

80th St. I, LLC v Faisst
2021 NY Slip Op 32436(U)
November 23, 2021
Supreme Court, New York County
Docket Number: Index No. 156548/2021
Judge: William Perry
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. WILLIAM PERRY

PART

23

Justice-----X
80TH STREET I, LLC

Plaintiff,

- v -

STEVEN FAISST,

Defendant.
-----XINDEX NO. 156548/2021MOTION DATE 08/17/2021MOTION SEQ. NO. 002

**AMENDED
DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32

were read on this motion to/for

CONTEMPT

Plaintiff is the owner of the property known as 40 East 80th Street, New York, NY 1175 (“Building”). Defendant, Steven Faisst, is the tenant of Apartment 25 (“Apartment”) pursuant to a lease commencing on March 1, 2021 and ending on February 28, 2022. The apartment is not subject to rent stabilization.

Defendant moves by Order to Show Cause, requesting that this Court;

(a) Restore the action to the calendar; and

(b) Pursuant to Judiciary Law §753 (A)(3) and CPLR § 5104, punish Defendant for

contempt of Court for his deliberate and willful failure to comply with the Orders of this Court, including the Temporary Restraining Order contained within the Order to Show Cause signed on July 15, 2021 and the Order on the record following oral argument on July 20, 2021 (collectively, the “Orders”), as a result of Defendant engaging in prohibited, illegal and/or objectionable nuisance-type conduct in the Building and Apartment, *after the issuance of the Orders*, including, without

limitation:

- Engaging in dangerous, menacing and erratic behavior; and
- Harassing a female neighbor in the Building; and
- Lurking on the roof above a female neighbor's apartment and the adjacent fire escape, staring into the neighbor's apartment; and
- Frantically banging on the door of a female neighbor and ranting incoherently; and
- Falsely reporting a gas leak odor to the Fire Department of the City of New York.

It should be noted that Defendant has neither appeared in this action nor filed any opposition to this motion. Notice should also be taken that defendant was personally served with the Court Orders.

To prevail on a motion to punish for civil contempt, the movant must establish (1) that a lawful order of the court, clearly expressing an unequivocal mandate, was in effect, (2) that the order was disobeyed and the party disobeying the order had knowledge of its terms, and (3) that the movant was prejudiced by the offending conduct." *Hayes v. Barroga-Hayes*, 985 N.Y.S.2d 673, 2014 N.Y. App. Div. LEXIS 3428, 3-4 (2d Dep't 2014) citing, *Coyle v Coyle*, 63 AD3d 657, 658, 882 N.Y.S.2d 423 (2d Dep't 2009).

The movant "bears the burden of proving contempt by clear and convincing evidence." *Dankner v. Steefel*, 41 AD3d 526, 528, 838 N.Y.S.2d 601 (2007). In addition, "the party to be held in contempt must have had knowledge of the order." *Galanos v Galanos*, 46 AD3d 507, 508, 846 N.Y.S.2d 654 (2d Dep't 2007).

On September 27, 2021, the Court held a hearing on the Order to Show Cause. Plaintiff presented the Orders of the Court at issue, the testimony of Elys Lopez, a building resident and the testimony of Scott Lerman, the building's managing agent to support its contempt claim. As stated earlier, defendant did not appear in this action.

Ms. Lopez resides in the apartment directly above that of defendant. She testified and stated in her affidavit that after the issuance of this Court's July 20th Order, defendant began a pattern of knocking on her door, pretending to be a police officer or repairman. She also stated that, almost nightly, defendant comes to her door screaming, slamming the door and opening his window and screaming into the air. She further stated that defendant has been seen peering through her skylight into her apartment. Ms. Lopez also stated that on September 15, 2021, defendant kicked her door so violently that he entered her apartment and threatened to kill her. Mr. Lerman testified as to defendant's violent conduct and threatening actions subsequent to the issuance of these Court Orders.

A review of the evidence presented and testimony of Elys Lopez and Mr. Lerman show that defendant has willfully failed to comply with the Orders of this Court dated July 15, 2021 and July 20, 2021 by engaging in the conduct expressly prohibited by the Orders (NYSCEF Doc. 19, 25).

Defendant was ordered to refrain from engaging in any illegal and/or objectionable nuisance-type conduct in the Building and Apartment. The prohibited conduct outlined in the Orders are also violations of the lease. The fact that after receiving the Orders, defendant not only continued the conduct, but escalated the behavior, clearly shows that defendant's actions are not inadvertent mistakes, but rather unapologetic, intentional repudiations of this Court's

Orders. Defendant's actions, which place the lives of his neighbors in harm's way, cannot and will not be overlooked by the Court. (NYSCEF Doc. 28,29). Therefore,

WHEREAS, plaintiff has demonstrated that defendant STEVEN FAISST willfully and intentionally failed to comply with the Orders of this Court by engaging in the prohibited, illegal and/or objectionable nuisance-type conduct as outlined in the Orders; it is hereby

ORDERED, that plaintiff's motion is granted and the case is hereby restored to the calendar; and it is further

ORDERED, that upon restoration, defendant STEVEN FAISST is found to be in contempt of Court; and it is further

ORDERED that defendant may purge himself of this contempt by remitting the sum of \$5,000.00 to plaintiff on or before December 6, 2021 as set forth above for the purging from the contempt to occur, Plaintiff herein on proof, by affidavit, of the failure of Defendant to purge himself as provided in this order within the time set forth above, may move for a further order in this provision through the imposition of fines and costs, including, but not limited to, the Plaintiff's costs and attorney's fees in bringing this contempt motion; and it is further

ORDERED that plaintiff is directed to personally serve a copy of this Order with notice of entry on defendant no later than Tuesday, November 30, 2021.

Any requested relief not expressly addressed by the Court has nonetheless been considered and is hereby denied.

This constitutes the decision and order of the court.

11/23/2021
DATE


WILLIAM PERRY, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE