

159 Bay Realty LLC v Sadiq
2021 NY Slip Op 32744(U)
December 21, 2021
Supreme Court, Kings County
Docket Number: Index No. 50519/21
Judge: Leon Ruchelsman
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS : CIVIL TERM: COMMERCIAL PART 8

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159 BAY REALTY LLC,

Plaintiff,

Decision and order

- against -

Index No. 505019/21

NASIM SADIQ and NASIM FIRDOUS,
BAY PARKWAY DELI GROCERY CORP.,
And XYZ CORP., said corporate name being
fictitious,

Defendants,

December 21, 2021

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PRESENT: HON. LEON RUCHELSMAN

The plaintiff has moved seeking a hearing whether the defendant's COVID hardship declaration is valid. Further, the plaintiff has moved seeking to reargue a decision of the court dated July 15, 2021 which denied a request for contempt. Lastly, the plaintiff seeks an order the defendants owe rent and attorney's fees. The defendants oppose the motion. Papers were submitted by the parties and arguments held. After reviewing all the arguments this court now makes the following determination.

As recorded in prior orders, on July 31, 2019 the plaintiff, owner of property located at 2171 Bath Avenue, within property located at 8758 Bay Parkway in Kings County, entered into a lease with the defendants. This lawsuit was commenced alleging the defendants failed to maintain adequate liability insurance. Further, the complaint alleges the defendant owes back rent in the sum of \$62,127. Subsequent to the filing of the complaint the court ordered the defendants to obtain insurance and required

the defendants to pay a certain sum of rent each month. On March 3, 2021 the court signed an order to show cause which ordered that "pending the hearing of this motion" the defendants were required to pay a sum certain in rent each month and the sum of \$62,127 for past rent owed. The defendants have not paid the past rent owed and the court denied the request seeking to hold the defendant in contempt. The plaintiff has now moved seeking the reliefs noted.

Conclusions of Law

First, the request seeking a hearing to challenge the COVID hardship declaration is granted. The parties will be notified of the date for such hearing.

Turning to the motion to reargue the denial of contempt, the plaintiff has not raised any new argument or any argument the court's determination was incorrect. Rather, the plaintiff has simply made the same arguments that were rejected in the prior order. The language of the order upon which the plaintiff seeks contempt was contained in an order to show cause. As previously held, that is an improper basis upon which to seek contempt.

Next, the defendants will have five days from receipt of this order in which to present the landlord with proof of adequate a valid Commercial General Liability Insurance Policy, which includes coverage of \$1,000,000 for one person, \$1,000,000 for one accident and \$50,000 for property damage, insuring the

landlord and tenant against such liability as well as fire/theft insurance for the premises and demonstrating proof of payment of required premiums. Further, the insurance policies noted must be in the names of the tenants Nasim Sadiq and Nasim Firduous. The failure to procure all the necessary insurance in the proper names withing five days of receipt of this order will constitute a wilful violation of a court order and can subject the defendants to sanctions. Moreover, the failure to present all such insurance will be a violation of the lease and will permit the landlord to take appropriate action in that regard. No excuse will be tolerated and no delay will be excused.

Next, beginning January 2022, subject to the COVID hardship hearing, the use and occupancy that must be paid by the defendants shall be \$4,986.23 for each month. This amends any previous order requiring a monthly payment of \$2,500. The new monthly amount will be \$4,986.23. Again, the failure to timely pay this amount, subject to the COVID hardship hearing, each month shall constitute a wilful violation of a court order and can subject the defendants to sanctions.

Next, the defendants dispute they owe \$92,286.92 or any amount of bank rent. They assert the lease guarantees two free months of rent each year. These matters will be decided at a hearing and will coincide with the COVID hardship hearing. Thus, the COVID hardship hearing will also evaluate the claims of bank

rent owed. Likewise, the request seeking attorney's fees is granted and the proper amount will be decided at the hearing.

Lastly, this decision, in no way alters the notice of eviction already granted. As long as the moratorium remains in place, subject to the COVID hardship hearing the defendants must pay rent in the amount of \$4,986.23 for each month.

So ordered.

ENTER:

DATED: December 21, 2021
Brooklyn, N.Y.



Hon. Leon Ruchelsman
JSC