

400 W. 59th St. Partners LLC v Feliciano
2021 NY Slip Op 32042(U)
March 1, 2021
Civil Court of the City of New York, New York County
Docket Number: L&T 72377/16
Judge: Marc Finkelstein
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK : HOUSING PART D

-----X
400 WEST 59TH STREET PARTNERS LLC,

Petitioner-Landlord,

-against-

Index No. L&T 72377/16

JOCELYN FELICIANO a/k/a JOSELYN FELICIANO
a/k/a JOSELYN WATSON,

DECISION/ORDER

Respondent-Tenant,

KENDRA L. WATSON, KOREY B. WATSON, I.W.
“JOHN DOE” and/or “JANE DOE”

Respondents-Undertenants.

-----X
MARC FINKELSTEIN, J.:

In this holdover proceeding the parties entered into a stipulation of settlement dated October 12, 2018. The stipulation provided as follows:

Respondent shall exclude Korey B. Watson and Isaiah Watson from the Premises for the duration of her occupancy of the Premises and shall use her best efforts in good faith to exclude Korey B. Watson and Isaiah Watson from the Premises, the Building’s public areas and its grounds at all times. As used in this Stipulation “grounds” shall not include publicly accessible sidewalks adjacent to the Building. Without limitation, Respondent shall not admit Korey B. Watson or Isaiah Watson into the Premises by opening the apartment door or providing a key or access to the key, or providing permission to Petitioner’s front desk staff to admit Korey B. Watson and/or Isaiah Watson to the Building. In the event Respondent becomes aware that Korey B. Watson and/or Isaiah Watson are present at the Premises or elsewhere in the Building or on its grounds, Respondent shall immediately notify Petitioner’s front desk staff. Respondent acknowledges and agrees that Petitioner, its agents and employees will treat Korey B. Watson and Isiah at all times as trespassers and may pursue all available remedies as against Korey B Watson and Isaiah Watson with regard to their unlawful presence at the Premises or elsewhere in the Building or on its grounds. However, Petitioner’s pursuit of its remedies shall not excuse Respondent from her affirmative obligation to ensure to the best of her ability that Korey B. Watson and Isaiah Watson are permanently excluded from the Premises, the Building and its grounds.

By the instant motion dated September 14, 2020 petitioner seeks to restore the matter to the calendar for a hearing on a breach of the stipulation by Ms. Feliciano, which allegedly occurred on June 27, 2020, and upon a finding of a breach, awarding petitioner a final judgment of possession and issuance of a warrant of eviction.

In the interim before the matter was heard, the COVID-19 Emergency Eviction and Foreclosure Prevention Act of 2020 (“CEEFPFA”) was passed, effective December 28, 2020. As a result, the issue arose as to what effect, if any, the new CEEFPFA has on the hearing that would have normally taken place prior to Covid and the Act. Petitioner’s counsel indicated at hearing that there was another incident which allegedly occurred in violation of the stipulation subsequent to the June 27, 2020 alleged breach. Petitioner reasonably argued that said incident was not included in the instant September 14, 2020 motion given that CEEFPFA, particularly the exception to a stay of proceedings, was not effective until December 28, 2020. As a result petitioner requested leave to submit supplemental papers to include any subsequent persistent and unreasonable behavior engaged in by Ms. Feliciano which would support its requested hearing going forward rather than being stayed. The court found this request reasonable under the circumstances and permitted both parties to submit supplemental papers.

Accordingly, both sides have submitted supplemental affirmations on the issue of whether this holdover proceeding should be stayed through at least May 1, 2021 under CEEFPFA or whether the exception to a stay under CEEFPFA should apply because the tenant, Joselyn Feliciano, “is persistently and unreasonably engaging in behavior that substantially infringes on the use and enjoyment of other tenants or occupants or causes a substantial safety hazard to others.”

Petitioner alleges that a subsequent incident occurred on October 1, 2020. The subject building is at 1 Columbus Place a/k/a 400-424 West 59 Street. According to the affidavit of a good Samaritan neighbor, it appears that she saw Ms. Feliciano’s son, Isaiah Watson, standing with his girlfriend, referred to as D.T., and Ms. Feliciano’s dog, in a small garden situated between 33 and 45 West 60th Street. She observed Mr. Watson kicking the dog and screaming at D.T. Later she saw Mr. Watson pressing D.T. against the fence outside of One Columbus Place. She told Mr. Watson to “leave her alone.” Mr. Watson then allegedly lunged at and spat on her. When she then was standing in the building vestibule Mr. Watson threw a stanchion at her, striking her hand and injuring it. He then knocked over an urn and threw plants in it at her. The police were called and they interviewed the good Samaritan and escorted her to the hospital.

Petitioner argues that this subsequent incident, when taken with the June 27, 2020 alleged incident, which formed the basis for the motion for breach of the stipulation, constitutes persistent and unreasonable behavior *by Ms. Feliciano* which substantially infringes on the use and enjoyment of other tenants or occupants or causes a substantial safety hazard to others. Therefore, petitioner argues that the stay provision of CEEFPA should not apply and a hearing should now proceed on the issue of whether Ms. Feliciano has breached the October 12, 2018 stipulation.

Respondent Joselyn Feliciano responds in her supplemental papers that she was not present at this incident and the incident does not demonstrate that she has persistently and unreasonably engaged in the substantial nuisance behavior referenced in CEEFPA. The incident occurred outside the building. In compliance with the stipulation, there is no indication that Ms. Feliciano invited or permitted her son to be in the neighborhood, around or outside the building

or inside the grounds or building. She was not involved in the incident. She did not open her apartment to her son or provide a key or access to a key and did not give permission to the front desk staff to admit her son. The court notes that the October 12, 2018 stipulation does not impose, in effect, strict liability on Ms. Feliciano based upon her son’s conduct of being in her neighborhood, outside the building or in the building grounds without her instigation, knowledge, permission or involvement.

If the allegations as to the incident are accurate, the court in no way condones or minimizes the actions of Ms. Feliciano’s son. However, while not the exclusive remedy for a breach provided in the October 12, 2018 stipulation, the stipulation does provide for petitioner to treat Ms. Feliciano’s son as a trespasser with regard to his unlawful presence at the premises or elsewhere in the building or grounds. It would appear the appropriate remedy was exercised by petitioner when the police were called.

The court does not believe that the sins of the son should be visited upon his mother to the extent that his behavior in this incident should be considered a component of unreasonable and persistent behavior engaged in by Ms. Feliciano herself. Thus, in regard to the issue at hand – whether in this case there should be an exception to the stay provisions of CEEFPA – the court finds that the facts and circumstances of the alleged October 1, 2020 incident taken in conjunction with the alleged June 27, 2020 incident do not amount to persistent and unreasonable behavior *engaged in by respondent Joselyn Feliciano* which substantially infringes on the use and enjoyment of other tenants or occupants or causes a substantial safety hazard to others.

Accordingly, as respondent has served and filed a duly executed CEEFPA Hardship Declaration, the court finds in favor of respondent’s arguments and, under CEEFPA, stays this

proceeding until at least May 1, 2021. Thereafter the parties will receive an invitation via TEAMS for settlement/argument on respondent's cross-motion that a virtual hearing is not an appropriate accommodation for respondent/and/or hearing on petitioner's motion.

This constitutes the order of the Court.

Dated: New York, New York
March 1, 2021

APPROVED
MFINKELS, 3/1/2021, 12:09:14 PM

MARC FINKELSTEIN
JHC