

LACP LLC v Ndongo

2025 NY Slip Op 34330(U)

November 14, 2025

Civil Court of the City of New York, New York County

Docket Number: Index No. L&T 316796/23

Judge: Clinton J. Guthrie

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This opinion is uncorrected and not selected for official publication.

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK: HOUSING PART D

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LACP LLC,

Index No. L&T 316796/23

Petitioner,

-against-

**DECISION/ORDER
AFTER HEARING**

CIRE NDONGO, MAMDOU ALIOU BALDE,

Respondents.

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Present:

Hon. CLINTON J. GUTHRIE
Judge, Housing Court

The decision and order after an evidentiary hearing upon respondent Mamadou Balde’s motion (seq. 9) to be restored to possession of the subject premises and for other relief is as follows.

BRIEF BACKGROUND

This summary nonpayment proceeding was filed in August 2023.¹ Respondent Mamadou Balde (named as Mamdou Aliou Balde in the petition) [hereinafter “respondent”] filed an answer in September 2023. On April 30, 2024, petitioner and respondent executed a settlement stipulation, whereby respondent consented to a judgment in the amount of \$24,220.00 (which reflected a negotiated amount) and the issuance of a warrant of eviction. Execution of the warrant was stayed for monthly payments towards the judgment, in the amount of \$504.58, plus the monthly rent, until the judgment was satisfied.

In July 2025, an eviction occurred. While a non-party filed a post-evict order to show cause on July 22, 2025, they did not appear on the return date. On October 28, 2025, respondent

¹ A predecessor petitioner commenced the case. The current petitioner substituted thereafter.

filed a post-evict order to show cause. On the return date, the court denied the order to show cause, holding that the court could not proceed without the joinder of the new tenant in possession, Maria Cabrera. On November 5, 2025, respondent filed the instant order to show cause, seeking restoration to possession of the subject premises, and a separate order to show cause seeking to join Maria Cabrera. On November 13, 2025, the court granted the order to show cause to join Maria Cabrera as a respondent and an evidentiary hearing was scheduled on respondent's instant order to show cause on November 14, 2025. On November 14, 2025, a hearing was conducted (with a French interpreter present for respondent) and completed.

EVIDENTIARY HEARING

Respondent Mamadou Balde testified first. He testified as follows. He moved into the subject premises in 2019 with his uncle, Cire Ndongo. He stated that he helped his uncle pay the rent and was involved in helping resolve a prior nonpayment proceeding. He acknowledged settling this case in April 2024 and stated that he left New York City for Africa on June 2, 2025.² He returned on October 22, 2025, which was after the eviction had occurred. He described making payments under the April 30, 2024 stipulation and his payments from January 2025 through April 2025 were admitted into evidence.³ He presented money orders and mailing receipts for May 2025 rent, which were admitted into evidence over petitioner's objection. He also stated that further payments in 2025 were made but were returned by petitioner.

On cross-examination, Mr. Balde stated that his uncle, Mr. Ndongo, had been afflicted with an "African disease" for 7 years and traveled almost yearly to Africa to receive treatment.

² The court acknowledges that Africa is a large and diverse continent, but Mr. Balde did not specify the country to which he traveled during his testimony.

³ Petitioner's attorney stipulated that petitioner had received payments under the stipulation through April 2025 on the record.

He acknowledged that he would facilitate Mr. Ndongo signing leases for the apartment but that he did not have a lease in his name.

In response to a question about other occupants, Mr. Balde testified that he left a friend, Bakar, and Bakar's wife in his apartment when he went to Africa in early June 2025. He also described a neighbor taking care of his apartment and leaving money for rent with the neighbor. He stated that June and July rent payments were sent but returned. Mr. Balde said he learned of the eviction when the friend, Mr. Seck, called him in July 2025. However, he ultimately did not return until October 22, 2025, and had been homeless since he returned. At the conclusion of cross-examination, he testified that there were two (2) bedrooms in the subject apartment, but that his uncle had "cut" one room into two in order to store his clothes.

After Mr. Balde testified, petitioner called its first witness, Alex Salamea. Mr. Salamea testified as follows. He is the property manager of the subject building and works for Langsam Property Services. He confirmed that there was an eviction at the subject premises in July 2025 and that it was a "full eviction" (i.e. all belongings were removed). He testified that respondent was evicted because of nonpayment of rent and a rent ledger was admitted into evidence over objection. He stated that after the eviction, petitioner fixed up the apartment by removing a partition in the kitchen, painting and plastering, and doing minor repairs. A new tenant, Maria Cabrera, rented the apartment as of September 1, 2025. He stated that Ms. Cabrera had worked with brokers to procure the apartment and that she had moved in with her son. He also stated that Ms. Cabrera had not violated her lease since she moved in.

Maria Cabrera was petitioner's second witness. She stated that she lives at the subject premises and had lived there since September 2025. Her one-year lease took effect on September 1, 2025, but she stated that she physically moved in a couple of weeks later. She

testified that she had looked for an apartment for 5 months and had saved money for the apartment. She further testified that she lives with her son, who is 14 years old and goes to a school in the Bronx.

Ms. Cabrera also testified that she had never encountered Mr. Balde until she first came to court on this case on November 13, 2025. She denied that anyone else had shown up at her apartment claiming tenancy rights to the apartment. She finished her testimony by stating that she understood that she would have a right to renew her lease.

DISCUSSION/CONCLUSION

Pursuant to RPAPL § 749, the court has the power to stay reletting and/or restore a respondent to possession for good cause shown (*see 591 Realty, LLC v Jenkins*, 85 Misc 3d 131[A], 2025 NY Slip Op 50217[U] [App Term, 1st Dept 2025]). However, when a new tenant has taken possession after an eviction, the court must undertake “a careful balancing of the equities” in assessing whether to restore a former tenant to possession (*Pomeroy Co. v Thompson*, 5 Misc 3d 51, 52 [App Term, 1st Dept 2004]; *see also Emerald 115 Mosholu, LLC v Smith*, 57 Misc 3d 155[A], 2017 NY Slip Op 51624[U] [App Term, 1st Dept 2017]). Here, upon considering the hearing testimony and evidence, the court finds that the equities do not weigh in respondent’s favor and denies his instant order to show cause, including his request to be restored to possession of the subject premises.

Respondent testified credibly about making payments until May 2025 under the April 2024 stipulation, but he did not proffer evidence regarding payments for June or July 2025 rent. While he claimed that the payments were returned, he was out of the country at the time and, to the extent that he left the obligation to submit the payments to his friend, the friend did not testify. Moreover, the substantial period of over 3 months between the eviction and respondent’s

first efforts to seek relief from the court was not credibly explained by respondent. While it is largely undisputed that he was out of the country, respondent did not explain why he did not attempt to return from Africa earlier, even after learning of the eviction. Respondent also failed to show how he could satisfy the judgment that was issued pursuant to the April 2024 stipulation.

While petitioner effectively acknowledged respondent as a tenant by executing a stipulation with him in this nonpayment proceeding, respondent conceded in his testimony that only his uncle had signed leases for the apartment. Additionally, respondent's occupancy, which dated to 2019, was not the type of long-term tenancy that would weigh in favor of restoration (*cf. 2425 Lorillard LLC v Jewels*, 36 Misc 3d 144[A], 2012 NY Slip Op 51547[U] [App Term, 1st Dept 2012]; *Thompson*, 5 Misc 3d at 52).

As for Maria Cabrera, she testified credibly about taking occupancy of the subject apartment pursuant to a 1-year lease in September 2025, along with her 14-year-old son. She described her efforts to locate and save for an apartment. In these circumstances, while her tenancy is relatively short, respondent has not demonstrated a sufficient basis to displace her and her minor child from the subject premises.

Upon the denial of respondent's order to show cause, all stays are vacated. This Decision/Order will be filed to NYSCEF and a copy will be emailed to respondent and Maria Cabrera. The parties are directed to pick up their exhibits in Room 524 or they may be destroyed at the court's discretion in compliance with DRP-185.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

Dated: New York, New York
November 14, 2025



HON. CLINTON J. GUTHRIE
J.H.C.

APPROVED
CGUTHRIE, 11/14/2025, 4:35:18 PM