

Genao v Chen
2024 NY Slip Op 35489(U)
March 11, 2024
Civil Court of the City of New York, Queens County
Docket Number: Index No. 6230/23
Judge: Kimon C. Thermos
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

**CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF QUEENS HOUSING PART C**

-----X
ELEANA GENAO,

Petitioner,

INDEX # 6230/23

-against-

DECISION / ORDER

JULIE CHEN,

Respondent

**NYC DEPARTMENT OF HOUSING PRESERVATION &
DEVELOPMENT,**

Respondent

-----X
Present: Kimon C. Thermos, JHC

Recitation, as required by CPLR 2219(a), of the papers considered in the review of the instant moving papers.

Papers

Numbered

Order to Show Cause, Affidavits and exhibits1

Appearing for the Petitioner: James Tenenbaum, Esq., Queens Legal Services
Appearing for the Respondent: none

Petitioner, the tenant of the subject apartment, brought this proceeding seeking the correction of certain violations of the Housing Maintenance Code issued by HPD. On November 27, 2023, Petitioner appeared by counsel and Respondent-owner appeared unrepresented. The parties entered into a Consent Order to Correct ("OTC") which incorporated by reference a list of the open violations for the subject premises. The OTC provided for dates in which Petitioner agreed to provide access and Respondent agreed to correct the violations included in the OTC as well as several repairs for which no violation had been placed.

On January 24, 2024, Petitioner filed an Order to Show Cause seeking to restore the matter to the calendar for: 1) an Order finding Respondent in civil and criminal contempt of the November 27, 2023 OTC for failing to correct one of the listed violations, a "C" class violation requiring the replacing of a missing door lock at the balcony door in one of the rooms of the apartment; 2) an order directing DHPD to correct the uncured violation "C" from the OTC and

another violation placed after the issuance of the OTC regarding a defective casement window: and 3) to impose penalties for failing to timely certify the correction of the violations of record.

The OSC was returnable February 9, 2024. Although duly served, Respondent did not appear on the return date and the matter proceeded to an inquest. At the hearing, Petitioner testified that Respondent corrected all of the violations in the OTC except for the terrace door lock. Petitioner testified that the door opens out into the terrace and does not stay closed because it has no lock mechanism, handle, or knob. It opens out very easily, which is a potential security issue but it also has permitted raccoons to enter and nest in the bedroom making it uninhabitable. Petitioner privately hired an animal pest control company Edy's Pest Control and paid them \$1,497.00 to trap and remove the two racoons living in the bedroom. The invoice indicating payment was admitted into evidence as proof of damages. Nothing else was presented.

Under Judiciary Law § 753, a court of record has the power to punish, 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 in the court may be defeated, impaired, impeded, or prejudiced." *See generally El-Dehdan v. El-Dehdan*, 26 N.Y.3d 19, 28-29 (2015). A civil contempt is "one where the rights of an individual have been harmed by the contemnor's failure to obey a court order." *Dept. of Env'tl. Protection v. Dept. of Env'tl. Conservation*, 70 NY2d 233, 239 (1987). For civil contempt to lie, the moving party must establish: 1) that a lawful order of the court clearly expressing an unequivocal mandate was in effect; 2) that it appear with reasonable certainty that the order has been disobeyed; 3) that the party charged must have had knowledge of the court's order; and 4) that the rights of a party to the litigation have been prejudiced. *Id.* The elements of civil contempt must be demonstrated by clear and convincing evidence. *See El-Dehdan*, 26 NY3d at 29.

The November 27, 2023 OTC was a lawful order of the court. It expressed an unequivocal mandate that Petitioner was to provide access on certain dates and Respondent was to come on those dates to correct the violations. Petitioner established that the order was disobeyed based on Respondents' failure to correct the violation for the door lock. The court takes judicial notice of the HPD website which shows that Respondent has not certified violation #16288649 as corrected and the violation remains open as of the date of this decision. HPD violations that are not certified are prima facie evidence that the underlying conditions still exist. *See Department of Hous. Preserv. & Dev. of the City of N.Y v. Ohebshalom*, 2023

N.Y.Misc.LEXIS 22736 (Civ. Ct., Qns. Cty. 2023); *Fiondella v. 345 W. 70th Tenants Corp.*, 217 A.D.3d 495 (App. Div., 1st Dept. 2023); *Dept. of Hous. Preserv. & Dev. v. Knoll*, 120 Misc.2d 813 (App. Term, 2nd Dept 1983). Respondent appeared in person, signed the OTC, and was given a copy in court on November 27, 2023, so there is no question that she had knowledge of the OTC. Finally, Petitioner established prejudice based on the testimony presented. *See Department of Hous. Preserv. & Dev. v. De Bona*, 101 A.D.2d 875, 875-876 (App. Div., 2nd Dept 1984); *Department of Hous. Preserv. & Dev. v. Knoll*, 120 Misc.2d 813, 814 (App Term, 2nd Dept. 1983).

Based on the above, Respondent is clearly in contempt of the November 27, 2023 OTC. Having determined that Respondent is in civil contempt of the November 27, 2023 OTC, an appropriate civil contempt penalty must be imposed. *See* Judiciary Law § 753. A civil contempt penalty must be “designed not to punish but, rather, to compensate the injured private party or to coerce compliance with the court’s mandate or both.” *Dept. of Env’tl. Protection*, 70 NY2d at 239. Pursuant to Judiciary Law § 753(a)(1), the court has the power to penalize disobedience to a lawful mandate of the court by fine, imprisonment or both.

Upon the facts and circumstances before the court, it is ORDERED AND ADJUDGED that both a fine and incarceration will be imposed against Respondent Julie Chan.

Judiciary Law § 773 sets out the fines to be imposed upon a contempt finding. If “actual loss or injury” is proven, the fine will be in the amount of said loss or injury. “Where it is not shown that an actual loss or injury has been caused, a fine may be imposed, not exceeding the amount of the complainant’s costs and expenses, and two hundred fifty dollars in addition thereto, and must be collected and paid, in like manner.” Judiciary Law §773. Petitioner has presented evidence regarding actual damages.

Respondent shall have fourteen (14) days from service of this Decision/Order to correct the one “C” class violation that remains open from the VSR dated October 20, 2023, which was integrated into the OTC. If the violation is corrected before the fourteen (14) days expire, Respondent shall be purged of civil contempt. If Respondent fails to purge civil contempt within the fourteen (14) day period after service of this Decision/Order, the court shall issue an arrest warrant directing the Sheriff of the City of New York to detain Julie Chan and deliver her to the NYC Department of Corrections for commitment to civil jail. Respondents must make an application to the court to purge civil contempt. The failure to do so promptly shall not be a

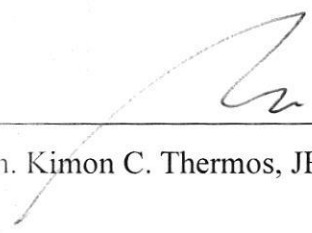
defense to the arrest warrant being issued and/or executed following the fourteen (14) day stay to permit a purge of contempt.

Based upon the testimony and documentary evidence presented the motion is granted only to the extent of: 1) holding Respondent in civil contempt of the Court's November 27, 2023 Order by failing to correct all the required violations; and 2) awarding a judgment in the amount of \$1,497.00 against Respondent Julie Chan in favor of Respondent Eleana Genao. Petitioner is directed to serve Respondent with a copy of this Decision/Order within five days of its receipt. Respondent shall have fourteen (14) days from service of this Decision/Order by Petitioner to purge civil contempt. If Respondent has not filed an OSC seeking to purge civil contempt by then, Petitioner may restore the case to the calendar for the court to hold a hearing on whether to issue an arrest warrant.

The Court also directs HPD to refer this apartment to their emergency repair program for correction of the emergency violation forthwith. Petitioner's remaining claims for legal fees is denied without prejudice to renew in the future. The Court declines to find criminal contempt. This constitutes the Decision and Order of the Court.

Dated: March 11, 2024

Queens, New York



Hon. Kimon C. Thermos, JHC

Civil Court
of the
City of New York

MAR 18 2024

ENTERED
QUEENS COUNTY