

**118 W. 27 LLC v Saltz**

2023 NY Slip Op 32310(U)

July 10, 2023

Supreme Court, New York County

Docket Number: Index No. 156046/2021

Judge: Frank P. Nervo

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
 COUNTY OF NEW YORK: IAS PART IV

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118 WEST 27 LLC,

**DECISION and ORDER**

*Plaintiff,*

-against-

Index No. 156046/2021

MARK SALTZ,

*Defendant.*

-----X

HON. FRANK P. NERVO, J.S.C.

Plaintiff owns the residential loft building in which defendant resides. It is undisputed that defendant is a statutory tenant under the Loft Law (Multiple Dwelling Law Article 7-c). As relevant to this action, plaintiff alleges, inter alia, that the defendant has engaged in, or otherwise permitted his guests to engage in, nuisance behavior and plaintiff seeks to permanently remove defendant from the apartment and terminate his statutory tenancy on this basis.

During the pendency of this matter, and in an attempt to resolve the alleged nuisance, the parties entered into a stipulation, so-ordered by the Court, whereby defendant was limited to hosting visitors for the sole purpose of purchasing defendant's artwork between the hours of nine o'clock in the morning and eight o'clock in the evening, with 72-hours advance notice to

plaintiff; visitors were prohibited during all other times (June 10, 2022 So-Ordered Stipulation at ¶¶ 4 – 6). Defendant was further limited to two roommates, who were already residing in the loft apartment, provided that defendant supplied their names and photo identification to plaintiff within two business days (*id.* at ¶ 2). Plaintiff alleged defendant violated the so-ordered stipulation and moved, pursuant to the stipulation's terms, to permanently remove defendant from the apartment.

Trial of this matter proceeded on July 7, 2022, and November 29, 2022.<sup>1</sup> During these proceedings, plaintiff submitted hundreds of photographs of defendant and defendant's guests in various areas of the building (plaintiff's pre-marked exhibits B, C, and D) and proffered testimony from the building's superintendent and three residential tenants. Defendant testified in his defense.

Following the conclusion of testimony on November 29, 2022, the Court permitted the parties to submit post-trial briefing and granted the parties several adjournments of same (NYSCEF Doc. Nos. 98, 110, 120, and 122). To the

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<sup>1</sup> Plaintiff's witnesses were unavailable on the initial June 28, 2022, trial date and there was no appearance on behalf of defendant on that date. Trial was, therefore, adjourned to July 7, 2022.

extent that plaintiff urges this Court to reject defendant's sur-reply brief as untimely (NYSCEF Doc. Nos. 122, 123, and 124), the Court has, in the interest of justice, nevertheless considered the sur-reply, as the delay is *de minimus* and does not prejudice plaintiff. Post-trial briefing was completed on June 12, 2023.

An order of removal and ejectment is a severe remedy. Nevertheless, where a statutory tenant of an Interim Multiple Dwelling (IMD) under the Loft Law engages in nuisance-type behavior, 29 RCNY § 2-08.1(a) permits a landlord to seek to evict the tenant:

(a) Grounds for eviction. The landlord of an IMD registered with the Loft Board may bring eviction proceedings against the residential occupant of a unit in a court of competent jurisdiction on any of the following grounds:

[...]

(2) that the residential occupant is committing or permitting a nuisance in such unit; or is maliciously or by reason of gross negligence substantially damaging the building; or his or her conduct is such as to interfere substantially with the comfort and safety of the landlord or of the other occupants of the same building or of adjacent buildings or structures

The Hon. Anne Katz provided a succinct history of the Loft Law, its relation to the Rent Stabilization Code, and both statutes' related use of

nuisance causes of action, as relevant to this action: “[the Loft Law] was enacted in 1982 to address problems which resulted from the illegal conversion of commercial loft buildings to residential use. The Loft Law is designed to provide a framework to transition from Interim Multiple Dwellings (“IMDs”) into rent stabilization. Accordingly, portions of the Loft Law and the Rent Stabilization Code (“RSC”) are to be read *in pari materia*” (*GSKP LLC v. Lee*, 71 Misc.3d 1223(A) [Civ Ct NY 2021] [internal citations omitted]).

Here, the evidence conclusively establishes that defendant violated the June 10, 2022 so-ordered stipulation, as well as permitted his visitors to engage in nuisance type behavior. It is undisputed that defendant failed to identify the two roommates, failed to provide advance 72-hour notice of any visitor, and repeatedly had visitors outside of the permitted hours. Defendant testified that he had, without consulting plaintiff or seeking modification of the so-ordered stipulation, permitted a new female roommate to take the place of one of the existing roommates. Defendant also testified that he had permitted visitors, including: a photographer, former students, and colleagues to access his apartment without providing any notice to plaintiff.

Likewise, plaintiff's superintendent testified that he had reviewed security camera footage from the building and recognized several of defendant's regular visitors accessing the building outside of the hours permitted by the stipulation, frequently between midnight and six o'clock in the morning. The superintendent testified that on July 1, 2022, the security camera footage depicted one of defendant's guests accessing the building's elevator with a gas-powered motorcycle, causing damage to the elevator. The superintendent also testified that he recognized a third roommate, a male, from the security camera footage who continued to reside in the apartment. Co-residents in the building testified to feeling unsafe and discomforted by defendant's frequent visitors.

Defendant testified that he had provided photo identification of the two roommates, as well as two studio assistants, to his attorney, and that he was unaware that his attorney did not forward the identifications to plaintiff. Defendant further testified that he misunderstood the stipulation, and believed that he was permitted to have any two roommates at one time, on the condition that he provide their identification to plaintiff. Similarly, defendant testified that he mistakenly believed he was permitted to have painting assistants and students as visitors at any time.

Defendant's age and explanations of his misunderstanding of the stipulation are properly considered by this Court in determining the proper remedy (*see generally Parkchester Apt. Co. v. Scott*, 271 AD2d 273 [1st Dept 2000]). Likewise, a lengthy tenancy history and efforts to comply are factors which militate against removal (*id.*; *see also 191 Street Associates LLC v. Cruz*, 50 Misc.3d 137(A) [App Term 1st Dept 2016]). However, a party's advanced age, retirement status, working from home status, or length of tenancy does not provide carte blanche to ignore or violate Court orders. Indeed, strict compliance and enforcement of the parties' stipulation is required (*Mill Rock Plaza Associates v. Lively*, 224 AD2d 301 [1st Dept 1996] "Strict enforcement of the parties' stipulation... is warranted based upon the principle that the parties to a civil dispute are free to chart their own litigation course").

Upon consideration of the foregoing, the Court, at this time, declines removal and eviction as sought by plaintiff's application. However, should defendant fail to comply with this decision and order, the Court will permit plaintiff to seek removal and eviction of defendant via a properly supported order to show cause, filed in this Part. The matter shall remain actively pending in this Part to permit same. Defendant is advised that the Court's

patience with non-compliance of its orders is not unlimited, and further non-compliance may result in removal and termination of tenancy.

Accordingly, it is

ORDERED that defendant shall not permit or host visitors in his apartment loft or any common area of the building from the hours of 5:00pm to 9:00am; and it is further

ORDERED that defendant's visitors shall be limited to those necessary for the sale of defendant's artwork and shall be limited to the hours of 9:00am to 5:00pm and defendant shall provide plaintiff with 72-hours advance notice of such visitor(s) and their government-issued photograph identification; and it is further

ORDERED that defendant may have no other visitors or guests to his apartment loft or common areas of the building; and it is further

ORDERED that defendant shall be limited to two roommates. While RPL § 235-f(3) provides for one roommate, defendant shall be permitted the two roommates consistent with the parties' stipulation of June 10, 2023, in addition

to any person deemed a “loft-tenant” by a determination of the Loft Board; and  
it is further

ORDERED that defendant shall have no other roommates or overnight  
guests; and it is further

ORDERED that, within 10 days, plaintiff shall serve a certified letter,  
return receipt requested upon defendant, with a copy of same filed via  
NYSCEF, designating the recipient for notice of defendant’s visitors and  
roommates and their identification; and it is further

ORDERED that, within 10 days of receipt of the certified letter above,  
defendant shall provide plaintiff with government-issued photo identification  
of the two permitted roommates to the recipient designated by plaintiff; and it  
is further


ORDERED that all other roommates shall vacate the premises within 30  
days of this decision and order; and it is further

ORDERED that non-compliance with this Decision and Order may result in removal and termination of tenancy.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT

Dated: July 10, 2023

ENTER:



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HON. FRANK P. NERVO  
J.S.C.