

Jannaccio v Chiapperini
2017 NY Slip Op 32190(U)
September 18, 2017
Supreme Court, Bronx County
Docket Number: 303368/2010
Judge: Lucindo Suarez
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: I.A.S. PART 19

-----X
NELLY JANNACCIO,

Plaintiff,

- against -

NANCY CHIAPPERINI,

Defendants.
-----X

DECISION AND ORDER

Index No. 303368/2010

Subject Property:
101 Pell Street
Bronx, NY 10464
(Block 5626, Lot 219)

PRESENT: Hon. Lucindo Suarez

Upon the order to show cause signed August 9, 2017 and the affirmation, affidavit and exhibits submitted in support thereof; the undated affirmation in opposition of non-party Richard Jannaccio and the exhibit submitted therewith; defendant’s affirmation in reply dated September 8, 2017 and the exhibits submitted therewith; and due deliberation; the court finds:

Defendant, who has sold real property to non-party Denise Harris (“Harris”), moves to hold non-party Richard Jannaccio (“Jannaccio”) in contempt for his failure to surrender possession of the property, in purported violation of various orders, including a May 24, 2017 possession agreement between Jannaccio and Harris executed contemporaneously with the deed from defendant to Harris. The agreement stated that Jannaccio would deliver possession by June 7, 2017 and that if possession was not so delivered, Harris would be entitled to one thousand dollars (\$1,000.00) per day, from an escrow account funded by monies otherwise due to Jannaccio from the sale, until delivery of possession. The present application stems from Harris’ recent threat of legal action against defendant due to Jannaccio’s failure to quit the premises.

“Civil contempt has as its aim the vindication of a private right of a party to litigation and any penalty imposed upon the contemnor is designed to compensate the injured private party for

the loss of or interference with that right.” *McCormick v. Axelrod*, 59 N.Y.2d 574, 582-83, 453 N.E.2d 508, 512, 466 N.Y.S.2d 279, 283 (1983) *amended by* 60 N.Y.2d 652, 454 N.E.2d 1314, 467 N.Y.S.2d 571 (1983). To find a party guilty of civil contempt,

it must be determined that a lawful order of the court, clearly expressing an unequivocal mandate, was in effect. It must appear, with reasonable certainty, that the order has been disobeyed. Moreover, the party to be held in contempt must have had knowledge of the court’s order, although it is not necessary that the order actually have been served upon the party. Finally, prejudice to the right of a party to the litigation must be demonstrated.

McCormick, 59 N.Y.2d at 583, 453 N.E.2d at 512-13, 466 N.Y.S.2d at 283-84 (internal citations omitted); *see also Attonito v. Maldonado*, 3 A.D.3d 415, 771 N.Y.S.2d 97 (1st Dep’t 2004), *lv denied*, 2 N.Y.3d 705, 812 N.E.2d 1261, 780 N.Y.S.2d 311 (2004).

Despite defendant’s recitation of the various documents with which she demands compliance, only the September 28, 2015 stipulation of settlement between defendant and Jannaccio, so-ordered by the undersigned, could be considered a court order for purposes of contempt. Jannaccio so concedes. The stipulation remains in effect, having never been the subject of an application to vacate, modify or resettle. As is relevant here, the 2015 stipulation recited, “Richard Jannaccio shall remain in possession of the premises until closing of title.”

The import of this provision is neither open to debate, *see Trabanco v. City of New York*, 81 A.D.3d 490, 916 N.Y.S.2d 90 (1st Dep’t 2011), nor “susceptible to more than one reasonable interpretation,” *see 239 E. 115th St. HDFC v. Olunkunle*, 29 Misc.3d 64, 67, 910 N.Y.S.2d 835, 837 (App Term 1st Dep’t Aug. 31, 2010). Nor could there be “legitimate disagreement,” *King v. King*, 249 A.D.2d 395, 396, 671 N.Y.S.2d 121, 122 (2d Dep’t), *lv dismissed*, 92 N.Y.2d 877, 700 N.E.2d 322, 677 N.Y.S.2d 783 (1998), as to its meaning that Jannaccio was to cease occupying the premises upon closing of title. Defendant’s and Jannaccio’s April 24, 2017 interim stipulation served only to limit defendant’s redress under the stipulation of settlement by

evinced her intent to permit Jannaccio to remain in the property for fourteen days after the closing date.

There is no argument that Jannaccio is aware of the stipulation of settlement, having signed it. There is further no argument that he violated it, given Harris' prosecution of a holdover proceeding against him in Landlord-Tenant Court which resulted in a stipulation of settlement staying a warrant of eviction until September 10, 2017.

Furthermore, Jannaccio's contribution to Harris' right to seek redress against defendant is sufficient impairment of defendant's rights to support a contempt application. *See Board of Directors of Windsor Owners Corp. v. Platt*, 148 A.D.3d 645, 49 N.Y.S.3d 293 (1st Dep't 2017). The possession agreement does not limit Harris' recourse solely to the escrow fund or to Jannaccio. The possession agreement specifically stated that it was not intended to limit Harris' legal and equitable remedies in obtaining possession. Nor does the stipulation of settlement in Civil Court render this application moot or barred by *res judicata*, as defendant was not a party to the proceeding or stipulation, nor does it guarantee that Harris will not pursue independent remedies against defendant. Furthermore, given Jannaccio's past conduct, the court does not assume that Jannaccio vacated the premises by the date specified by Civil Court.

To the extent Jannaccio claims the court does not have jurisdiction to entertain the application, he has participated meaningfully throughout this litigation. In any event, it is immaterial in what capacity he acted, as long as he was aware of the terms of the order violated, which he does not deny. *See Citibank, N.A. v. Anthony Lincoln-Mercury, Inc.*, 86 A.D.2d 828, 447 N.Y.S.2d 262 (1st Dep't 1982); *Lipstick, Ltd. v. Grupo Tribasa, S.A. de C.V.*, 304 A.D.2d 482, 758 N.Y.S.2d 317 (1st Dep't 2003).

Accordingly, it is

ORDERED, that defendant's motion for an order adjudging non-party Richard Jannaccio in contempt is granted to the extent set forth below; and it is further

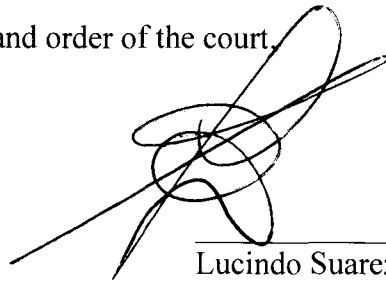
ORDERED, that non-party Richard Jannccio is deemed in civil contempt for failing and neglecting to vacate and surrender the subject premises, such neglect and failure being calculated to and actually defeating, impeding, impairing, and prejudicing defendant's rights and remedies; and it is further

ORDERED, that non-party Richard Jannaccio may purge himself of the finding of contempt by vacating and surrendering the subject premises within forty-eight (48) hours after service upon him of a copy of this order with written notice of its entry; and it is further

ORDERED, that non-party Richard Jannaccio is advised that should he fail to purge the finding of contempt within forty-eight (48) hours after service upon him of a copy of this order with written notice of its entry, he may be fined pursuant to Judiciary Law §773 and/or a warrant may be issued for his arrest.

This constitutes the decision and order of the court.

Dated: September 18, 2017

A handwritten signature in black ink, appearing to read 'Lucindo Suarez', is written over a horizontal line. The signature is stylized and somewhat cursive.

Lucindo Suarez, J.S.C.