29-33 Convent Ave. Hous. Dev. Fund Corp. v Bost
2015 NY Slip Op 31492(U)
August 11, 2015
Civil Court of the City of New York, New York County
Docket Number: L&T 59390/2014
Judge: Sabrina B. Kraus
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CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK: HOUSING PART R

29-33 CONVENT AVENUE HOUSING DEVELOPMENT FUND CORPORATION,

Petitioner

HON. SABRINA B. KRAUS

DECISION & ORDER
Index No.: L&T 59390/2014

-against-

SIMONA BOST
29 Convent Avenue, Apt. 1
New York, New York 10025

Respondent

BACKGROUND

This summary holdover proceeding was commenced by **29-33 CONVENT AVENUE HOUSING DEVELOPMENT FUND CORPORATION** (Petitioner) against **SIMONA BOST** (Respondent), the proprietary lessee of **29 Convent Avenue, Apt. 1, New York, NY 10025** (Subject Premises), based on the allegation Respondent had made alterations to the Subject Premises in violation of the proprietary lease and house rules.

PROCEDURAL HISTORY

Petitioner issued a Notice to Cure dated December 31, 2013, asserting that Respondent had made alterations, giving her thirty days to cure by restoring the Subject Premises to the condition prior to the commencement of the work, and allowing for an inspection on February 7, 2014, to confirm the cure.

Petitioner issued a Notice of Termination, dated February 18, 2014, based on their claim that Respondent had failed to comply with the Notice to Cure and cure the default.

The petition is dated March 21, 2014, and the proceeding was initially returnable April 7, 2014. Respondent appeared *pro se* on April 1, 2014, and filed a written answer asserting failure to state a cause of action, that removal of the sheetrock referenced in the pleadings was done with permission from Petitioner, and seeking sanctions against Petitioner for the frivolous institution of this proceeding.

On April 7, 2014, the parties entered a stipulation agreeing to an inspection at the Subject Premises on April 19, 2014, between 9 am and 12 pm by V&T Construction, the Super for the building and Rich Tobin and/or one additional Board member. The stipulation provided "(t)he parties will attempt to resolve all issues between them, if possible, following inspection including but not limited to any items required to complete alterations and gain approval and fees." The proceeding was adjourned to June 18, 2014.

On May 29, 2014, Respondent sent a letter to the court regarding ongoing settlement efforts between the parties, and submitted an affidavit of unavailability asserting she could not appear on June 18, because "I received results of 4-19-14 inspection 5-28-14. It is not enough time to rectify situation. I wish to continue under the supervision of the court." Respondent stated she would be unavailable to appear in court for two months, and requested an adjournment until August 13, 2014.

Counsel appeared for Respondent on September 8, 2014, and filed an amended answer dated September 11, 2014, asserting five affirmative defenses, including failure to state a cause

of action and that the work was done with permission or alternatively that no permission was necessary.

On September 17, 2014, Petitioner moved for an order amending the petition to include two paragraphs to the petition, which made assertions regarding termination of Respondent's tenancy after the expiration of the cure, and Respondent cross-moved for leave to amend her answer and conduct discovery. On said date, Petitioner's motion was granted on consent, the petition was deemed amended *nunc pro tunc*, and Respondent's cross-motion was granted on consent to the extent of allowing the proposed amended answer, but withdrawing the first, second, third and fourth affirmative defenses, and paragraph 25 of the counterclaim. Respondent's request for leave to conduct discovery was denied by the court.

On October 21, 2014, Respondent issued a verified bill of particulars. Respondent asserted she was given permission to make the alteration by Richard Tobin via email on February 21, 2013, and that Respondent was given permission to commence alterations "including the removal of sheetrock" at the February 12, 2013 Board meeting.

On October 29, 2014, Petitioner moved for summary judgment, and on December 15, 2014, Respondent cross-moved for summary judgment.

On April 8, 2015, the court (Hahn, J) issued an order denying both motions, dismissing paragraph 24 of the counterclaim, and directing the payment of use and occupancy *pendente lite*.

On June 29, 2015, the proceeding was transferred to the Expediter's Part for assignment to a trial judge. On July 15, 2015, the proceeding was assigned to Part R for trial. The trial commenced, and continued and concluded on July 17, 2015, and the court reserved decision.

FINDINGS OF FACT

Petitioner is the owner of the Subject Premises, pursuant to a deed dated February 12, 1997, from the City of New York, through HPD, to Petitioner (Ex 1-A). Respondent is the proprietary lessee of the Subject Premises, pursuant to a proprietary lease dated January 23, 2013 (Ex 1-B).

At the closing for the Subject Premises, Respondent advised Cynthia Calloway (Calloway) the treasurer of the Board at that time , that she wished to make alterations in the Subject Premises by converting it from a one bedroom to a studio.

Calloway was the first witness called by Petitioner and the court found her to be a credible witness. Calloway first started to serve on the Board in 1990, and lived through HPD renovations of the Subject Building.

At Calloway's invitation, Respondent attended the next Board meeting on February 12, 2013, to discuss this issue. Respondent discussed what she wanted to do in the Subject Premises, including removal of a wall. The Board advised Respondent of the necessary requirements for approval of such an alteration, including execution of an alteration agreement, additional documentation required and the submission of a security deposit. Immediately after the meeting, Rich Tobin (Tobin) and Rich Ray (Ray) went to inspect the Subject Premises with Respondent and further discuss her plans.

Tobin is employed as a Project manager for the Queens Public Library and moved to the building in 1987. Tobin has a degree from Columbia School of Architecture in Urban Planning and Historical Preservation. Tobin is currently Vive President of the Board.

During the inspection, Tobin agreed that Respondent could remove enough sheetrock to have an engineer make an inspection and determine whether the wall to be removed was a lode bearing wall, and what if any systems existed behind the wall and how the work should proceed. Tobin emphasized that other then cosmetic work, such as the removal of a coat closet, any other work beyond the limited removal of sheetrock, would require a fully executed alterations agreement, submission of a security deposit and other specified documentation. Tobin told Respondent that studs could not be removed, and all material behind the sheetrock had to remain in place.

During the weekend of February 16th, Respondent commenced demolition of the walls in the Subject Premises. Respondent did this work herself at late hours over that weekend. Vanda Jamison (Jamison), who lives above the Subject Premises was disturbed by this work and spoke with Respondent, in the presence of the Super, on Sunday morning and advised her that the house rules prohibited demolition work during such hours.

An emergency Board meeting was called for February 20, 2013, to discuss the fact that Respondent had apparently commenced work in the Subject Premises without approval, and to discuss the hours that work is permissible. Respondent later acknowledged in her testimony that she had done her own demolition of the Subject Premises using a crowbar, that she had removed lathe and studs and that she had worked on weekends and late hours in violation of the house rules.

At the February 20 meeting, Respondent had asserted that Jamison had been hostile and intimidating and she instructed the Board that Jamison was to stay away from her and have no further interactions with her. Respondent was provided with a copy of the blank Alterations

Agreement and the checklist of required documentation (Ex 1-E) before any work could proceed. Ray, the Secretary of the Board at the time, highlighted the additional documentation required, including certificates of insurance naming the Board as the insured, a security deposit, and approved plans.

A second inspection of the Subject Premises took place by Tobin, and Ray immediately after the February 20, meeting.

Additional copies of the alteration agreement and check list were resubmitted to Respondent, at her request, on March 13, 2013 via email (Ex 1-F). Respondent acknowledged receipt of multiple copies of the alterations agreement and list of required documentation in her testimony.

Respondent obtained a written statement from an architect, Eric K. Daniels, RA asserting that a wall could be removed because it was not a load bearing wall (Ex 1-H-i). The statement is dated April 16, 2013 and provides:

> This letter is to confirm that after inspection of the interior apartment wall located at 29 Convent Avenue, Apt. #1 9see plan attached), it is confirmed that this is a non-load bearing wall. This wall may be demolished as specified in the rules stipulated in the building's Alteration Agreement or building bylaws regarding demolition and construction. It is recommended to have licensed professionals perform the work.
>
> The inspection included probes and was an "up close" visual inspection. Any building plumbing, gas, electrical, intercom, steam risers or other building risers located in the wall that also service other tenants in the building located within the wall to be demolished, must be maintained at all times and protected during demolition and construction. This must be specified in any agreement between the owner of the apartment and the contractor.

Respondent did not call Daniels as a witness at trial. Thus no work at all should have been done after April 16, 2013 without the executed alterations agreement and supporting

documentation, because as of that date enough of the sheetrock had already been removed for a determination as to whether the wall was lode bearing, and the manner in which the work should proceed. Instead of following the recommendations of her own Architect, Respondent ignored them completely.

On May 18, 2013, the Board, via email (Ex 1-K), requested Respondent meet with them to discuss the renovations, that Respondent bring to the meeting a signed copy of the alteration agreement, and that Respondent provide access after said meeting for Board members to inspect the Subject Premises and see the status of the work. Two proposed dates were set for the meeting.

Respondent responded the same date (Ex 1-L), and declined to meet with the Board. Respondent stated she had not yet hired a contractor, and that once she did she would contact the Board with all the details and an executed alterations agreement. Respondent stated she had no timeline for performing the work, and that when she was ready to proceed she would provide the Board with all required documentation.

On June 4, 2013, Respondent emailed the Board that she still had not been able to find a contractor (Ex 1-M), but the following day she stated she found a contractor and would soon submit an executed alterations agreement with required documentation [Ex 1-N-(i)]. Respondent subsequently testified that this contractor was “shifty”, disappeared and was never actually retained.

On June 7, 2013, the Board via email renewed its request for Respondent to come to a Board meeting, this time on June 9, with a signed copy of the alterations agreement and necessary documentation (Ex 1-O).

On July 20, 2013, Petitioner issued a Thirty (30) Day Notice to Cure (Ex 1-P) asserting that Respondent was in violation of the proprietary lease and house rules. The notice asserted that Respondent had failed to submit an executed copy of the alterations agreement, no permits had been provided for the removal of the walls in the Subject Premises, which Respondent had done. Respondent was advised to cure she had to provide a written statement of alterations made to date, provide copies of applications for permits and permits obtained, provide copies of contracts with the contractor she had retained and obtain written consent from the Board to either restore the premises or proceed with the alterations.

Respondent replied by email on August 19, 2013 (Ex 1-Q). Respondent asserted she had only removed sheetrock as permitted, and had performed no further alterations. Respondent asserted that she needed no permits and required no licensed contractor, other than for electrical work, that she could not afford to provide the security deposit required by the Board, and that she had no time to meet with the Board further. She attached a copy of the alterations agreement that she had signed and unilaterally modified, by eliminating the request for a security deposit and modifying provisions regarding Petitioner's right to inspect. Respondent did not provide any of the other documentation required by the checklist repeatedly sent to her.

The Board responded through counsel, by letter dated September 13, 2013 (Ex 1-R). The Board agreed to reduce amount of required deposit, and to some other modifications, and again the Board requested access on October 4, 2013, for an inspection.

Respondent provided access on October 4th as requested. Calloway and the Super conducted the inspection and took photographs [Ex 3(a)-(e)]. The photographs show that Respondent had gone forward with demolition of multiple walls, and that the work done went

well beyond the permission given just to take down a portion of the sheetrock sufficient for the architect to make original plans. The photos show that lathe had been removed, and that the subfloor below and the ceiling above was exposed. There are gaps in the floor and dangling electrical wires. The photos show that the Subject Premises was not in habitable condition.

After said inspection, Respondent submitted two documents by slipping them under the office door of the Board . One evidenced Respondent's attempt to have DOB waive the requirement for electrical permits, which she later acknowledged was unsuccessful as permits were required (Ex 1-S) and the other was a certificate of insurance for an electrical company (Ex B) which did not name Petitioner as the insured as required, and which company Respondent never submitted proof of ever actually having retained. 1

On November 25, 2013, counsel for Petitioner sent a further letter detailing Respondent's defaults of her obligations (Ex 1-T). The letter advised: that Respondent had left the Subject Premises without walls for an extended period of time; Respondent had failed to proceed with necessary steps for the work to continue and be finished; that Respondent's conduct had caused or exacerbated problems with vermin in the Subject Building; that Respondent to date had failed to submit documentation to Petitioner showing she had hired a licensed contractor, or other necessary documentation. Respondent was given ten days to execute the alterations agreement, and submit required documentation. Respondent was put on written notice that failure to comply would lead to a denial to proceed with any work and require Respondent to restore the premises to its original condition.

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1 Respondent testified at trial that she had a fully executed contract with the electrician, but never submitted same in evidence.

On November 28, 2013, Respondent replied by email. She indicated that: she considered the allegations and demands of Petitioner to be a joke and "dumbfounding"; that she could not afford the security deposit required by the alterations agreement; that she saw no reason why she should be required to submit any additional information to Petitioner regarding the work; that she had only observed a minimal amount of vermin; and that there was no way she could cure her default within ten days (Ex 1-V).

This correspondence exchange continued with Petitioner repeatedly and patiently laying out for Respondent, in detail, the requirements necessary for the work to proceed, and advising that allowing the Subject Premises to remain without walls was not an option (Exs. 1-W thorough 1-CC).

On December 31, 2013, Petitioner served a another notice to cure, which is the predicate for this proceeding. The notice laid out Respondent's defaults under the proprietary lease and house rules. The Notice provided that to cure Respondent must restore the Subject Premises to the condition it was in prior to Respondent's removal of sheetrock and additional demolition, and allow an inspection by the Board on February 7, 2014, to confirm the cure.

Respondent did not restore the Subject Premises and did not provide access for the scheduled inspection.

Tobin was last in the Subject Premises in April 2014. At that time Tobin observed that Respondent had proceeded with alterations beyond just the removal of sheetrock. Tobin described what he observed in detail and through the use of phonographs admitted into evidence [Ex M (1)-(5)]. Tobin described the exposure of subflooring and the ceiling being removed, electrical work that had been done including disconnected cables, live wires hanging, loose

junctions, visible joists in the floor, removal of studs, removal of laithe, the unsupported ceiling, and removal of plaster. The court found Tobin to be a very credible witness.

Respondent also testified at trial. The court found that Respondent's testimony lacked credibility in several respects. Respondent testified that no mention was made at the February 12 meeting or inspection of an alterations agreement or any required documentation. Respondent said Tobin gave her permission to commence the work without restrictions, as long as it was determined that the wall to be removed was not load bearing. Respondent denied that Ray was present at the February 12 inspection of the Subject Premises. The court did not find this testimony credible.

Respondent testified that she began removing the walls between the February 12 and February 20 meeting. Respondent removed the molding and testified that she took a week off from work to commence demolition. Respondent used a crowbar and a gun and removed studs, and most of the lathe underneath the sheetrock. Respondent had entirely removed the sheetrock and walls by the end of February and hired men to remove the debris from the Subject Premises.

Respondent acknowledged that she was provided a copy of the alterations agreement at the February 20 meeting, but alleged that all she was told was to look at it and get back to the Board, no detailed requirements were discussed and Respondent denies any discussion of the alterations agreement by Tobin at the February 20 inspection following the meeting.

Between February 20 and May 18 Respondent continued to do her own demolition in the Subject Premises and continued to hire people to remove debris. Respondent ignored any obligations she had with regard to the alterations agreement. Respondent testified that she found the alterations agreement "overwhelming" and that she stopped being responsive to Petitioner's

inquiries, because she never found a contractor or took steps to proceed in the manner required by the Board.

Respondent stated she attempted to go to DOB herself to proceed properly but found DOB too complicated to navigate. Respondent could not figure what kind of permit she needed or how to get it. Respondent acknowledged that the work she did created a dangerous condition in the Subject Premises, as she had cut electrical wires herself, but Respondent incredibly testified that she was the only one in danger and it had no impact on the Board. Respondent testified that she feels that the Subject Premises is now a dangerous place to be as a result of the work she did. Respondent testified she had removed all but a few of the studs. Respondent acknowledged that when she removed the sheetrock there were many electrical systems inside the walls. Respondent decided which wires were active and which were not and cut the wires she did not believe were active.

Respondent testified that she removed studs because they were old and had nails in them,. Respondent believed that the studs she removed were only decorative.

Respondent testified that she did not believe an executed alterations agreement was required and that as soon as she provided the letter from the architect that she could move forward with the alterations without further re approval from the Board.

Respondent's testimony in this regard lacked any shred of credibility.

DISCUSSION

Section 5.04 of Respondent's proprietary lease provides that Respondent shall not make alterations to the Subject Premises without the written consent of Petitioner.

Section 5.03(d) of the proprietary lease provides that it is Respondent's responsibility to maintain and repair the interior of the Subject Premises including interior walls, floors, and ceilings.

The overwhelming evidence at trial supports the conclusion that Respondent has breached the Proprietary Lease by making alterations without the written consent of Petitioner, by performing work without permits or contractors, by performing work at hours and in a manner that were not permitted by the proprietary lease.

Respondent was never ready able and willing to comply with Board requirements to proceed with and complete the work, and Respondent has allowed the Subject Premises to remain in an uninhabitable condition for years, a condition which she acknowledges is dangerous. Petitioner took every possible step to attempt to resolve this issue with Respondent amicably prior to resorting to litigation and spelled out in detail over and over again the procedure that Respondent was required to follow.

Respondent appears to consider herself above the rules.

The alterations agreement clearly sets forth the required documentation to be submitted to proceed with work. The agreement is reasonable and sets forth that work should proceed diligently, not on weekends or holidays and shall in no event be completed more than six months after commencement.

Respondent ripped down the walls in the Subject Premises and cut wires, but has for years taken no further steps to comply with the Board requirements or proceed with the work in a legal manner.

CONCLUSION

Based on the foregoing, Petitioner is awarded a final judgment of possession as against Respondent. Issuance of the warrant is stayed ten days for Respondent to effect a cure by restoring the Subject Premises to the condition it was in on February 12, 2013, prior to the removal of any sheetrock or alterations. Respondent shall provide access to Petitioner on August 26, 2015, at 6pm to confirm the cure. On default, the warrant may issue and execute on Marshall's notice.

This constitutes the decision and order of the Court.2

Dated: New York, New York
August 11, 2015

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Sabrina B. Kraus, JHC

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2 Parties may pick up exhibits, within thirty days of the date of this decision, from Window 9 in the clerk's office on the second floor of the courthouse. After thirty days, the exhibits may be shredded, in accordance with administrative directives.

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