

Kollie v Watkins

2018 NY Slip Op 33119(U)

November 28, 2018

Supreme Court, Kings County

Docket Number: 516671/2018

Judge: Carolyn E. Wade

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At Part 84 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, located at Civic Center, Brooklyn, New York on the 20th day of November 2018

PRESENT:

HON. CAROLYN E. WADE,

Justice

-----X
MARCEAU KOLLIE,

Plaintiff,

Index No. 516671/2018

-against-

DECISION and ORDER

AARON WATKINS, ZUMCK REALTY CORP., and
BAMBOO HILLS CORP.,

Defendants.
-----X

Recitation, as required by CPLR §2219(a), of the papers considered in the review of Defendants' Motion:

<u>Papers</u>	<u>Numbered</u>
Order to Show Cause/Notice of Motion and Affidavits/Affirmations Annexed.....	1 _____
Cross-Motion and Affidavits/Affirmations.....	_____
Answering Affidavits/Affirmations.....	_____
Reply Affidavits/Affirmations.....	_____
Memorandum of Law.....	_____

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KINGS COUNTY CLERK
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Upon the foregoing cited papers and after oral argument, defendant Zumck Realty Corp and Bamboo Hills Corp. move for an order: (1) punishing plaintiff Marceau Kollie by fine, imprisonment, or both, for contempt of Court for violating this Court's temporary restraining order entered on September 26, 2018 ("TRO"); (2) directing Plaintiff to immediately comply with the TRO, which directs that Plaintiff not perform any construction, alterations, renovations and demolition to Unit 208 located at 255 McKibbin Street, Brooklyn, New York 11206; and (3) awarding Defendants Zumck and Bamboo damages, including attorney's fees and costs incurred, as a result of Plaintiff's contempt of court.

The underlying action was brought by plaintiff Marceau Kollie ("Plaintiff"), seeking, *inter alia*, an order declaring that Plaintiff is protected under Article 7-C of the Multiple Dwelling Law, §§280, et seq. (the "Loft Law"). Plaintiff is a sublessee at 225 McKibbin Street, Unit 208, Brooklyn, New York 11206 (the "Subject Unit" or "Unit"), an interim multiple dwelling unit registered with the New York City Loft Board.. Defendant Aaron Watkins ("Watkins") is the leaseholder and the sublessor of the Unit. Defendant Zumck Realty Corp ("Zumck") is the owner of the Subject Unit, and co-defendant Bamboo Hills Corp. ("Bamboo") is the net lessee.

On September 26, 2018, Defense counsel presented his initial Order to Show Cause, in the presence of Plaintiff's attorney, seeking a preliminary injunction ("OSC for a Preliminary Injunction) to enjoin Plaintiff from performing any construction, alterations, renovations and demolition in the Subject Unit; and directing Plaintiff to provide access to the Subject Unit to Defendants. Therein, Defendants allege that Plaintiff was performing unauthorized demolition

and construction work without licensed contractors and work permits. The Court signed the OSC for Preliminary Injunction, scheduled to be heard on October 26, 2018, with the following TRO:

ORDERED, that pending the hearing of this motion, Plaintiff, his agents, servants, employees and all other persons acting under the jurisdiction, supervision and/or direction of Plaintiff be, and hereby are, restrained and enjoined from performing any construction, alterations, renovations and demolition to the Subject Premises including, without limitation, electrical work, carpentry, masonry work, drywall installation, framing, studding and sheetrock installation; and

ORDERED, that pending the hearing of this motion, Plaintiff and/or his agents and Defendants will meet at the subject unit on October 3, 2018 at 3 p.m. solely for inspection purposes.

(Exhibit "A" of Defendants' OSC for Contempt)

The OSC for Preliminary Injunction also included a provision allowing Defendants to meet with Plaintiff at the Unit for inspection purposes at a time that both present parties agreed to be mutually convenient.

On October 15, 2018, while the OSC for a Preliminary Injunction was pending to be heard, Defendants filed the instant Order to Show Cause for Contempt ("OSC for Contempt"), alleging that Plaintiff violated the TRO by continuing to perform illegal electrical work. On the same day, Plaintiff's attorneys, Ween & Kozek, PLLC, also filed an Order to Show Cause to Withdraw as Counsel ("OSC to Withdraw as Counsel"), on the ground that a conflict of interest arose between Plaintiff and another tenant that it was representing.

The three aforementioned applications were heard by this Court on the October 26, 2018 return date. After oral argument, Defendants' OSC for a Preliminary Injunction, and Ween & Kozen, PLLC's OSC to Withdraw as Counsel were granted. However, the instant OSC for Contempt was marked "fully submitted."

In support of their application, Defendants submits a notarized affirmation by Moses Zupnick ("Zupnick"), the president of Zumck. Moses avers that, despite Plaintiff's knowledge of the TRO, he continued to demolish the walls in the Unit and perform electrical work. Multiple photos were annexed as Exhibit "D," as evidence that work was being performed. Moreover, Zupnick states that during the October 3, 2018 court-ordered inspection of the unit, he noticed that Plaintiff demolished the walls of three bedroom in the Unit, and that electrical lines were removed (Exhibit "E"). Zupnick avers that as a result of Plaintiff's work, the Unit no longer has electricity, except for an outlet in the kitchen. He further states that Plaintiff's meddling with the electrical lines posed as a fire hazard, and caused the breakers for the hallway lights to pop.

Defendants also submit an affidavit by Mark Grillo ("Grillo"), who states that Plaintiff rented him a room in the subject unit. Grillo states that he moved in on September 1, 2018, and has seen Plaintiff install sheetwork, plaster, and perform electrical work, as recent as October 2, 2018. Grillo also claims that Plaintiff was renting out the Unit for parties approximately two to four times a month, and that he engaged in an Airbnb-type business on a daily basis.

Neither Watkins, the leaseholder of the Unit, nor Plaintiff, who is now self-represented, have submitted written opposition.

“To sustain a finding of civil contempt, a court must find that the alleged contemnor violated a lawful order of the court, clearly expressing an unequivocal mandate, of which that party had knowledge, and that as a result of the violation a right of a party to the litigation was prejudiced” (*Incorporated Village of Plandome Manor v Ioannou*, 54 AD3d 365, 366 [2d Dept 2008]; *Automated Waste Disposal, Inc. v Mid-Hudson Waste, Inc.*, 50 AD3d 1073, 1074 [2d Dept 2008]). “It is not necessary that the disobedience be deliberate or willful; rather, the mere act of disobedience, regardless of its motive, is sufficient if such disobedience defeats, impairs, impedes or prejudices the rights of a party” (*Hinkson v Daughtry-Hinkson*, 31 AD3d 608 [2d Dept 2006]).

In the instant case, Defendants have demonstrated that Plaintiff is in contempt of court, as he violated the TRO issued by this Court on September 26, 2018. Notably, Plaintiff had knowledge of the Order, as his attorney accepted service of the underlying Order to Show Cause in court. Moreover, the photographs of the unit’s condition evinces that Plaintiff’s construction and demolition in the unit can impede, and prejudice the rights of Defendants.

Notwithstanding, this court notes that Plaintiff’s Counsel’s application to withdraw was heard and granted on the same day that Defendants’ instant application was orally argued. However, no written opposition was submitted on Plaintiff’s behalf. In the interest of justice, this Court will give Plaintiff an opportunity to purge himself of the contempt.

Accordingly, it is hereby

ORDERED that Plaintiff appears for a hearing on December 21, 2018 at 2:15pm at Kings County Supreme Court, 360 Adams Street, room 423, Brooklyn, NY 11201, to provide a

full account of his acts in the Unit after the issuance of the September 26, 2018 temporary restraining order. **PLAINTIFF'S WILLFUL REFUSAL OR NEGLECT TO DO SO WILL RESULT IN PUNISHING HIM FOR CONTEMPT OF COURT, WHICH MAY RESULT IN FINE OR IMPRISONMENT**, and it is further

ORDERED that Defendants serve a copy of this Decision/Order by personal service and by certified mail on plaintiff MARCEAU KOLLIE. A copy of this ruling shall also be mailed to defendant Aaron Watkins by December 3, 2018; and it is further

ORDERED that Defendants' Order to Show Cause to hold Plaintiff in contempt is granted to the extent set forth above.

This constitutes the Decision and Order of the court.



HON. CAROLYN E. WADE
ACTING SUPREME COURT JUSTICE

HON. CAROLYN E. WADE
ACTING SUPREME COURT JUSTICE

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