

Fiduciary Trust Co. Intl. v Mehta

2013 NY Slip Op 31907(U)

August 15, 2013

Civ Ct, NY County

Docket Number: 89852/2012

Judge: Sabrina B. Kraus

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

FIDUCIARY TRUST COMPANY
INTERNATIONAL, CO-EXECUTOR OF THE
ESTATE OF VIOLA SOMMER

X

Petitioner-Landlord

-against-

DECISION & ORDER
Index No.: L&T 89852/2012

HON. SABRINA B. KRAUS

HIMANSHU MEHTA
425 East 58th Street, Apt 20B
New York, New York, 10022

Respondent

X

BACKGROUND

This summary holdover proceeding was commenced by **FIDUCIARY TRUST COMPANY INTERNATIONAL, CO-EXECUTOR OF THE ESTATE OF VIOLA SOMMER** (Petitioner) and sought to recover possession of **Apartment 20B** at 425 East 58th Street, New York, New York, 10022 (Subject Premises), based on allegations that **HIMANSHU MEHTA** (Respondent) is a licensee who's right to occupancy has been terminated.

PROCEDURAL HISTORY

Petitioner issued a Notice to Quit dated October 15, 2012, which asserted that Respondent was the licensee of Prabhavati D Mehta (Tenant) who died on November 17, 2011, and that as a result of her death Respondent's license had been terminated or revoked. The notice further asserts that on October 12, 2012, the Public Administrator surrendered all right title and interest Tenant may have had in the Subject Premises to Petitioner. The petition is dated

November 21, 2012, and the proceeding was originally returnable on December 20, 2012. The petition asserts that the Subject Premises are exempt from rent regulation because the Subject Premises is a cooperative unit and is not occupied by a “non-purchasing tenant” as defined under section 352-eeee of the General Business Law.

Respondent appeared through counsel and filed an answer and counterclaims dated January 30, 2013. On that date, the parties, through counsel entered into a stipulation of settlement. Pursuant to the stipulation Respondent withdrew his defenses and counterclaims and consented to entry of a final judgment of possession and forthwith issuance of the warrant. Respondent agreed to vacate by July 31, 2013, and to pay past due use and occupancy of \$18,975.00 for November 2012 through January 2013, by February 15, 2013. Use and occupancy for February through May 2013 was waived, and Respondent was to pay \$6,325 per month for June and July 2013. The stipulation included a “Time is of The Essence” provision for the vacate date.

There is some implication in the stipulation that Respondent is a hoarder. Paragraph (7) of the stipulation provides that “Respondent shall not place any of his property in the hallway or outside the door of the Apt & Respondent shall use his best efforts to cause the Apt to be cleaned & free & clear of all clutter.”

Respondent timely made all payments required under the stipulation, but failed to vacate as required. Respondent’s counsel now moves for an order appointing a *guardian ad litem* (GAL) for Respondent to help relocate Respondent. On August 13, 2013, the court heard argument and reserved decision. While Petitioner seeks relief in the opposition papers submitted, no cross motion for any relief has been filed.

DISCUSSION

Respondent does not seek to vacate the underlying stipulation of settlement.

Respondent's counsel does not assert that her ability to represent her client and settle this litigation was in anyway impeded by an alleged disability of her client. Rather Respondent's counsel asserts only that Respondent is not prepared to comply with his obligation to vacate the Subject Premises, and that he has responded irrationally to her attempt to communicate with him about vacating.

It is asserted that Respondent has substantial means. Moreover, Respondent's counsel makes no claim that Respondent has any right to ongoing possession of the Subject Premises nor any meritorious defense to the underlying proceeding.

CPLR § 1201 provides that a person shall appear by a GAL when he is an adult incapable of adequately defending his rights. "The Legislature promulgated CPLR Article 12 so that GALs could help protect their wards' rights for the action or proceeding, but only in a temporary and limited capacity (*1234 Broadway LLC v Lin* 25 Misc3d 476, 481)." "By definition an Article 12 guardianship is confined to the case pending in court. It follows that GALs are temporary officers of the court for the duration of an action or proceeding (*Id* at 482)."

Here, movant only seeks the appointment of a GAL to facilitate Respondent's relocation, however, generally speaking such a responsibility would be more appropriate for an Article 81 guardian than a GAL, who's primary function is to ensure the rights of the ward are protected through the point of a final resolution of the proceeding.

It is the burden of movant to establish that the appointment of a GAL is necessary, but the motion is unsupported by any medical evidence or anything other than counsel's affirmation.

Respondent appeared in court prior to retaining counsel and before this court on the record showed absolutely no indication of any incapacity. Respondent appeared again on the date the stipulation was executed. Respondent executed the stipulation after prolonged negotiations between counsel, which commenced in the morning and continued through the court's afternoon session. There was no suggestion at any point that counsel was impeded in her ability to represent Respondent based on any incapacity.

Counsel for Respondent describes her interactions with Respondent on said date as follows:

At times there appeared to be some difficulty with Himanshu Mehta understanding the terms of the stipulation but I thought he was unfamiliar with the court process and proceeded to explain to him the terms of that stipulation that afternoon and thought he understood the stipulation. I did advise him that pursuant to the terms of the stipulation, he had the right to remain in possession and must vacate by July 31, 2013. I provided him with a copy of the stipulation and thought that he understood the stipulation at that time. After providing him with a copy of the stipulation after it was signed I had no further contact with him until after the middle of this month.

Counsel for Respondent states that in July when she spoke with Respondent about vacating, it became clear to her that he suffers from some type of "psychological problem" and that Respondent "... has problems involving saving immense materials which may cloud his ability to comprehend the seriousness of this proceeding."

Counsel concludes by asserting that Respondent does not comprehend that he must vacate the Subject Premises, and is unable to help himself vacate the Subject Premises, and that in hindsight she now believes that he did not understand the implications of the stipulation of

settlement at the time it was entered. Counsel asserts that absent the appointment of a GAL Respondent will end up living on the streets, because he cannot make arrangements to move.

Respondent was served with the motion papers by his attorney personally when they met at her office. Respondent was advised by his attorney to appear in court for the motion but elected not to do so, although he has appeared on all other court dates. Counsel asserts that Respondent consents to the appointment of a GAL, because he would like someone to help him.

Respondent's counsel emphasizes in her reply papers that she does not seek to vacate the underlying stipulation of settlement and that there is no meritorious defense to the claim for possession and that the sole purpose for which a GAL is sought is to facilitate Respondent's move from the Subject Premises.

As noted above, facilitation of a move after entry of a judgment and issuance of a warrant is not the function of a GAL appointed pursuant to Article 12. There is scant authority addressing the application to appoint a GAL after entry of a judgment and issuance of a warrant. In *Kalimian v Driscoll* [NYLJ July 20, 1992, at 23, col. 4 (App Term, 1st Dept)] the court appointed a GAL after trial, where Respondent was represented by counsel, but in *Driscoll* the judge vacated the jury trial after being presented with the testimony of a psychiatrist that the tenant suffered from a mental illness that seriously impacted her insight and judgment, and that the incapacity impeded her ability to defend against the landlord's claim to the extent that a different outcome was possible after the appointment of a GAL. In all cases where a GAL is sought after entry of a judgment, it was in connection with an application to vacate the judgment and because a substantial right of the litigant was impacted (*see eg Vinokour v Balzaretti* 62 AD2d 990 *movant sought to vacate stipulation of settlement*).

Here these two essential claims are lacking, counsel does not assert that she was impeded in her “zealous” advocacy of Respondent by any incapacity and counsel acknowledges that even with a GAL no different outcome will be had (*In re Casey* 251 AD2d 1002 *court did not err in failing to appoint a GAL for mentally ill respondent where Respondent was present for the hearing with counsel, and absent evidence that Respondent was incapable of adequately defending his rights in court; Gonzalez v Cirri* 56 AD3d 425 *motion to vacate default properly denied absent competent admissible medical evidence that party was incapable of protecting her rights at time action was commenced and judgment entered*).

Moreover, the moving papers do not even raise sufficient issue for the court to order a hearing on the issue of the necessity of a GAL (*Roach v Benjamin* 78 AD3d 468 *affirmation of counsel did not provide competent evidence of party’s incapacity claim and no hearing was required in light of failure to submit competent medical evidence*).

Finally the court notes that over six months have passed since the entry of a judgment which is not challenged and a further stay on execution of the warrant is not warranted [RPAPL§ 753(1)].

Based on the foregoing, the motion for the appointment of a GAL is denied. However, APS must be notified prior to the service of a Marshal’s notice and of any scheduled eviction date. Execution of the warrant is stayed through August 30, 2013 to afford counsel an opportunity to seek any relief in light of the order issued, or if so advised to afford Respondent an opportunity to seek the appointment of Article 81 guardian in Supreme Court.

This constitutes the decision and order of this court.

Dated: August 15, 2013
New York, NY

Hon. Sabrina B. Kraus,
JHC

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