

Cordasco v Maldonado
2021 NY Slip Op 31023(U)
March 24, 2021
Supreme Court, Kings County
Docket Number: 503785/2021
Judge: Lara J. Genovesi
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At an IAS Term, Part 34 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse thereof at 360 Adams St., Brooklyn, New York on the 24th day of March 2021.

P R E S E N T:

HON. LARA J. GENOVESI,
J.S.C.

THOMAS CORDASCO

Plaintiff,

-against-

APRIL MALDONADO, "JOHN DOE" and "JANE
DOE"

Defendant.

Index No. 503785/2021

DECISION/ORDER

(Motion Sequence #1)

WHEREAS, plaintiff Thomas Cordasco is the owner of the building located at 844 41st Street, Brooklyn, New York 11232 who by his counsel Belkin Burden Goldman LLP, commenced this action by filing of a Summons with Notice dated February 16, 2021 (*see* NYSCEF Doc. # 1) seeking monetary and injunctive relief against defendant April Maldonado alleging her to be the occupant of Apartment 1F pursuant to a now expired licensee agreement extended to her by the former tenant of record who vacated the Apartment in March 2020 and that she remains in the Apartment without Owner's permission while engaging in nuisance behavior alleged to be a threat to the health, welfare, and safety of the other tenants at the Building; and

WHEREAS, on February 17, 2021, plaintiff filed an emergency order to show cause with an application for a temporary restraining order pursuant to CPLR 6313 which sought an order: (i) pursuant to CPLR 6301,6311 and 6313(a) enjoining April Maldonado, John Doe and Jane Doe, their agents or employees from performing any work, including but not limited to electrical work, inside of 844 41ST Street, Brooklyn, New York 11232 at pain of contempt; and (ii) pursuant to CPLR §6301, §6311 and §6313(a) ordering April Maldonado, John Doe and Jane Doe to grant Plaintiff immediate, unimpeded access to the Apartment for the purpose of confirming that no further illegal construction and/or electrical work has been performed inside of the Apartment; and

WHEREAS, the Hon. Steven Z. Mostofsky granted Plaintiff's application for a temporary restraining order which ordered that pending the hearing of the motion, Defendants Maldonado, John Doe, Jane Doe, their agents, servants, employees and all other persons acting under the jurisdiction, supervision and/or direction of Maldonado were restrained and enjoined from performing any construction, alterations, renovations and demolition in the Building, including, without limitation, electrical work, carpentry or masonry work, and further ordered Maldonado and/or her agents to grant Plaintiff access to Apartment 1F on February 25, 2021 at 3:00 p.m. solely for inspection purposes to confirm no dangerous conditions exist inside; and

WHEREAS, the court calendared the underlying motion to be heard on March 10, 2021 at 9:30am before the Honorable Lara J. Genovesi, J.S.C in Supreme Court, Kings County Part 34; and

WHEREAS, on the March 10, 2021 return date, upon April Maldonado's failure to appear, this Court adjourned the motion to March 24, 2021 at 9:45 a.m. This Court issued an order which indicated that the order to show cause was on the court's calendar; that, as a courtesy, upon defendants' failure to appear, it was adjourned to March 24, 2021; that due to the COVID-19 pandemic, all appearances will be conducted virtually, via Microsoft Teams until further notice; and included instructions on how to appear virtually, including a telephone number and conference ID to call into the meeting, in the event the litigant did not have access to Microsoft Teams. Counsel for plaintiff was directed to serve this order on defendants by no later than March 21, 2021, and

WHEREAS, Plaintiff effectuated service of the March 10, 2021 order and supporting papers on April Maldonado, John Doe and Jane Doe and electronically filed an affidavit of service memorializing the same as was required of him prior to the March 24, 2021 return date; and

WHEREAS, on March 24, 2021 at 9:45am counsel for plaintiff appeared by Microsoft teams but defendants failed to appear, and no attorney appeared on behalf of defendants; and

WHEREAS, after waiting a considerable time, when no defendant appeared, this Court marked the motion submitted; and

WHEREAS, at 10:16am this Court received an email to the virtual courtroom from an individual representing to be April Maldonado who claimed she had attempted to contact the Court multiple times without response and that she would like to be heard on the motion; and

WHEREAS, this Court immediately disclosed the e-mail to counsel, advised the parties that the case would be re-calendared on Microsoft Teams due to Ms. Maldonado's request, and asked if both parties were available at 12:30 p.m.; and

WHEREAS, both parties confirmed by e-mail that they were available at 12:30 p.m.; and

WHEREAS, this Court waited until 12:50pm for April Maldonado to appear, and upon her second failure to appear, this Court, on the record, restated the procedural history set forth above and proceeded to hear plaintiff's application; and

NOW, having heard Plaintiff's application and reviewed its underlying submissions submitted to the court herein, and having received no opposition, it is hereby

ORDERED, that on default of defendant Maldonado at 1:07 p.m., plaintiffs' order to show cause is granted in its entirety based upon plaintiff's submission of photographs of impermissible electrical work done at the building, an affidavit of a licensed electrician speaking to the urgent and dangerous condition caused by the work, the remedial efforts taken by Owner to repair the illegal electrical work and the results of the February 25, 2021 inspection of the Apartment;

ORDERED, that pursuant to CPLR §§ 6301, 6311 and 6313(a) April Maldonado, John Doe, Jane Doe, their agents or employees are hereby enjoined from performing any work, including but not limited to electrical work, inside of 844 41ST Street, Brooklyn, New York 11232; and it is further

ORDERED that pursuant to CPLR §§ 6301, 6311 and 6313(a) April Maldonado, John Doe and Jane Doe are hereby directed to provide Plaintiff unimpeded access to 844


41st Street, Apartment 1F, Brooklyn, New York 11232 on March 31, 2021 from 10:00am-4:00pm so that Plaintiff may inspect and repair conditions in the apartment, confirm that no further illegal construction and/or electrical work has been performed inside of the apartment, and that no further dangerous or urgent condition exists in the apartment which is in need of repair; and it is further

ORDERED, that in the event either April Maldonado, John Doe or Jane Doe refuse to provide access, plaintiff may ask the New York City Police Department for assistance, at their convenience provide plaintiff with unimpeded access into the Apartment for the purpose of inspecting the Apartment; and it is hereby

ORDERED, that plaintiff serve a copy of this order by certified, overnight mail to 844 41st Street, Apartment 1F, Brooklyn, New York 11232 on or before March 26, 2021.

This constitutes the decision and order of the Court.

E N T E R:



Hon. Lara J. Genovesi
J.S.C.