

Tezca v Chery

2021 NY Slip Op 32090(U)

October 26, 2021

Civil Court of the City of New York Kings County

Docket Number: Index No. L&T 305012/21

Judge: Julie Poley

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This opinion is uncorrected and not selected for official publication.

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF KINGS, HOUSING PART B

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JUAN TEZCA,

Petitioner,

Index No. L&T
305012/21

-against-

MARIE CARMEN CHERY, AS TRUSTEE OF THE
MARIE CHERY REVOCABLE LIVING TRUST,

**DECISION AND
ORDER**

Respondent,

-and-

DEPARTMENT OF HOUSING PRESERVATION
AND DEVELOPMENT OF THE CITY OF NEW YORK
("DHPD"),

Respondent.

-----X

Present: Hon. Julie Poley
Judge, Housing Court

Petitioner Juan Tezca commenced this HP action against Respondent to correct violations in Apt. 1 at 183 South 2nd Street Brooklyn, New York 11221 ("Premises"). Both Petitioner and Respondent appeared via Microsoft Teams.

On September 24, 2021, Respondent filed a motion seeking leave to file an answer, leave to implead the New York City Department of Buildings ("DOB") and for an order directing DHPD and DOB to enforce a vacate order against the subject premises. Petitioner also moved to amend the pleadings and for an order striking/ dismissing a portion of Respondent's answer. Both motions were adjourned on consent to November 4, 2021 at 3:30 pm with a briefing schedule.

On October 12, 2021, Petitioner moved via Order to Show Cause for an order requiring Respondent and its principles and agents to remove a sheetrock wall placed over the secondary means of egress of Apartment 1 at 183 South 2nd Street Brooklyn, New York and for an order enjoining Respondent and its principals and agents from installing any walls or any other barrier to block the secondary means of egress at the subject premises.

Respondent opposed the motion and sought to dismiss this proceeding by arguing that Respondent as named is not a proper party to the action. Counsel introduced a Deed dated March 22, 2019 wherein Marie Chery & Elizabeth Chery as trustees of the Marie Chery Revocable Living Trust transferred the Property to 183S2ST, LLC. Respondent argues that since the successor entity was not named or served with pleadings in this action the proceeding should be dismissed.

On October 14, 2021, during argument, Petitioner acknowledged that the wall at the premises which was obstructing the secondary means of egress was removed. Petitioner therefore was only seeking an order enjoining Respondent from installing any walls or barrier to block the secondary means of egress at the subject premises during the pendency of the proceeding. Respondent denied placing the wall, however, Respondent agreed not to place or install any walls which would obstruct the secondary means of egress to the subject premises.

Accordingly, Petitioner's motion is granted to the extent that Respondent is enjoined from installing any walls or barrier to block the secondary means of egress at the subject premises during the pendency of this proceeding unless permitted by law.

The Court now turns to Respondent's application seeking to dismiss the proceeding for failure to name a proper party. Respondent argues that since Petitioner did not sue the current

deed owner 183S2ST, LLC, the proceeding must be dismissed. After reviewing the records, the Court declines to dismiss this proceeding. The Deed, dated March 22, 2019, has Marie Chery & Elizabeth Chery, as Trustees of the Marie Chery Revocable Living Trust, dated June 17, 2015, transferring the interest to 183S2ST, LLC, a single asset LLC whose sole member is Marie Chery & Elizabeth Chery, as Trustee of the Marie Chery Revocable Living Trust dated June 17, 2015 with an office at 875 East 219th Street, Bronx, New York 10467. It appears that the principle of the LLC remains Marie Chery and Elizabeth Chery, as Trustee of the Marie Chery Revocable Living Trust, who was sued at Respondent in the petition. Additionally, the Multiple Dwelling Registration, which has not been updated since 2017, lists Marie Chery as owner and Ckrelja Ferdo as managing agent with an address at 875 East 219th Street, Bronx, New York 10467, which is the same address listed for the new Deed owner.

Respondent's narrow interpretation of "owner" to include only a deed owner is contradicted by the plain language of the governing statutes. The Multiple Dwelling Law ("MDL") defines the term "owner" expansively to include the "owner or owners of the freehold of the premises or lesser estate therein, a mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee, agent, or any other person, firm or corporation directly or indirectly in control of the dwelling." (MDL § 4 (44)). The Housing Maintenance Code ("HMC") has a similarly expansive definition of "owner." (N.Y.C. Admin. Code §27-2004(a)(45)). To allow Respondent to be relieved from its obligations as an owner would be contrary to the legislature's intent in using such a broad definition of ownership in the MDL and HMC, both of which cast a wide net to include anyone who has any type of control over a dwelling, and would hinder this Court's core mission to pursue the enforcement of housing

standards. (*See*, N.Y.C. Civ. Ct. Act §110(c)).

Additionally, an owner who fails to timely file registration information with HPD is not in compliance with N.Y.C. Admin. Code 27-2102(a) and such failure deprives a defaulting party in an HP proceeding from demonstrating the reasonable excuse needed to vacate a default judgment. (*See, Ellouzi v. Sherman* 63 Misc 3d 1216(A) [Civ. Ct. N.Y. Cty 2018] citing *Dep't of Hous. Pres. & Dev. City of NY v. 373 8th St. Realty*, 35 Misc 3d 147(A) [Ap. Term 2nd Dept. 2012] and *Dep't of Hous. Pres. & Dev. City of NY v. Barrett*, 20 Misc 3d 135 [App. Term 1st Dept 2008]).

Finally, according to the N.Y.C. Civ. Ct. Act § 110 (d), the Court, on application of any party or on its own motion, may join any other person or city department as a party in order to effectuate proper housing maintenance standards and to promote the public interest in actions or proceedings involving the enforcement of state and local laws for the establishment and maintenance of housing standards. By Respondent's own admission, 183S2ST, LLC, a single asset LLC whose sole member is Marie Chery & Elizabeth Chery, as Trustee of the Marie Chery Revocable Living Trust, dated June 17, 2015, with an office at 875 East 219th Street Bronx, New York 10467 ("183S2ST, LLC") is the new deed owner of the premises and is therefore directly in control of the subject premises. As such, the 183S2ST, LLC is a necessary party to this proceeding for the enforcement and maintenance of housing standards and this Court *sua sponte* joins 183S2ST, LLC as Respondent to this proceeding pursuant to N.Y.C. Civ. Ct. Act § 110 (d).

Petitioner is to serve a copy of this Decision and Order together with an amended Notice of Petition and Petition upon all Respondents at the address designated on the Deed and to the Secretary of State by first class mail with certificate of mailing and by certified mail, return

receipt requested, on or before October 28, 2021.

THEREFORE, IT IS:

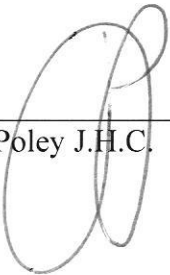
ORDERED: The clerk shall amend the caption to include, 183S2ST, LLC as an additional Respondent; and

ORDERED: Respondents Marie Carmen Chery, as Trustee of the Marie Chery Revocable Living Trust, and 183S2ST, LLC are enjoined from installing any walls or barrier blocking the secondary means of egress at the subject premises during the pendency of this proceeding unless permitted by law; and

ORDERED: This proceeding is adjourned to November 4, 2021 at 3:30 pm for a virtual Court appearance via Microsoft Teams, as previously scheduled, for all parties to appear and for all purposes. If a party is unable to appear virtually, the party is directed to appear on November 4, 2021 at 3:30 pm, Part B, Room 409 in the Housing Part of the Kings County Civil Court located at 141 Livingston Street, Brooklyn, New York. If the parties need further assistance, please contact the courtroom clerk at (347) 404-9251.

This is the Decision and Order of this Court which shall be uploaded to NYSCEF.

Dated: Brooklyn, New York
October 26, 2021



Julie Poley J.H.C.

Honorable Julie Poley