

Aviles v 4220 15th Ave. Assoc., LLC

2022 NY Slip Op 34513(U)

June 2, 2022

Supreme Court, Kings County

Docket Number: Index No. HP 307014/2020

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

-----X
PETRA AVILES,

Index Number HP 307014/2020

Petitioner,

-against-

DECISION/ORDER

4220 15th AVENUE ASSOCIATES, LLC
LIEB REICHMAN, RACHEL REICHMAN,

Respondents,

DEPARTMENT OF HOUSING PRESERVATION
AND DEVELOPMENT OF THE CITY OF NEW YORK,

Respondent-HPD.

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Present:

JULIE POLEY
Judge, Housing Court

Recitation, as required by CPLR 2219(a):

Notice of Motion and Affidavits Annexed.....	1
Cross-Motion and Affidavits Annexed.....	2
Order to Show Cause and Affidavits Annexed.....	3
Answering Affidavits.....	4
Replying Affidavits.....	5
Exhibits.....	6
Stipulations.....	7
Other.....	0

This is an HP proceeding in which Petra Aviles sought an order to correct based on Housing Maintenance Code (“HMC”) violations which were placed on the property located at 4220 15th Avenue, Apt. 2D, Brooklyn, New York 11231 (“premises”) and a finding that Respondents harassed her in violation of N.Y.C. Admin. Code § 27-2005(d). In particular, Petitioner alleged that the floor collapsed in her bedroom and kitchen, which rendered the premises unsafe to live in and forced Petitioner to relocate for her safety. HPD and DOB issued

vacate orders for the premises. Petitioner further alleged that she is a long-term tenant in a Rent Stabilized apartment and that Respondents have repeatedly attempted to remove her from the premises by ignoring repairs, commencing legal proceedings that are discontinued, and by making unsolicited buyout offers.

On May 7, 2021, the parties settled this proceeding pursuant to a Consent Order. (*See*, R. Ex. M). The Consent Order required Respondents to correct all HPD violations at the premises listed in the Violation Summary Report, dated April 20, 2021, within 90-days, to correct all conditions listed in the HPD Vacate Order, dated September 20, 2020, and complete all tasks necessary to restore Petitioner Petra Aviles to possession of the premises within 90-days. The Consent Order provides that any party may move for contempt or civil penalties in the event of default, and that Respondents may apply to extend the 90-day correction deadline upon showing that Respondents acted with “reasonable diligence” to perform their obligations in a timely manner, and that the delay was beyond Respondents’ control. (*See*, R. Ex. M).

At this juncture there are 3 motions before the court. The day before the 90-day correction deadline was set to expire, Respondents moved to extend the correction deadline, citing ongoing permitting issues. (*See*, NYSCEF Doc. No. 86). Petitioner and HPD both moved for a finding of civil contempt, an award of civil penalties, and an access order. Petitioner also sought leave to pursue their harassment claims. (*See*, NYSCEF Doc. No. 123 and No. 127).

After a substitution of counsel was filed for Respondents, the court conducted a status conference on April 27, 2022 to ascertain the status of this proceeding and confer with the parties to see what issues remain outstanding now that Respondents have new legal counsel. At the status conference it was readily apparent that nearly 1-year after the Consent Order was signed, conditions at the premises largely remain status quo. The vacate orders have not been lifted,

HPD violations remain open, and Petitioner remains out of possession of the premises. Respondents, still citing permitting issues, cannot say with any certainty as to when the conditions will be corrected or when Petitioner can return to her home. Based on the foregoing, Respondents' motion to extend the 90-day correction deadlines set in the Consent Order is denied. The court cannot provide an open-ended extension, which is what Respondents seek. Respondents did not provide a timeframe for compliance with the Consent Order, and after the status conference, it is clear that 1-year after the Consent Order was signed Respondents still cannot provide a timeframe for completion. The Court now turns to the motions filed by Petitioner and HPD.

Civil Contempt

Petitioner and HPD seek to hold Respondents in civil contempt. Judiciary Law § 753(a)(3) and Civil Court Act § 110(e) authorize this Court to adjudicate contempt issues.¹ There are four elements necessary to support a finding of civil contempt. "First, 'it must be determined that a lawful order of the court, clearly expressing an unequivocal mandate, was in effect. Second, 'it must appear with reasonable certainty, that the order has been disobeyed.' Third, 'the party to be held in contempt must have had knowledge of the court's order, although it is not necessary that the order actually have been served upon the party.' Fourth, 'prejudice to the right of a party to the litigation must be demonstrated.'" (*El-Dehdan v. Ed-Dehdan*, 26 NY3d 19, 29 [2015]; quoting, *Matter of McCormick v. Axelrod*, 59 NY2d 574, 583 [1983]). As

¹ Judiciary Law § 753 provides that a court of record has the power to punish a party to an action or special proceeding for disobedience to a lawful mandate of the court, "by fine and imprisonment, or either, a neglect or violation of duty, or other misconduct, by which a right or remedy of a party to a civil action or special proceeding, pending the court may be defeated, impaired, impeded, or prejudiced." (*See*, NY CLS Jud § 753(A)(3)).

opposed to criminal contempt, “willfulness is not an element of civil contempt.” (*El-Dehdan v. El-Dehdan*, 26 NY3d 19, 25 [2015]).

The Court’s power to punish a party for civil contempt is discretionary, and in exercising that discretion, the Court should take into consideration the facts and circumstances of each case. (See, *Chambers v. Old Stone Hill Rd. Assoc.*, 66 AD3d 944, 946 [2nd Dep’t 2009] [“A motion to punish a party for civil contempt is addressed to the sound discretion of the motion court.”]; see also, *Educational Reading Aids Corp. v. Young*, 175 A.D.2d 152 [2nd Dep’t 1991] [“An application to punish a party for contempt is addressed to the sound discretion of the court.”]). The fact that Petitioner, an elderly woman, remains out of possession of her long term Rent Stabilized apartment since at least September 10, 2020, during a global COVID-19 pandemic, are salient facts that cannot be overlooked when considering whether to hold Respondents in civil contempt.

Petitioner and HPD have established the four elements necessary to hold Respondents in civil contempt. First, the Consent Order, dated May 7, 2021, is a lawful order that clearly expresses an unequivocal mandate for Respondents to correct HPD violations at the premises, to correct all conditions listed in the HPD Vacate Order, and complete all tasks necessary to restore Petitioner Petra Aviles to possession of the premises within 90-days (on or before August 5, 2021). Second, it appears with reasonable certainty that the order has been disobeyed. The Court takes judicial notice of HPD’s violation records as *prima facie* evidence of proof of the conditions stated therein. (MDL § 328(3); see also, *Dept. of Hous. Preserv. & Dev. of the City of N.Y. v. Knoll*, 120 Misc.2d 813 [App Term, 2nd Dep’t 1983] [HPD’s computer database records are *prima facie* evidence of any matter stated therein.]). The attached HPD violation report, dated June 1, 2022, shows ninety-two (92) open violations at the subject building, forty-one (41)

of which are for the subject premises. (*See*, Schedule A attached hereto).² After a notice of violation is served, it is an owner's responsibility to certify that the violation has been corrected, and "failure to file such certificate of compliance shall establish a prima facie case that such violation has not been corrected." (HMC § 27-2115(f)(7)). In addition, it is undisputed that HPD's Vacate Order has not been rescinded and that Petitioner has not been restored to possession of the premises. (*See*, Schedule B attached hereto). Third, Respondents had knowledge of the Consent Order, dated May 7, 2021. Fourth, Petitioner has been prejudiced by Respondents' default as it is undisputed that Petitioner has not been restored to possession of the premises. Therefore, based on the foregoing, the court finds that Respondents are in contempt of the Consent Order, dated May 7, 2021, with damages to be determined.

Petitioner and HPD also seek civil penalties. Although HPD's records are considered *prima facie* evidence, and there is a presumption in favor of HPD's findings, owners are permitted by statute to raise defenses to civil penalties and can seek to mitigate them. (*See*, HMC § 27-2116). Where, as here, Respondents have raised defenses to civil penalties and factual issues which could mitigate civil penalties, such as the presence of stop work orders, permitting issues, and potential COVID-19 related delays, Respondents should be afforded a full opportunity to raise such defenses and mitigating circumstances at a trial. (*See, Dept. of Hous. Preserv. & Dev. of City of N.Y. v. De Bona*, 101 AD2d 875, 875 [2nd Dep't 1984] ["Although civil penalties for the violation run from the date the notice is affixed to the certificate of inspection visits and there is a presumption of a continuing violation, penalties cannot be collected or otherwise enforced, until a judicial proceeding is brought. At this proceeding, the

² For reference, when Petitioner commenced this HP proceeding, they alleged 70 open HPD violations for the subject building, 41 of which for the subject premises, so based on the sheer number of violations, the situation has not improved at all.


owner may negate the existence of any violation, rebut the presumption of a continuing violation, or otherwise present a defense. Thus, the owner is afforded a full hearing on the merits prior to the deprivation of any property rights (internal citations omitted).”]). As the opposition papers present potential defenses and/or mitigating circumstances to civil penalties, a hearing is required to resolve the factual dispute. (*Automated Waste Disposal, Inc. v Mid-Hudson Waste, Inc.*, 50 AD3d 1073 [2nd Dep’t 2008] [hearing must be conducted if a factual dispute exists which cannot be resolved on the papers alone.]). Therefore, Petitioner and HPD’s motion for civil penalties is granted to the extent that a civil penalties hearing shall be held.

The balance of Petitioner and HPD’s motions are granted to the extent that Petitioner may pursue her harassment claims and Respondents are ordered to provide Petitioner and HPD access to the subject building and subject premises while taking all safety precautions into consideration.

Therefore, based on the foregoing, Respondents’ motion to extend the correction deadline is denied, Petitioner and HPD’s motions are granted to the extent that the court finds Respondents in civil contempt of the Consent Order, dated May 7, 2021, and this proceeding is transferred to Part X for a hearing on Petitioner’s damages, for a civil penalties hearing, and for Petitioner to pursue her harassment claims. Lastly, access, as noted above, shall be arranged between counsel.

This constitutes the Decision/Order of this court, which shall be uploaded to NYSCEF.

Dated: June 2, 2022
Brooklyn, New York



Julie Poley JHC

Hon. Julie Poley