

Harris v Israel

2018 NY Slip Op 33995(U)

July 11, 2018

Civil Court of the City of New York, New York County

Docket Number: 75691/2016

Judge: Jack Stoller

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Decision and Order of the Honorable Jack Stoller Appealed From, dated July 11, 2018 [pp. 6 - 12]

CIVIL COURT OF THE CITY OF NEW YORK COUNTY OF NEW YORK: HOUSING PART N ----- X MATTHEW HARRIS,

Petitioner/Landlord,

Index No: 75691/2016

- against -

DECISION/ORDER

WOODRINA ISRAEL,

Respondent/Tenant.

----- X Present: Hon. Jack Stoller Judge, Housing Court

Matthew Harris, the petitioner in this proceeding ("Petitioner"), commenced this holdover proceeding against Woodrina Israel, the respondent in this proceeding ("Respondent"), seeking possession of 53 East 92nd Street, Apt. 3R, New York, New York ("the subject premises") on the ground that the subject premises is subject to the Rent Stabilization Law and that Petitioner sought possession of the subject premises for his personal use pursuant to 9 N.Y.C.R.R. §2524.4(a)(1). Respondent interposed an answer. The Court held a trial of this matter on June 25, 2018.

Petitioner proved that the subject premises is subject to the Rent Stabilization Law; that Respondent has been a tenant of the subject premises; and that Petitioner effectuated timely and proper service of a notice to Respondent that he declined to renew her lease because he wanted to occupy the subject premises for his personal use.

Petitioner introduced into evidence two deeds showing that he owns the building in which the subject premises is located ("the Building") and the building immediately next door to the Building ("the Adjacent Building"). Petitioner testified that he currently lives about three blocks

away from the subject premises; that Petitioner lives with his wife and three children, aged twelve, eleven, and eight; that he is a partner in an investment fund; that two of his children attend a school that is approximately six-and-a-half blocks from the subject premises; that one of his children attends a school that is about a half-block from the subject premises; that he and his family previously lived in London until 2010; that he and his family moved from London to New York partly to be closer to his extended family in California and his wife's extended family in New Jersey; that he originally secured financing to purchase the Adjacent Building; that he has since paid that mortgage off; that he purchased the Building with no financing; and that both buildings cost about \$10 million each.

Petitioner testified that he and his wife wanted to find a property with more space and that they could design to what they wanted for a family residence for a significant time to come where their children could grow up; that they wanted their children to have bedrooms on the same floor; a space for a play room; a common space where they could gather; that, after searching for a period of time, they thought about the potential for a combination of the Building and the Adjacent Building (collectively, "the buildings"); that the buildings are identical brownstones; that he retained an architect ("the architect"); that his wife and children had input in the planning; that he also owns houses in Southampton and in California, none of which have any outstanding mortgages; that he spends about twenty nights a year in California; that he and his family nonetheless intend to live in the buildings for all but forty nights out of the year; that his office is about forty blocks from the subject premises; that there used to be tenants in the buildings; that Respondent is the only remaining tenant in the buildings; that he intends to have a home with two basement levels, including a basketball court, a large playroom, and storage, a ground floor

with a kitchen and an entryway, a next level with a dining room and a living room, a next level with a master bedroom and a bathroom, all three of his children's bedrooms on the same floor above that, an office for his wife, and a home theater a meditation and yoga pavilion on the top floor.

Petitioner testified that the combination of the buildings will cost \$15 to 20 million to be paid out of his personal worth, which he testified is about \$500 million; that his current salary is \$250,000 and that a bonus structure gives him a percentage of the profits that he realizes each year, which averages about \$15 million a year; that he signed an agreement with the architect; that the architect's fee is approximately \$1.5 million; that he paid \$1.25 million; that he has participated in about 25 to 30 meetings with the architect, developing a vision, refining the vision, discussing everything from technical aspects, interiors, rooms, and finishes; that his wife was in all meetings; and that there was one meeting with his children where they were asked questions.

Petitioner testified that his assistant received one rent check from Respondent in error after the expiration of the notice declining to renew her lease and that he returned that check to Respondent within a couple of days of receiving it.

Respondent did not cross-examine Petitioner.¹

The architect testified that he is licensed; that he renovates houses and apartments in New York, with a specialty in high-end residential units; that he is a partner in a firm; that he has a bachelor's degree in architecture from the University of Minnesota and a master's degree from

¹ Respondent had been represented by two previous attorneys, both of whom had successfully moved to be relieved as her counsel. Respondent appeared at the trial unrepresented.

Yale University; and that he teaches architecture at Yale. The Court granted Petitioner's application to qualify the architect as an expert.

The architect testified that Petitioner contacted him in 2015 to talk about the possibility of combining the Building and the Adjacent Building into one house; that Petitioner retained him and his firm to do so; that the buildings are two nineteenth-century brownstones; that he has worked on other projects that also involve the combination of two houses into one; that the New York City Department of Buildings ("DOB") defines such work as an alteration; that he had dozens of meetings with Petitioner and Petitioner's wife; that he drafted a proposal; and that he has signed an agreement to provide that service to Petitioner. Petitioner introduced the agreement for architectural services into the record, which states the intention to combine the buildings into a single family residence. The architect testified that Petitioner has paid him a majority of his fee; that consultants have been retained for engineering, structural, and mechanical work and electrical and sprinkler designs and for foundation and underpinning design; that Petitioner paid these consultants; and that a number of associates at his firm worked on the project for the past year and a half.

Petitioner introduced into evidence an approved set of plans from DOB and from the New York City Landmarks Commission ("Landmarks") for the combination of the buildings into a single-family residence. The plans consist of sets of drawings by professionals of various disciplines: an architectural set, supported excavation, a plumbing set, a mechanical set, a sprinkler and fire protection set, and a landmark set. The architect testified that he first submitted plans for zoning review, then to Landmarks, and then to DOB, as DOB would not approve project until Landmarks approved it.

The architect testified to features of the new residence that are particular to Petitioner, including a basketball court, removal of the wall between the buildings, a shower for Petitioner's dog in the mud room to wash salt off the dog's feet after walks in the wintertime, a gallery space to have enough height and wall space to accommodate art work specific to Petitioner's household, a room for meditation, and a spa for Petitioner and his children. Petitioner introduced into evidence drawings rendering what the space will look like.

The architect testified that contractors are licensed by DOB and that Petitioner only has to engage the contractor and have the contractor pull permits and start construction.

Respondent did not cross-examine the architect.

On her case, Respondent introduced into evidence a number of deeds and other recorded documents pertinent to the buildings. Respondent argued that mortgages that were recorded were inconsistent with Petitioner's testimony about whether he had taken out financing on the buildings and that Petitioner and/or Petitioner's wife had prior involvement with the buildings.

N.Y.C. Admin. Code §26-511(e)(9)(b) and 9 N.Y.C.R.R. §§2524.4(a)(1) and 2524.4(a)(3) permit an owner to refuse renewal leases to rent-stabilized tenants and to recover possession of "one or more" stabilized dwelling units for his or her personal use and occupancy as his or her primary residence, or as the primary residence of a member of the owner's immediate family, without first obtaining DHCR approval. Pultz v. Economakis, 10 N.Y.3d 542, 548 (2008). In order for Petitioner to prevail, Petitioner has an affirmative obligation to prove by a preponderance of the evidence that he has a good faith intent to occupy the subject premises. Hirsch v. Stewart, 63 A.D.3d 74, 79-80 (1st Dept. 2009), Delorenzo v. Famiglietti, N.Y.L.J. May 1, 1996 at 30:3 (App. Term 1st Dept.), Matlak v. Zietek, 2009 N.Y. Misc. LEXIS 2583 (Civ. Ct.

Kings Co. 2009), *citing Nestor v. Britt*, 213 A.D.2d 255 (1st Dept. 1995), *Smilow v. Ulrich*, 11 Misc.3d 179 (Civ. Ct. N.Y. Co. 2005). The intent to recover the premises for personal use must be actual and genuine and not a subterfuge for removal of tenants. *Bourdouris v. Caravella*, N.Y.L.J. Aug. 8, 2001 at 19:5 (Civ. Ct. Kings Co.), *citing Sobel v. Mauri*, N.Y.L.J. Dec. 12, 1984 at 10:4 (App. Term 1st Dept.).

The testimony of the architect as to specifications of the buildings tailored to the personal use of Petitioner and his family, particularly accommodations of walls to fit Petitioner's art holdings, a meditation room for Petitioner, a basketball court, and a number of bedrooms on the same floor to accommodate Petitioner's three children, all evince an intent of Petitioner to actually live in the reconfigured buildings after the construction work is done. The attendance of Petitioner's children at schools within easy walking distance of the subject premises further evinces such an intent, a part of the totality of the circumstances the Court is to consider in assessing good faith. *Garner v. Berger*, N.Y.L.J. July 15, 2002 at 20:3 (Civ. Ct. N.Y. Co.), *Bourdouris, supra*, N.Y.L.J. August 8, 2001 at 19:5. Petitioner's financial wherewithal to engage in such a construction project is another factor in evaluating good faith. *Brown v. Robards*, 29 Misc.3d 129(A)(App. Term 1st Dept. 2010). Petitioner's testimony, the testimony of the architect as to the fee paid, the documented acquisition of various permits and approvals from city agencies, and the recorded documents in evidence all evince Petitioner's ability to pay for the work that he and the architect testified to.

The evidence that Respondent introduced did not address Petitioner's good faith intent to proceed with the renovation that he testified to, nor to Petitioner's intent to reside in the two buildings with his family. In the absence of any rebuttal as to these crucial considerations, the

preponderance of the evidence shows that Petitioner has a good-faith intent to occupy, *inter alia*, the subject premises for the personal use of him and his family.

Petitioner's prompt return of one rent check cashed after the expiration of her lease, which Respondent did not rebut, did not vitiate the notice declining to renew her lease.

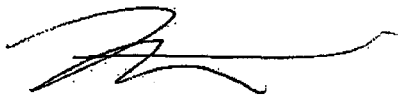
Monacelli v. Farrington, 1996 N.Y. Misc. LEXIS 648 (App. Term 1st Dept. 1996), Roxborough Apartment Corp. v. Becker, 176 Misc.2d 503, 505 (Civ. Ct. N.Y. Co. 1998)(Acosta, J.), 155 West Assoc. v. Dapper, 2009 N.Y. Misc. LEXIS 5293 (Civ. Ct. N.Y. Co. 2009), 170 E. 77th 1 LLC v. Berenson, 12 Misc.3d 1017, 1020 (Civ. Ct. N.Y. Co. 2006).

Accordingly, the Court awards Petitioner a final judgment of possession. Issuance of the warrant of eviction is permitted forthwith, execution thereof is stayed through August 31, 2018 for Respondent to move out of the subject premises. On default, i.e., if Respondent does not move, a marshal may evict Respondent by executing the warrant of eviction after service of a notice.

The parties are directed to pick up their exhibits within thirty days or they will either be sent to the parties or destroyed at the Court's discretion in compliance with DRP-185.

This constitutes the decision and order of this Court.

Dated: New York, New York
July 11, 2018



HON. JACK STOLLER
J.H.C.