

<b>Bellstell 7 Park Ave. LLC v Bayerle</b>
2013 NY Slip Op 30905(U)
April 30, 2013
CCIV, New York County
Docket Number: 79892/2011
Judge: Sabrina B. Kraus
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CIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF NEW YORK: HOUSING PART C

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BELLSTELL 7 PARK AVENUE LLC, X

Petitioner-Landlord

-against-

**DECISION & ORDER**  
Index No.: L&T 79892/2011

**HON. SABRINA B. KRAUS**

RUTH BAYERLE  
7 Park Avenue, Apt No. 94  
NEW YORK, NEW YORK 10016

Respondent-Tenant

STACY MALO, "JOHN DOE" AND/OR "JANE DOE"

Respondent- Undertenants

\_\_\_\_\_  
X

**BACKGROUND**

The underlying summary holdover proceeding was commenced by **BELLSTELL 7 PARK AVENUE LLC** (Petitioner) against **RUTH BAYERLE** (Respondent), the rent-stabilized tenant of record based on the allegations that Respondent has created a nuisance by allowing Collyer Conditions in 7 Park Avenue, Apt No. 94., NEW YORK, NEW YORK 10016 (Subject Premises) and that Respondent has unlawfully sublet the Subject Premises to Stacy Malo (Malo). Respondent is 81 years old and has lived in the Subject Premises for over thirty-five years.

Respondent and Malo appeared herein through counsel and filed an answer on October 18, 2011, asserting that Malo is Respondent's roommate and that in 2010, Respondent fell in the

Subject Premises, and sustained injuries resulting in her hospitalization. As of the date of the answer it was asserted that Respondent was still in a rehabilitation facility recovering from her injuries. The answer further asserts that Respondent is being harassed and discriminated against by Petitioner.

On November 30, 2011, Petitioner moved for discovery and use and occupancy. The parties stipulated to discovery and use and occupancy and the proceeding was marked off calendar.

Respondent produced documents pursuant to the stipulation regarding discovery, and on June 26, 2012, Malo appeared for a deposition. Some of the documents produced were redacted. At the deposition, counsel for Malo directed her to respond only to questions related to the subletting claim, and not to issues concerning the allegation of nuisance. As a result, Petitioner's counsel elected to suspend the deposition.

In July 2012, Petitioner moved for relief pursuant to CPLR 3126 asserting that Respondent and Malo had failed to comply with discovery. Respondent cross-moved for a protective order. The motions were resolved by the court (Stanley, J) pursuant to an order dated November 26, 2012, wherein the court declined to award relief pursuant to 3126 or a protective order. The proceeding was again marked off calendar for completion of discovery.

On December 28, 2012, counsel for Respondent and Malo moved to be relieved. On January 2, 2013, the court (Stanley, J.) granted the motion on default<sup>1</sup> and adjourned the proceeding to February 6, 2013, to afford Respondent and Malo an opportunity to obtain new counsel.

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<sup>1</sup> GAL did submit an affidavit in opposition which was filed with the court on December 27, 2012, however, this does not appear to have been considered by the court in its order .

On February 6, 2013, Martin Bayerle, the son of Respondent, appeared and was appointed GAL for Respondent based on Respondent's inability to come to court and a power of attorney, which the court deemed to be consent on behalf of Respondent.

The GAL entered a stipulation agreeing to provide un-redacted copies of certain documents previously produced and the proceeding was adjourned to April 30, 2013. On April 30, 2013, Petitioner moved a second time for relief pursuant to CPLR 3126 and Respondent, through her GAL cross-moved for dismissal.

The motions were marked submitted and the court reserved decision. The motions are consolidated for disposition herein.

#### **RELATED LITIGATION**

In 2011 Respondent, through counsel commenced an action in Supreme Court under Index Number 112949/2011 asserting discrimination by Petitioner. On or about November 15, 2011 an RJI was filed and a stay of the this proceeding was granted. Respondent moved to consolidate this proceeding with th Supreme Court action, and on June 7, 2012, Justice Joan Madden issued an order denying the motion and vacating the stay.

#### **DISCUSSION**

To the extent Petitioner argues that the GAL is precluded from moving this court for any relief, Petitioner is misinformed. While it is accurate that an attorney in fact may not represent a party to a litigation, a GAL is authorized to prosecute or defend the claims of their ward, and this includes the ability to make motions for relief during a proceeding (*See eg Desantis v Bruen* 165 Misc.2d 291; *Sande Rocke and Company v Rosen* 23 AD2d 648).

The court finds no basis to award Petitioner relief pursuant to CPLR 3126. There was never court ordered discovery in this proceeding, rather the parties agreed to discovery.

Generally, discovery is awarded to a landlord for a claim of illegal subletting (*see eg Hartsdale Realty Company v Santos* 170 AD2d 260), but rarely for a claim based on nuisance, where a landlord would be hard pressed to establish ample need for same. Therefor to the extent Malo limited her responses to issues related to subletting and declined to respond to questions pertaining to the nuisance claim the court finds that said conduct was appropriate and is in no way the basis for relief pursuant to CPLR 3126.

GAL asserts that in April 2012, Respondent returned to the Subject Premises for a few weeks, but was subsequently readmitted as an inpatient until January 14, 2013, when she permanently returned to the Subject Premises.

As of the date of submission of the motions it is undisputed that Malo has permanently vacated the Subject Premises.

GAL also submits photographs of the Subject Premises, which do not appear to show any Collyer's Condition currently in the Subject Premises.

Therefore the primary dispute between the parties would appear to be an entitlement to costs. While the court agrees that even if both the alleged sublet and nuisance have been cured, Petitioner is nevertheless entitled to a trial, the court does not find that further discovery is warranted in this proceeding. Particularly given that Respondent is an 81 year old tenant with limited resources, has resided in the Subject Premises for 35 years and is admittedly residing there now.

Based on the foregoing the motions are denied.

The proceeding is restored to the calendar and triall is set for June 3, 2013 at 9:30 am.

This constitutes the decision and order of this court.

Dated: April 30, 2013  
New York, New York

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Hon. Sabrina Kraus

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