

Justo-Aponte v Eshcol

2025 NY Slip Op 33562(U)

September 5, 2025

Civil Court of the City of New York, Kings County

Docket Number: Index No. LT 309908/25

Judge: Tashanna B. Golden

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CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF KINGS: HOUSING PART O

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FRANCISCO EDUARDO JUSTO-APONTE,

Petitioner

Index No. LT # 309908/25

LEVY ESHCOL, ET. AL.,

Respondent

DECISION/ORDER

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Motion Seq. # 3

Present: Hon. Tashanna B. Golden:

Recitation, as required by CPLR 2219(a), of the papers considered in review of Respondent’s motion for summary judgment:

Papers:	Numbers
Petitioner’s Order to Show Cause, Affirmation in Support, and Exhibits.....	NYSCEF # 45-54
Respondent’s Opposition and Exhibits.....	NYSCEF # 59-62
Petitioner’s Reply.....	NYSCEF # 63-65
Death Certificate of Levy Eshcol.....	NYSCEF # 66
Court File.....	<i>Passim</i>

Upon the foregoing cited papers, the Decision and Order on these motions are as follows:

Petitioner filed this instant Illegal Lockout proceeding via Order to Show Cause on or about March 28, 2025, seeking a judgment of possession, and to restore the Petitioner to possession of the premises located at 32 Patchen Avenue, Apt. 5, Brooklyn, NY 11221 (the “subject premises”) from Respondent. The Order to Show Cause was signed, and the matter was calendared for April 10, 2025. The Respondent, through counsel, filed an Answer. All three Respondents are represented by the same counsel. However, a notice of appearance was filed for Respondent 32 P LLC only on April 10, 2025, and the other two Respondents did not retain counsel until May 5, 2025. On May 2, 2025, the parties entered into a stipulation agreeing to lift the stay on construction

and make a series of listed repairs within thirty days.¹ The agreement was signed by Respondent 32 P LLC via counsel and Roy Rave in his individual capacity.² On May 5, 2025, a hearing was held. The Court issued a decision on May 12, 2025, granting Petitioner a judgment of possession for the subject premises. On May 16, 2025, Petitioner filed another Order to Show Cause seeking enforcement of the Judge's Order and demanding Respondent provide Petitioner a copy of the key to the subject premises. On June 10, 2025, the Court issued an Order granting the Petitioner's motion for contempt of the order to turn over a copy of the key and granting Petitioner attorney's fees and a money judgment in the amount of \$158.00 per day until the keys to the building and subject premises were provided to the Petitioner.³

On June 18, 2025, Petitioner filed a second Order to Show Cause, once again seeking to enforce the May 2025 Stipulation of Settlement, specifically Paragraphs 2 and 3, which mandated the repair and restoration of the subject premises within 30 days. Petitioner opposes the motion on the basis that 1) contempt was not contemplated in the stipulation and therefore the Court cannot grant the motion; and 2) even if it the court were to find that contempt is actionable, the death of Respondent Eshcol mandates a stay of this proceeding pursuant to CPLR 1015. The Court first addresses the alleged stay.

Stay Due to Death of a Party

According to Respondent's Counsel, Respondent Levy Eshcol passed away on June 24, 2025 and as a result the matter should be stayed for two to three months pursuant to CPLR § 1015(a) or until an Estate is established for the deceased party. CPLR § 1015(a) states "[g]enerally. If a party dies and the claim for or against him is not thereby extinguished the court shall order

¹ See NYSCEF Doc # 24

² *Id*

³ See NYSCEF Doc # 42

substitution of the proper parties.” However, when there are multiple parties as plaintiffs or defendants the proceeding may continue under CPLR § 5015(b) when there is a death of a party. Specifically, CPLR § 5015(b) states “[u]pon the death of one...of the...defendants in an action in which the right sought to be enforced survives only...against the surviving defendants, the action does not abate. The death shall be noted on the record and the action shall proceed.” *Bon Temps Agency, Ltd. v Hickey*, 5 AD3d 157 [1st Dept 2004] held that:

“Accepting as fact the death of defendant Hickey despite the absence of any record evidence, this action may proceed against the surviving partner. While CPLR 1015 (a), provides that ‘[i]f a party dies and the claim . . . against him is not thereby extinguished the court shall order substitution of the proper parties,’ where the right sought to be enforced survives only against the surviving defendants, the action does not abate and shall proceed (CPLR 1015 [b]). Specifically, in an action against copartners, if one of them dies during the pendency of the action, the plaintiff may proceed against the surviving partner (15A NY Jur 2d, Business Relationships § 1590; *see Owen v Blumenthal*, 167 Misc. 213, 218, 3 N.Y.S.2d 192 [1938], *affd* 254 App Div 853, 6 N.Y.S.2d 366 [1938], *revd* on other grounds 280 N.Y. 96, 19 N.E.2d 977 [1939]).”

Id. at 157-158.

Here, the deceased is one of three co-Respondents in this proceeding and the matter can and should continue without Mr. Eshcol under CPLR § 1015(b). Additionally, Mr. Eshcol does not own the property in his personal capacity but rather as an agent of 32 P LLC. Therefore, any enforcement action of repairs or otherwise will be against 32 P LLC. Furthermore, the stipulation entered into on May 2, 2025, was not signed by Respondent Eshcol, but only by 32 P LLC through counsel and Roy Rave, in his personal capacity as he was not represented on that date.⁴ Levy Eshcol did not sign the stipulation nor was he represented by counsel at the time of signing.⁵ Therefore, there is no need to stay this proceeding as a result of the death of Respondent Eshcol.

⁴ See NYSCEF Doc # 24

⁵ See NYSCEF Doc # 26

As such, the Respondents request for a stay is denied. The Court acknowledges the death of Levy Eshcol, and the proceeding may continue against Respondents Roy Rave and 32 P LLC.

Petitioner's Contempt and Sanctions Motion

Petitioner seeks an order for contempt and sanctions based on Respondent's default on the So-Ordered stipulation signed by the parties on May 2, 2025. Specifically, Petitioner seeks a money judgment of \$250.00 for civil contempt, a separate money judgment for attorney fees in the amount of \$1,125.00 for the time spent bringing the motion plus additional fees accrued after filing the motion, and a daily fine of \$195.00 per day from June 2, 2025, until the Petitioner is restored to the subject premises.

Pursuant to Judiciary Law § 753, a court may punish a party for contempt by fine or imprisonment. *See Vider v Vider*, 85 AD3d 906, 908, 925 NYS2d 189 (2011). To establish contempt, there has to be "clear and convincing evidence that a lawful court order clearly expressing an unequivocal mandate was in effect, that the person alleged to have violated the order had actual knowledge of its terms, and that the violation has defeated, impaired, impeded, or prejudiced the rights of a party[.]" *Id* at 907 (citations omitted). Judiciary Law § 773 permits a fine "[i]f an actual loss or injury has been caused to a party to an action or special proceeding, by reason of the misconduct proved against the offender, and the case is not one where it is specially prescribed by law, that an action may be maintained to recover damages for the loss or injury, a fine, sufficient to indemnify the aggrieved party, must be imposed upon the offender, and collected, and paid over to the aggrieved party, under the direction of the court."

Respondent argues that the Stipulation did not have a default provision and, therefore, the Respondent is not in civil contempt of any order. The Court disagrees. The Stipulation of settlement was signed by the parties on May 2, 2025, and so ordered by the Court on the same

day.⁶ The Respondents acknowledge that they signed the Stipulation and have failed to make all required repairs and renovations that were agreed to in the stipulation. The Court so ordered the stipulation effectively creating a mandate and the Petitioner is prejudiced by continuing to remain unhoused. Therefore, the Court finds that the Petitioner is in contempt of the so ordered stipulation from May 2025 and is fined \$250.00.

Petitioner additionally seeks that the Respondent be sanctioned from June 2, 2025, onward as they are not in compliance with the stipulation. Civil Court Act § 110(c) states:

Regardless of the relief originally sought by a party the court may recommend or employ any remedy, program, procedure or sanction authorized by law for the enforcement of housing standards, if it believes they will be more effective to accomplish compliance or to protect and promote the public interest; provided in the event any such proposed remedy, program or procedure entails the expenditure of monies appropriated by the city, other than for the utilization and deployment of personnel and services incidental thereto, the court shall give notice of such proposed remedy, program or procedure to the city department charged with the enforcement of local laws relating to housing maintenance and shall not employ such proposed remedy, program or procedure, as the case may be, if such [*8] department shall advise the court in writing within the time fixed by the court, which shall not be less than fifteen days after such notice has been given, of the reasons such order should not be issued, which advice shall become part of the record. The court may retain continuing jurisdiction of any action or proceeding relating to a building until all violations of law have been removed.

The court may take additional steps to ensure that the Court Order is followed. Here, Respondents agreed to make repairs to the subject premises within 30 days of signing the stipulation on May 2, 2025. As of July 17, 2025, the Respondents themselves state that the repairs are not completed. At the hearing on September 3, 2025, Respondents failed to appear in their individual capacity and therefore could not dispute Petitioner's claims that the condition of the subject premises remain unchanged. There is no dispute that the Respondent has not been restored to the subject premises and there is no indication of when he will be.

⁶ See NYSCEF Doc # 24

Respondent alleges that the delay was due the Petitioner's own impediment to the worker's going into the subject premises and staying there. However, Respondent did not have personal knowledge of the Petitioner's behavior, nor did he attach an affirmation nor affidavit from someone who did have personal knowledge. Furthermore, Respondent did not show any communication with Petitioner's counsel letting them know about the alleged Petitioner's behavior. As such, the Court finds it appropriate to grant Petitioner's motion and grant a money judgment in favor of the Petitioner and orders the Respondent to pay \$195.00 per day from June 2, 2025 through September 3, 2025 (total of 94 days or \$18,330.00) payable within 10 days of the date of this Order. Petitioner is also awarded a money judgment in the amount of \$195 per day beginning on September 4, 2025, until the Respondent is restored to actual possession of the subject premises. Furthermore, a money judgment for attorney fees is granted to the Petitioner in the amount of \$3,000.00 pursuant to Judiciary Law §773⁷ payable within 10 days of the date of this Order. The Parties acknowledge payment to Petitioner from Respondent in the amount of \$1514.00 in satisfaction of the June 10, 2025 Order which resolves the portion of the motion seeking said payment.⁸

It is ORDERED that Petitioner's motion is GRANTED in its entirety.

Petitioner is awarded a FINAL JUDGMENT in the amount of \$18,330.00 for civil contempt totaling 94 days at \$195.00 per day. Respondent shall remit payment of \$18,330.00 to Petitioner by September 15, 2025.

⁷ This reflects the \$1,125.00 initially requested when the instant motion was filed, and an additional 5 hours of time at \$375.00, which was estimated by the Court based on additional motion practice and multiple court appearances.

⁸ See NYSCEF Docs # 42 and 58.

Petitioner is awarded a FINAL JUDGMENT against Respondents in the amount of \$3,000.00 for attorney's fees. Respondent shall remit payment of \$3,000.00 to Petitioner/Petitioner's counsel for attorney's fees by September 15, 2025.

Petitioner is awarded a FINAL JUDGMENT in the amount of \$195 per day beginning September 4, 2025 through the date Petitioner is restored to actual possession of the subject premises. Respondent shall remit payment to Petitioner within 10 days of Petitioner's restoration.

The Court notes Epstein, Schreier, Shapiro moved to be relieved as Counsel for Respondents. Their motion was granted on September 3, 2025.

The foregoing is the Decision/Order of this court.

Dated: September 5, 2025
Brooklyn, New York



So Ordered
Hon. Tashanna B. Golden
Judge, Housing Court

Hon. Tashanna B. Golden
Judge, Housing Court