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| <b>Louis v Sycamore Birch Mgt.</b>                                                                                                                                                                                             |
| 2023 NY Slip Op 35211(U)                                                                                                                                                                                                       |
| March 9, 2023                                                                                                                                                                                                                  |
| Supreme Court, Bronx County                                                                                                                                                                                                    |
| Docket Number: Index No. 816445/2021E                                                                                                                                                                                          |
| Judge: Kim Adair Wilson                                                                                                                                                                                                        |
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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX

-----X  
RHON MEHEGAN JENNINGS LOUIS,

Plaintiff,

**Index No.: 816445/2021E**

-against-

SYCAMORE BIRCH MANAGEMENT, VYSE VALLEY  
CORPORATION, and PETER BOURBEAU,  
Defendants.

-----X  
**HON. KIM A. WILSON:**

Plaintiff RHON MEHEGAN JENNINGS LOUIS, moves for summary judgment in his favor on liability, as against Defendants, SYCAMORE BIRCH MANAGEMENT, VYSE VALLEY CORPORATION, and PETER BOURBEAU, to strike Defendants' Answer and Affirmative Defenses, and for related relief.

**Parties/Alleged Facts**

Plaintiff JENNINGS LOUIS alleges that he is a rent-stabilized tenant of premises located at 1796 Vyse Avenue, Apt. S52, Bronx, NY 10460, owned by Defendant VYSE VALLEY CORPORATION. Defendants SYCAMORE BIRCH MANAGEMENT, and PETER BOURBEAU, are the management company, and agent, for the subject premises.

This is an action to recover damages for Plaintiff's alleged illegally eviction, from the subject premises, on June 18, 2021, when Defendants changed the locks, and disposed of his property located in the apartment, without a Court Order or Warrant. (See Complaint dated December 2021). Plaintiff JENNINGS LOUIS further alleges as follows:

"The Defendants' illegal eviction of me and the displacement from my home included the destruction and disposal of all my personal property including but not limited to a prized collectable sneaker collection that I had spent decades amassing, my college degree, and all my furniture, electronics, and clothing.

As the Defendants have admitted to the illegal entry and changing of locks and the disposal of the property in the Subject Premises, it is respectfully submitted that there are no meaningful questions of fact as to liability, and that the only question before the Court is the valuation of my property and displacement".

(Plaintiff JENNINGS LOUIS' Affidavit, dated June 7, 2022).

In opposition, Defendants essentially allege that, in June 2021, when the locks were changed, Defendants had believed that Plaintiff JENNINGS LOUIS had abandoned the apartment. Defendants assert "Abandonment" as an Affirmative Defense in their Answer -- where they also allege that, at the salient times, Plaintiff had not been occupying the subject apartment as his primary residence; that Plaintiff's primary residence was in Massachusetts; and that "Plaintiff admitted under oath in the prior proceeding, that he was in Massachusetts prior to and during the pendency of both lower court proceedings". (See Defendants' Answer, dated March 9, 2022). Defendants further explain as follows:

"By his own admission Plaintiff had not been residing in the apartment for a year before the locks were changed as he was living in Massachusetts, although he claimed he came to the building on one or two occasions in that time frame.

Based upon Plaintiff's absence from the apartment, the Defendants believed that the apartment was abandoned, and changed the locks. I was present when the locks were changed and went into the apartment.

There were no items of any great value in the apartment belonging to Plaintiff. There were garbage bags of trash, and spoiled food in the refrigerator".

(Defendant PETER BOURBEAU's Affidavit, dated August 1, 2022). Moreover, Plaintiff had not been paying his rent since November 2020, which was about eight months prior to the time that the locks were changed in June 2021.<sup>1</sup>

As a consequence of Defendants' changing the lock, the Plaintiff had commenced, in July 2021, an "illegal lock-out" Petition, in Landlord and Tenant Court, entitled *Rhon-Mehegan Jennings Louis v Sycamore Birch Management, Vyse Valley Corp., and Peter Bourbeau*, Index No. LT-307992-21/BX.

That action was resolved by a Stipulation of Settlement, dated August 12, 2021, and So-Ordered on August 16, 2021, upon which all parties rely herein. The parties, essentially, stipulated that JENNINGS LOUIS be restored to possession, without prejudice to the commencement of a separate plenary action to recover their respective damages, and preserving their respective defenses. In relevant part, the So-Ordered Stipulation provides as follows:

"Whereas the parties agree that Respondents offered Petitioner a **renewal lease dated July 24, 2020 that has not yet been signed;**

Whereas Respondents sent letters dated February 25, 2021 and April 16, 2021 to Petitioner at the subject premises regarding **outstanding rent;**...

Whereas Respondents Sycamore Birch Management LLC, Vyse Valley Corporation, and Peter Bourbeau admit that they **changed the locks** to the subject premises without permission on or around **June 18, 2021;**

Whereas Respondents admit that they discarded Petitioner's belongings that were in the subject premises; ...

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<sup>1</sup> Due to the JENNINGS LOUIS' failure to pay rent, VYSE VALLEY CORP., the Owner, had commenced a non-payment Petition, in April 2021, in Landlord and Tenant Court, entitled *Vyse Valley Corp. v Rhon Mehegan Louis*, Index No. LT-303422-21/BX. (It was not until September 2021 that the tenant, JENNINGS LOUIS, had filed his Answer in that action).



Whereas Petitioner admits that **he has traveled between his apartment/the subject premises and his family out-of-state** to provide care for an ill family member ...

The parties stipulate and agree as follows: ...

**2. Respondents agree to restore Petitioner to possession ...**

**3. Petitioner reserves all claims to any and all damages** available under the law, including but not limited to punitive and compensatory damages and treble damages pursuant to RPAPL § 853, and the right to seek such damages in a plenary action. **Respondents reserve related defenses** and their own monetary claims against Petitioner, including but not limited to the non-payment case LT 303422-21/BX and subsequently accrued rent. Petitioner reserves all defenses to Respondents' claims". [emphasis added]

#### Applicable Law/Analysis

The relevant statutes involved in matters involving allegations of an unlawful eviction include RPAPL § 768, and New York City Administrative Code § 26-521, which are worded similarly.

RPAPL § 768 "Unlawful eviction" provides as follows:

**"(a) It shall be unlawful for any person to evict or attempt to evict an occupant of a dwelling unit who has lawfully occupied the dwelling unit for thirty consecutive days or longer or who has entered into a lease** with respect to such dwelling except to the extent permitted by law pursuant to a warrant of eviction or other order of a court of competent jurisdiction or a governmental vacate order by: ...

(iii) engaging or threatening to engage in any other conduct which prevents or is intended to prevent such occupant from the lawful occupancy of such dwelling unit or to induce the occupant to vacate the dwelling unit including, but not limited to, **removing the occupant's possessions from the dwelling unit**, removing the door at the entrance to the dwelling unit; removing, plugging or otherwise rendering the lock on such entrance door inoperable, or **changing the lock** on such entrance door without supplying the occupant with a key". [emphasis added]

In order to prove that a tenant abandoned an apartment, an Owner generally “must establish the following conditions (1) the tenant's intention to abandon or relinquish possession of the unit, and (2) some overt act or failure to act which clearly indicates that the tenant or occupant neither claims nor retains any interest in the subject premises”. (*Colon v Nugarese Inc.*, 2022 NY Slip Op 30446[U], \*5-6 [Civ Ct, Bronx County 2022]).

Herein, prior to the date when Defendants had changed the lock on the subject apartment, Plaintiff had failed to sign a renewal lease; had been absent and living in Massachusetts for a substantial amount of time; and had not been paying rent for eight months. While Defendants acknowledge that they discarded items that were in the apartment, they claim that those items were merely garbage bags of trash, and spoiled food in the refrigerator. Moreover, by the aforesaid So-Ordered Stipulation, dated August 12, 2021, the parties had, explicitly, preserved their *respective* rights to commence this action to recover damages, and to preserve their defenses.

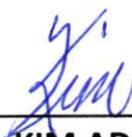
Under the circumstances, there remain triable issues of fact and credibility, on liability, and damages -- warranting denial of summary judgment.

**Conclusion:**

Accordingly, Plaintiff RHON MEHEGAN JENNINGS LOUIS’ motion, for summary judgment in his favor on liability, as against Defendants, SYCAMORE BIRCH MANAGEMENT, VYSE VALLEY CORPORATION, and PETER BOURBEAU, to strike Defendants’ Answer and Affirmative Defenses, and for related relief, is denied.

This constitutes the decision and order of this Court.

Dated: MAR = 9 2023

  
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HON. KIM ADAIR WILSON, J.S.C.