

Andrada Owners Corp. v Digrazia

2012 NY Slip Op 32495(U)

October 1, 2012

Civil Court, New York County

Docket Number: 74646/2010

Judge: Sabrina B. Kraus

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

ANDRADA OWNERS CORP.

X

Petitioner-Landlord

-against-

DECISION & ORDER

Index No.: L&T 74646/2010

HON. SABRINA B. KRAUS

CHI LEE DIGRAZIA

Respondent-Tenant

X

BACKGROUND

This summary holdover proceeding was commenced by **ANDRADA OWNERS CORP.** (Petitioner) against **CHI LEE DIGRAZIA** (Respondent) seeking possession of 139 East 30th Street, Apt 1B New York, NY 10016 (Subject Premises) based on the allegation that Respondent, the proprietary lessee, had breached her obligations under the proprietary lease.

The proceeding was resolved pursuant to a stipulation of settlement in May 2011 (Stipulation). The Stipulation provides for service of a fifteen day notice cure on default. In the event of a default that is not cured, the Stipulation provides Petitioner may restore the proceeding, and that Respondent’s tenancy would be terminated. Both parties are represented by counsel.

On July 27, 2011, Petitioner issued a notice advising that Respondent had defaulted under the terms of the Stipulation and giving Respondent 15 days to cure (The Notice). The

Notice asserted that Respondent had violated the Stipulation by allowing others to occupy the Subject Premises without permission, and that she had been advertising on the internet to rent the Subject Premises for short term rentals.

On September 23, 2011, Petitioner moved to restore the proceeding to the calendar and for summary judgment based on the alleged defaults. On December 7, 2011, the motion was granted by the court (Stanley, J) to the extent of setting the matter down for a hearing on the issue of whether the Stipulation had been breached.

On January 19, 2012, the proceeding was transferred to Part X for the hearing and then assigned to Part R. The hearing was originally scheduled for February 29, 2012, and then adjourned on several occasions, as well as for interim motion practice. The hearing took place on August 3, and August 6, 2012. At the conclusion of the hearing, the Court reserved decision.

THE NOTICE TO CURE

The Notice was the second default alleged by Petitioner pursuant to the Stipulation, and it makes reference to an earlier notice to cure, dated June 30, 2011 (June Notice), which was never entered into evidence or filed with the Court.

The Notice asserts Respondent violated paragraph four of the stipulation: .

Paragraph four (4) of the Stipulation provides:

Respondent represents that she is currently in sole possession of the premises ... and states that there are no other persons and/or entities entitled to possession thereof. Respondent represents that she has not, and will not authorize or permit any third parties to occupy the Premises, including but not limited to Louis Lanclos ... unless such occupancy is permitted by the terms of the Proprietary Lease ... , this Stipulation or NY Real property Law § 235-f.

The Notice references communications sent by Respondent in July, which were in response to the June Notice. The first was dated July 8, 2011 (Ex 2) and asserted that

Respondent has four employees at the Subject Premises: Rachelle A Cid, identified as a front desk receptionist during the day and a housekeeper in the evenings; Sellene Prieto identified as a Colon-hydro technician; Eric Russ, a handy man and LS Experts for plumbing work.

Respondent also asserted that, she lived in the Subject Premises with Poonam Arora, her roommate, and that Rachelle Cid lived there as well.

Paragraph 8(iii) of the Stipulation provides:

Respondent agrees to provide a list of her employees, their positions and a picture of each employee to the Andrada, within 10 days after the execution of this Stipulation or hiring any new employees, and shall notify the Andrada of any new hires and/or terminations within 20 days thereof.

The following day, Respondent sent a copy of the July 8, Email with the heading **Employees picture and positions** along with a drivers license for Rachelle Cid and a resume for Selene Prieto. Respondent made additional handwritten notations on the email and forwarded this to Petitioner's counsel (Ex 3). The handwritten notations stated that Sellene Prieto was not yet an employee, that she was not scheduled to start work until September, at which time, a photo would be provided. Under the section of the email that indicated who was living in the Subject Premises, Respondent added "p.s. Rachelle's boyfriend and my stepson sometime stay overnight."

Two days later, on July 11, 2011, Respondent sent another email to the managing agent which stated:

Due to holiday and vacation season, I will be away from my apartment for weeks and my immediate extended DiGrazia Family members such as my current husband (Donald DiGrazia), stepsons, stepdaughters and step nephews (Damion, Share, Jaden and christion DiGrazia) will help me do my duty have key access to my apartment. If you see some new young goodlooking caucasian faces in and out with key to the building and my apartment please be aware of this.

(Ex 4).

The Notice asserts that these communications constitute an admission that three or more non-family members are residing in the Subject Premises without Petitioner's consent, and establish a violation of paragraph 6 of the Stipulation.

Paragraph 6 of the Stipulation provides:

Respondent agrees that in accordance with Section 14 of the Proprietary Lease the Premises may be occupied by a guest for a period not exceeding one month, and that no guests may occupy the Premises unless the permitted adult resident (i.e. Respondent) is then in occupancy of the Premises.

The Notice asserts that the July 11 email indicates an intent to breach the stipulation by Respondent's admission that she will be gone for "weeks" and that the people she was allowing to occupy in her absence did not qualify as "immediate extended family members." The Notice states that the occupancy of the individuals identified in the July 11 email is a violation of the Stipulation and demands that Respondent either prevent the individuals from occupying or cause them to vacate.

The Notice refers to an internet advertisement (Ex 7G) offering the Subject Premises for short term rentals with a daily, weekly and monthly rate, in violation of Paragraph 4 of the Stipulation. The advertisement is dated June 20, 2011 and reads in pertinent part¹:

We use most newest colonic machine in the market to service you at most comfortable rooms. The room rates is daily, weekly and monthly at your treatments need. The rooms are located at most tourist attraction areas at mid twon of Manhattan in New York City and Waterfront Freeport Long island Village of fishing and boating at your own backyard.

The bottom of the advertisement reads under Sell offers

¹ The advertisement is quoted as it appeared with spelling and grammatical errors left unaddressed.

Single rooms, daily, weekly and monthly rate

Single private room with window aircondition share bathroom and kitchen with two other femals.

Manhattan location at \$95 per day, \$250 per week and \$900 per month.

Long Island location at \$80 per day, \$200 per week and \$600 per month.

The Notice provides that Respondent is to cease and desist from this and any other advertisement immediately, as any conduct undertaken to implement this solicitation without consent shall constitute a default under the Stipulation.

On August 18, 2011, Respondent sent Petitioner a written response (Ex 5) to the Notice. In her letter, Respondent states that she has separated from her husband, who was only first identified to Petitioner in the July 8 email, and has been living with her girlfriend and domestic partner in the Subject Premises since May 2009. The letter also acknowledges that Rachelle Cid lives in the Subject Premises with her boyfriend Christian. Respondent also asserted that the internet advertisement was a “mistake,”and that she had changed and corrected it. Respondent states that the advertisements should have read \$95 per service not \$95 per night and that someone else had put the advertisement on the internet.

This letter constitutes an admission by Respondent that as of the date of the letter, August 18, 2011, which is after the expiration of the 15 day cure period set forth in the Notice, three other individuals were living in the Subject Premises. Respondent asserts that this was permissible under Paragraphs 14 of the Proprietary Lease and Petitioner asserts it is a violation of the Lease and the Stipulation.

FINDINGS OF FACT

The Court finds that Respondent has materially breached the terms of the Stipulation and that Respondent failed to cure said breach within fifteen days of the notice. The Court finds that

Respondent sublet one room in the Subject Premises to Poonam Arora (Poonam). Respondent made so many contradictory statements about the nature of her relationship with Poonam and Poonam's interest in the Subject Premises that her testimony can not be considered reliable. First, Respondent falsely represented that no one was living in the Subject Premises in the Stipulation. Respondent never offered any credible explanation as to why she made this false representation in the Stipulation.

Then, after receiving the June Notice, Respondent sent a written notice alleging for the first time in July that Poonam is her "roommate." Three days later, Respondent advised Petitioner for the first time of the occupancy of her "current" husband and four members of his family to whom she has provided keys and who will occupy the Subject Premises in her absence.

Thirty days later, Respondent changes her story yet again. Now pursuant to the August 18, 2011 letter, Poonam is not a roommate, but a girlfriend and Domestic Partner who has been living in the Subject Premises for two years. Just one month after notifying Petitioner for the first time of her husband's occupancy and his four children having access with their own keys, Respondent now asserts that she and her husband have separated.

The Court finds that Respondent is not living in the Subject Premises and has instead sublet the Subject Premises in violation of the Proprietary Lease and the Stipulation. The Court notes that the Subject Premises is a one bedroom apartment which has been further subdivided into three rooms. Each of the rooms has a padlock on the door.

One room was sublet to Rachelle Cid (Cid), a second room to Poonam, and a third to a man identified as Christian Digrazia (Christian).

Respondent also continued to advertise for additional occupants. Respondent testified that she was familiar with the internet ad in evidence as Ex 7G. Respondent testified she may have drafted the ad, but that she did not know who the two females were that were referenced in the ad, because Respondent testified that as of the date of the ad, 6/20/11, neither Poonam nor Cid were living in the Subject Premises. The Court found Respondent's explanation of the advertisements to be completely lacking in credibility.

The Court credits the testimony of Christopher Platt, who after the execution of the Stipulation, observed first hand the other individuals coming and going from the Subject Premises and who similarly observed Respondent was not living in the Subject Premises during this period. Mr. Platt identified through physical description Christian, Poonam and Cid as all independently living in the Subject Premises and coming and going with their own keys. Christian was not coming and going with Cid, but was entering with his own key by himself. Christian was observed as living in the Subject Premises through October 2011 and Poonam was observed to have lived in the Subject Premises through April 2012, when she appeared to have been thrown out, and was found with all her belongings packed up in the lobby.

Mr. Platt's testimony was further substantiated by the credible testimony of Alexander Michaud who lives in Apartment 1A in the subject building. Mr. Michaud's descriptions support the finding that Respondent was not living in the Subject Premises and had sublet to these individuals.

Rachelle Cid testified for Respondent. Cid started living in the Subject Premises in June 2011. At that time, she testified that She, Poonam and Christian all had their own keys to the Subject Premises.

Cid testified that the Subject Premises has been divided into three rooms plus a bathroom. Cid occupies one of the rooms as her bedroom. There is a second bedroom where Poonam slept. Each of the rooms is locked and Cid can only access the other rooms if Respondent provides her with a key. Cid does not keep any of the keys and stated that of the three rooms there are rooms she is not permitted to enter, thus it is unclear exactly what kind of “housekeeping” it is asserted Cid does. Cid testified there is no kitchen in the Subject Premises, but that there is a stove.

Cid acknowledged that Christian was sleeping in the Subject Premises as often as five nights per week. Cid has never met Donald DiGrazia. Cid provided no credible testimony which would support Respondent’s claim that Christian DiGrazia was there as her boyfriend, rather than as another subtenant of Respondent.

Cid testified that “when (Respondent) would sleep over” Respondent slept on a massage table in the third room, which is a “waiting room” and living room. Based on an evaluation of the credibility of the testimony of Cid and Respondent, Court concludes that Respondent does not sleep in the Subject Premises on a regular basis.

Cid testified that Respondent and Poonam slept in different rooms on the occasions they were both sleeping in the Subject Premises. Cid also testified that she did not know if Respondent and Poonam slept in the same room. Cid testified that when Respondent slept in the Subject Premises she slept on a small massage table, but that there were three beds in the Subject Premises during the summer of 2011 when she, Christian and Poonam were living there. Cid testified at the time of the hearing there were two beds in the Subject Premises, although Leah Rudell testified there were two beds in her room at the time of the hearing.

Cid testified that Respondent sleeps at the Subject Premises five nights a week and Cid also testified that she does not keep track of Respondent's whereabouts and does not know when Respondent sleeps in the Subject Premises. Cid's testimony was filled with contradictions and lacked credibility.

Cid's testimony about her receptionist and housekeeping duties was particularly lacking in credibility, and Respondent appeared to be attempting to coach Cid in her answers during her testimony by making gestures. Cid testified that she worked a 40 hour week from 9am to 5pm but really was unable to detail what "work" was done for Respondent during these hours.

Cid testified that she is paid \$500 per month and that up until January 2012, those payments were in cash. Once again this testimony about being paid lacked credibility and is contradicted by Respondent's own evidence of a 2011 W-2 showing a total in alleged wages to Cid for 2011 of \$1907.79 (Ex A). Cid testified that as a receptionist she answers the phone approximately three times per day, and that she only answers the phone if Respondent is not available. Cid testified this was her only duty as a as a receptionist. Cid acknowledges that there is no receptionist desk for her to sit at, and that she does not speak with any patients. Cid did know the name of the treatments Respondent provides. Cid has never received payments from any patients and has never observed any patient making a payment. Cid does not know where Respondent maintains her files, and has never had access to any of Respondent's files. Cid could not identify the equipment located in the Subject Premises or what the equipment was used for (pictures of the equipment are exhibits 8c - 8f).

Cid testified that during the day she cleans and errands. This contradicts the representations made by Respondent to Petitioner, which was that Cid works as a receptionist

during the day and does housekeeping in the evenings.

At the time of the hearing, Leah Rudell was living in the Subject Premises. According to Cid, Leah Rudell (Rudell) started living in the Subject Premises approximately two months before the hearing. However, Rudell's occupancy started earlier as confirmed by her having signed for two certified letters delivered to the Subject Premises on May 8, 2012 (Ex 16). Cid stated that Rudell's daughter Lillian is also living in the Subject Premises. Lillian is a twenty year old adult. Rudell testified she moved to the Subject Premises from Florida for her daughter to start school in New York.

Rudell testified that she has been living in the Subject Premises since June 30, 2012. Rudell testified there are two bedrooms in the Subject Premises. Rudell testified that she was Respondent's sister, but no documentation was provided to support any of the people living in the Subject Premises had any family relationship to Respondent, including Rudell. Rudell testified she is married to Jeffrey Rudell, that her husband sleeps in the Subject Premises twice a week since she has moved in, and that he does not work at the Subject Premises.

Respondent also testified on her own behalf. Respondent testified that Lousi Lanclos lived in the Subject Premises up until the time the Stipulation was entered, and that he no longer lives there because of the Stipulation. Respondent testified Lanclos is her ex husband and that they have a daughter together named Sarah.

Respondent testified that Cid is like family to her, because she is the girlfriend of a DiGrazia family member. However, Respondent also testified that she knows nothing about Christian because he is related to Donald DiGrazia, and since her separation from Donald he shares no family information with Respondent. This contradicts her earlier testimony that Cid

was like family because she was a girlfriend of Christian.

Respondent said she offered Cid a place to stay because Cid came from Hawaii, and her boyfriend was unemployed. Respondent offered Cid room and board and \$500 per month. Respondent testified that Cid's boyfriend never moved in, because he had his own apartment in Chinatown with a cousin, but that the boyfriend regularly slept at the Subject Premises. However, Respondent eventually admitted Christian was living in the Subject Premises. Respondent testified that she last saw Christian DiGrazia in October, and that he found a roommate and wanted to move out of the Subject Premises. Respondent testified that she told Christian it was great that he was moving out, because his living in the Subject Premises was causing Respondent problems.

Respondent also testified that Cid broke up with Christian, and that Cid did not want to move into Christian's apartment, and he did not want to move into the Subject Premises. Respondent testified that on Ex 3 she added Christian as Cid's boyfriend by hand after sending the original email. Respondent testified that she added this because Cid only told her about Christian staying at the Subject Premises, after Respondent sent the email. Respondent testified that no one she identified in her July 11 email ever was in the Subject Premises except Christian, whom she described as some unknown relative. Respondent's testimony regarding Cid and Christian was completely lacking in credibility.

Presumably in an effort to explain Cid's damaging and incoherent testimony, Respondent testified that Cid was mentally disabled and "slow" and that Respondent did not want her patients exposed to Cid, whom she had originally asserted was hired as a receptionist for her business.

Respondent testified that Poonam moved out because she only had a six month visa, which contradicts her statement in earlier communications that Poonam had been living with her for years. Respondent testified that Poonam paid no rent, because she was unemployed and that Respondent supported Poonam.

Respondent testified that when Poonam lived in the Subject Premises, she slept in the same room with Poonam and Respondent's daughter. Respondent then testified that Poonam was more like a roommate than a domestic partner, and that Poonam cared for Respondent's daughter.

Cid never testified that Respondent's daughter lived in the Subject Premises.

Respondent testified that although the Subject Premises is her primary residence she had no bed of her own to sleep in, because she gave her bed to Poonam who shared that bed with Respondent's daughter. Respondent testified she slept in a different bedroom than Poonam and Respondent's daughter.

At the time of the hearing, Respondent testified that her daughter shared a bed with Rudell's twenty year old daughter, in the same room occupied by Rudell and Rudell's husband. Rudell did not testify that anyone else lived in the Subject Premises, let alone her bedroom.

Respondent testified that she has no employees and needs no employees to run her business, other than Cid.

Respondent testified that she met Poonam through the internet, and that Poonam was referred to her as a math tutor for her daughter. Poonam first came to the Subject Premises to tutor Respondent's daughter in math and Poonam tutored her daughter until 11pm or midnight. Respondent testified that she started to have Poonam stay over at the Subject Premises, because

it was too dangerous for Poonam to go home after completing tutoring at midnight.

Respondent testified that Poonam became her domestic partner, when her exhusband Louis moved out of the Subject Premises. Respondent testified that she thought “domestic Partner” meant “Domestic Worker” and that Poonam was like a nanny for her daughter. Respondent testified Poonam washed her clothes and took her daughter to school. Respondent testified that she and Poonam never slept in the same bed, but shared physical affection.

Respondent testified her daughter was 15 years old at the time of the hearing. Respondent testified her daughter attended school at Crown Academy.

Respondent’s testimony lacked credibility. Respondent constantly contradicted herself and the testimony of other witnesses. Respondent’s testimony that she confused “Domestic Partner” with “Domestic Help” makes no sense. It is not credible that Respondent would have her teenage daughter sleep in the same bed with a stranger she met on the internet.

Moreover in October 15, 2011 affidavit in opposition, a document prepared by her attorney, Respondent described Poonam as her girlfriend whom she lived with after her separation from her husband. Respondent in the same affidavit identifies Poonam as her Partner of over two years.

CONCLUSION

Based on the forgoing, the Court finds that Respondent has breached paragraphs 4 and 6 of the Stipulation. Cid is not a domestic employee but clearly appears to be a subtenant. Cid’s residency in the Subject Premises without permission of Petitioner is a breach under the stipulation. Christian DiGrazia or the man identified as Christian DiGrazia also lived in the Subject Premises from at least July through October and this was in violation of the Stipulation.

Poonam lived in the Subject Premises. It is unclear when Poonam started living there as Respondent's claims varied wildly in this regard, but clearly Poonam was living there before Cid started living there. Poonam was not Respondent's roommate, as the Court finds Poonam lived in the Subject Premises through April 2012 and that Respondent was not living at the Subject Premises during this period.

Respondent appears to have used the Subject Premises for short term rentals. Respondent's outlandish explanations for the number of people living in the Subject Premises defy credibility and establish more than one breach of the Stipulation that Respondent failed to cure during the allotted period. Pursuant to paragraph 14 of the Stipulation, Petitioner is entitled to a final judgment of possession terminating Respondent's tenancy. The warrant of eviction shall issue forthwith. Execution of the warrant is stayed through November 30, 2012.

This constitutes the decision and order of this Court.

SABRINA B. KRAUS

Dated: New York, New York
October 1, 2012

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