

**Cooper v Monterey 96 St. LLC**

2023 NY Slip Op 31423(U)

April 28, 2023

Supreme Court, New York County

Docket Number: Index No. 653521/2013

Judge: Arlene P. Bluth

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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT:** HON. ARLENE P. BLUTH **PART** **14**

*Justice*

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MEL COOPER,

Plaintiff,

- v -

MONTEREY 96 STREET LLC, STEVE BRECKER,  
BENJAMIN VELASQUEZ,

Defendant.

-----X

**INDEX NO.** 653521/2013

**MOTION DATE** 04/26/2023

**MOTION SEQ. NO.** 001

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27

were read on this motion to/for PARTIAL SUMMARY JUDGMENT.

Plaintiff’s motion for partial summary judgment is granted in part.

**Background**

In this case about an alleged illegal eviction, plaintiff contends that he entered into a sublease in a building owned by defendant Monterey 96 Street LLC (“Owner”) that was managed by defendant Brecker and where defendant Velasquez was the super. Plaintiff alleges that about a month into the sublease, defendant Velasquez changed the locks to the front door of the apartment and refused to give plaintiff a key to the new lock.

The age of this case requires the Court to review the procedural posture. Plaintiff filed a voluntary petition for bankruptcy in January 2014 in the United States Bankruptcy Court for the Southern District of New York (NYSCEF Doc. No. 11). The case has therefore remained stayed for many, many years.

Now, plaintiff moves for partial summary judgment on his first cause of action for wrongful eviction. He claims that he was removed from the apartment and not given new keys. A disagreement ensued between plaintiff, the super and the building manager after which plaintiff allegedly left after being directed to by the police.

In opposition, defendants claim that the matter is stayed due to the pending bankruptcy and on the ground that defendants Velasquez and Brecker were not properly served. They also claim that the moving papers do not satisfy plaintiff's burden on the cause of action for wrongful eviction. Defendants claim that the sublease is invalid because it was executed without the written consent of the landlord. They argue that a squatter has no legal right to be in the apartment.

In reply, plaintiff contends that the bankruptcy stay is no longer in effect as that case is now disposed. He also argues that the issue of improper service was waived by defendants because they did not move to dismiss on that basis. Plaintiff contends that defendants admit that he was, by operation of law, a holdover tenant and that they engaged in an impermissible self-help eviction by changing the locks. He stresses that there are no contentions in defendants' opposition that the locks were changed at the direction of the tenant.

### **Discussion**

As an initial matter the Court observes that the automatic stay due to plaintiff's bankruptcy is now lifted based upon the final decree from the bankruptcy court (NYSCEF Doc. No. 27). Moreover, defendants cannot assert improper service because they did not move to dismiss on such grounds within 60 days of serving their answer (*Wiebusch v Bethany Mem. Reform Church*, 9 AD3d 315, 781 NYS2d 6 [1st Dept 2004]).

The Court grants the motion because plaintiff established that he was a subtenant and that defendants removed him without a warrant of eviction. The sublease provided that it terminated on August 28, 2013 (NYSCEF Doc. No. 22). The next day, defendants changed the locks.

Nothing in this record demonstrates a sufficient reason for why defendants changed the locks under these circumstances. Defendant Brecker's claims that plaintiff twice attempted to change the locks without the permission of the tenant is not supported by any admissible evidence or how he acquired this knowledge. There is nothing from the tenant herself to support this theory.

Defendants' other arguments similarly do not raise issues of fact that could compel the Court to deny the motion. Their arguments about squatters not acquiring tenancy rights and that the sublease was invalid does not change the fact that plaintiff had a sublease with the undisputed actual tenant at this apartment. Plaintiff contends, and defendants do not dispute, that he showed the sublease to the individual defendants on the day of the self-help eviction.

To the extent that defendants argue that they discovered that plaintiff had changed the locks and they simply changed the locks back again, that does not raise an issue of material fact because they do not dispute that they excluded plaintiff from the apartment. Defendants were not entitled, in that moment, to determine that plaintiff was a "squatter." That is a determination to be made by the proper court after plaintiff was provided with the requisite due process.

Critically, Mr. Brecker admits that plaintiff was at the apartment "apparently with the permission of the [tenant]" (NYSCEF Doc. No. 18, ¶ 7). Defendants offered nothing to show they took any proper steps to challenge the sublease with the actual tenant or to remove plaintiff through the legal process. Instead, defendants changed the locks and removed plaintiff from the apartment the day after the sublease ended.

The Court denies the branch of the motion that seeks an immediate hearing on damages. Plaintiff's second cause of action for trespass is inextricably intertwined with the first cause of action for wrongful eviction. It would be highly inefficient to do a hearing on one claim while the other claim remains pending.

Accordingly, it is hereby

ORDERED that plaintiff's motion for partial summary judgment on his first cause of action is granted as to liability only.

Conference: May 23, 2023 at 11:30 a.m. By May 16, 2023, the parties are directed to upload 1) a discovery stipulation signed by all parties, 2) a stipulation of partial agreement that identifies the areas in dispute regarding discovery or 3) letters explaining why no agreement about discovery could be reached. Based on these submissions, the Court will assess whether an in-person appearance is necessary. The failure to upload anything by May 16, 2023 will result in an adjournment of the conference.

4/28/2023

DATE



ARLENE P. BLUTH, 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