, however, he admitted that he has keys to the Subject Premises, he often sleeps there, and his New York State identification card (Ex A) lists the Subject Premises as his residence. Kornegay testified that Respondent is away from the Subject Premises for days at a time because she works as a home attendant and Kornegay testified he housesits for Respondent to care for her two cats.

Respondent testified on her own behalf. Respondent testified that she lives alone in the Subject Premises which is a three bedroom apartment.

#### **DISCUSSION**

The Stipulation settling the proceeding is somewhat ambiguous. It does not provide for any particular relief other than "appropriate relief" in the event of a default. Nor does it state what type of default would entitle Petitioner to further relief.

Petitioner did establish by a preponderance of credible evidence that on two occasions Melvin was admitted to the Subject Premises.

While Korengay may appear to be living in the Subject Premises, Petitioner did not establish same by a preponderance of credible evidence at the hearing, and Kornegay was not one of the individuals Respondent agreed to exclude from the Subject Premises.

Additionally, Petitioner established that Respondent allowed occupants in the Subject Premises on February 4, 2015 resulting in a disturbance including multiple occupants jumping out of the window to escape police, and police activity at the Subject Premises.

Finally, the court notes that Petitioner commenced this proceeding based on a breach of lease claim, and served a notice to cure affording Respondent an opportunity to cure all alleged breaches.

Based on the foregoing, the court finds that Petitioner is entitled to a final judgment of possession. However, pursuant to RPAPL §753(4) issuance of the warrant is stayed for ten days to afford Respondent an opportunity to cure by permanently excluding Melvin from the Subject Premises, and ceasing to allow any guests or occupants to engage in such conduct as occurred on February 4, 2014 or is otherwise referenced in the predicate notices.

The remaining probationary period under the Stipulation shall continue to run. In the event Respondent further breaches the Stipulation during the remaining period or fails to cure the current breach within 10 days, Petitioner may move for issuance of the warrant.

This constitutes the decision and order of this court.

Dated: February 9, 2015

New York, New York

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Hon. Sabrina Kraus

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