

Mutual Redevelopment Houses v Nichols

2015 NY Slip Op 30323(U)

March 6, 2015

Supreme Court, New York County

Docket Number: 153867/13

Judge: Joan A. Madden

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY
PRESENT: HON. JOAN A. MADDEN PART 11
Justice

MUTUAL REDEVELOPMENT HOUSES ,

PLAINTIFF,

- v -

DEFENDANT.

INDEX NO. 153867/13

MOTION DATE:

MOTION SEQ. NO.:003

JULIE NICHOLS,

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

PAPERS NUMBERED

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

-

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: [] Yes [x] No

Melissa L. Steinberg (“Movant”), as Guardian Ad Litem (“GAL”) for defendant Julie Nichols, moves for an order (1) discharging her as GAL for Ms. Nichols in this proceeding, (2) ordering Adult Protective Services (“APS”) to pay her \$600 in compensation, (3) directing that a money judgment in favor of Movant and against Ms. Nichols in the amount of \$5,516.06 representing \$5,325.00 in compensation and reimbursement of \$191.06 in reasonable and necessary expenses incurred by her on behalf of Ms. Nichols; or, in the alternative, (4) directing plaintiff Mutual Redevelopment Houses, Inc. (“Mutual”) to pay her \$5,516.06 from Ms. Nichols’ equity in her apartment which equity is currently held by Mutual, prior to transferring any remaining equity to Ms. Nichols. Ms. Nichols, appearing *pro se*, opposes the motion. Mutual opposes the motion to the extent the Movant seeks payment from the equity held by it from Ms. Nichols’ equity in the apartment, arguing that the money owed by Ms. Nichols to it exceeds the remaining equity.

Mutual is the owner of 351 West 24th Street, in Manhattan (“the Building”) and commenced this action against Ms. Nichols, who was a tenant in apartment 1A (“the

Apartment”) to, *inter alia*, enjoin her from bringing garbage, waste and other items into the Apartment and to give Mutual a right to access to the Apartment, including in connection with a project in the Building to remove and replace the heating, ventilation and air cooling systems (the “HVAC Project”). The Movant was appointed as GAL for Ms. Nichols in this action by court order dated March 6, 2014. At the time of the appointment, a warrant of eviction had issued by the Housing Part of the Civil Court to evict Ms. Nichols based on a determination by the New York Department of Housing Preservation & Development (“HPD”) that Ms. Nichols had created nuisance conditions in the Apartment. By order dated May 14, 2013, this court had stayed Ms. Nichols’ eviction pending her appeal of an Article 78 proceeding challenging the HPD determination so long as Ms. Nichols complied with certain conditions related to the timing of the appeal of the Article 78 proceeding and agreed to give access to Mutual to provide cleaning services to remove items from the Apartment to facilitate HVAC Project. Subsequently, based on the Movant’s investigation, it was determined that Ms. Nichols had not yet perfected her appeal of the Article 78 proceeding, that the time to do so had expired, and that no avenues remained for appealing the issuance of a certificate of eviction or the underlying HPD determination. Accordingly, in an order dated March 25, 2014, the court extended the stay of eviction against Ms. Nichols only through April 22, 2014, to give Ms. Nichols time to vacate and surrender the Apartment, and provided Ms. Nichols with an additional thirty days from the eviction or surrender of the Apartment to remove any personal belongs from the Apartment and from a storage area owned and operated by Mutual.

As detailed in the Movant’s affirmation of services, and the invoice annexed to the affirmation the Movant spent a total of 39.45 hours for services rendered in connection with her appointment as Ms. Nichols’ GAL between on February 18, 2014, and July 16, 2014. In reply, Movant submits an updated invoice showing that she expended an additional 4.65 hours, between July 17, 2014 and the time that the motion was fully submitted, for a total of 44.1 hours¹.

In her affirmation, the Movant has sets forth in detail the work she has done on Ms

¹The invoice submitted in reply indicates that the Movant is entitled to recover a total of \$6,816.56 consisting of \$6,622.50 for 44.1 hours of services rendered and \$194.06 for expenses. This calculation is incorrect since 44.1 hours at \$150 per hour equals \$6,615.00 (and not \$6,622.50). The correct total is thus \$6,809.60, (i.e. \$6,615.00 plus \$194.06 for expenses).

Nichols' behalf, including investigating whether she had any options other than vacating the Apartment, making numerous telephone calls (no fewer than 28) to Ms. Nichols to discuss the proceeding and her relocation, attempting to contact Ms. Nichols by letters dated March 6, March 31, and April 18, 2014, none of which elicited any response. The Movant also discussed Ms. Nichols' situation with John Sheehan ("Sheehan"), a social worker, who met Ms. Nichols at All Soul's Church. In addition, Movant contacted an attorney working for the City of New York Office of Legal Affairs ("OLA") to discuss the possibility of OLA bringing an Article 81 proceeding under the Mental Hygiene Law to obtain a guardian for Ms. Nichols; however, the OLA declined to do so based on the recommendations of one of its psychiatrists. The Movant also met with Ms. Nichols and her case worker from APS to discuss Ms. Nichols' relocation and asked APS to assist Ms. Nichols in relocating her belongings to the condominium in Queens where she would be living; however, APS declined because Ms. Nichols was being evicted. The Movant also attended the City Marshal's attempt to evict Ms. Nichols on June 5 and her eviction on June 9, 2014. Movant also met with the Building's management to attempt to retrieve Ms. Nichols' belongings.

While Movant states that the court routinely awards her \$300 per hour for her compensation for legal services rendered as a GAL, she is requesting payment in this matter at a discounted rate of \$150 per hour, which reflects her desire "not to gouge [Ms. Nichols], and also the fact that [she] expended a great deal of time and effort attempting to assist [Ms. Nichols], reducing the amount of time and effort [she] was able to expend on higher paying legal work" (Affirmation of Services, ¶ 66). The Movant also states that "upon information and belief Ms. Nichols owns a condominium valued at approximately \$200,000 and has savings of approximately \$200,000, and stands to receive a payout of her accrued equity in her apartment upon her complete surrender of the apartment" (Id. ¶ 68). This is consistent with Ms. Nichols' statement during the course of this proceeding that she did own an apartment other than the one at issue here.²

CPLR 1204 provides that "a court may allow a [GAL] a reasonable compensation for

²While Ms. Nichols admitted to buying the apartment she also claimed at one point it was a storage facility and not a place to live. However, a record from the Department of Finance Office of the City Registrar dated April 12, 2013, produced in this action, showed that Ms. Nichols purchased a "single residential coop unit" in Rego Park, New York.

[her] services to be paid in whole or in part by any party or from any recovery had a behalf of a person whom such [GAL] represents or from such person's other property." Here, upon careful review of the record, the court finds that the Movant is entitled to the relief sought in this motion, including the amounts she seeks as compensation for her services. While Ms. Nichols opposes the motion, arguing that the City of New York should pay Movant as the City accepted responsibility for the Movant's appointment, this argument is without support in law. Moreover, while Ms. Nichols contends that Movant did not help her, the record reflects that the Movant worked on Ms. Nichols' behalf despite Ms. Nichols' refusal to cooperate. As for Mutual's partial opposition, as noted by Movant in reply, while Mutual may have a superceding claim to any equity left from the Apartment, the Movant still has the right to recover any funds that may remain.

Finally, since Ms. Nichols was an APS client throughout this proceeding and the Movant, as GAL, represented Ms. Nichols' interests, she is entitled to a \$600 stipend payable by the City of New York.

In view of the above, it is

ORDERED that the Melissa Steinberg, Esq. is hereby discharged from her duties as the GAL for defendant Julie Nichols; and it is further

ORDERED that upon consent, the Department of Social Services of the City of New York shall pay Melissa Steinberg, Esq.. the sum of \$600, within 20 days of service upon it of a copy of this order with notice of entry, the affirmation of services of GAL dated July 16, 2014, (with exhibits) filed with the court pursuant to CPLR 1204 for services tendered to the Ms. Nichols as her GAL; and it is further

ORDERED that the Clerk shall enter a judgment in favor of Melissa Steinberg, Esq. and against Julie Nichols in the amount of \$6,209.60, with interest at the statutory rate, as calculated by the Clerk, together with costs and disbursements, upon submission of a bill of costs; and it is further

ORDERED that within twenty days of service on the plaintiff Mutual Redevelopment Houses, Inc. of a copy of this order with notice of entry and of the judgment, plaintiff Mutual Redevelopment Houses, Inc. shall pay Melissa Steinberg, Esq., up to the sum of \$6,209.60, from any funds from the equity in the Apartment remaining in Ms. Nichols' account after plaintiff is paid moneys due and owing to it; and it is further

ORDERED that to the extent Mutual Redevelopment Houses, Inc. does not have sufficient funds from the remaining equity in the Apartment to pay the sum of \$6,209.60, plaintiff shall promptly notify Ms. Steinberg of this fact

DATED: March 6, 2015



HON. JOAN A. MADDEN
J.S.C.

Check One: FINAL DISPOSITION NON-FINAL DISPOSITION