

Sanchez v Rivera

2018 NY Slip Op 33733(U)

July 2, 2018

Supreme Court, Westchester County

Docket Number: Index No. 61004/2017

Judge: Terry Jane Ruderman

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This opinion is uncorrected and not selected for official publication.

To commence the statutory time for appeals as of right (CPLR 5513(a)), you are advised to serve a copy of this order, with notice of entry, upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X
WILFREDO SANCHEZ and W.R. HOLDING CORP.,

Plaintiffs,

DECISION AND ORDER

Motion Sequence No. 2

Index No. 61004/2017

-against-

RAFAEL RIVERA a/k/a RALPH RIVERA,
BUSTAR CORP., and TERESA C. RIVERA,

Defendants.

-----X
RUDERMAN, J.

The following papers were considered in connection with the motion of plaintiff Wilfredo Sanchez for an order pursuant to CPLR 6301 enjoining defendants Rafael Rivera and Bustar Corp. from prosecuting any action or proceeding to evict plaintiff and his family from the premises of 900 South Street, Peekskill, New York:

<u>Papers</u>	<u>Numbered</u>
Order to Show Cause, Affidavit, Exhibits A - F, and Memorandum of Law	1
Affidavit in Opposition to TRO, Affidavit in Opposition to Motion, Exhibits A - B	2

Plaintiffs Wilfredo Sanchez and his wholly-owned company, W.R. Holding Corp., commenced this action to overturn his conveyance of a property located at 900 South Street, Peekskill, New York, to his nephew, defendant Rafael Rivera, through Rivera's wholly-owned and -controlled company, defendant Bustar Corp.

Sanchez and his family continue to reside at the disputed premises. The present motion

was prompted in part by Rivera's efforts to lock out Sanchez's mother-in-law, Carmen Granados, from a room in the building that she had habitually used as, in effect, her bedroom. A decision and order of the Peekskill City Court directed Bustar to provide Granados with access, re-entry and possession of the room, inasmuch as Bustar had dispossessed Granados without first obtaining a warrant of eviction (*Granados v Bustar Corp.*, Index No. LT 214-18 [Peekskill City Ct, Reginald J. Johnson, J., April 19, 2018]).

Plaintiff filed the underlying order to show cause in anticipation of proceedings to evict his mother-in-law, and further anticipating additional forms of dispossession by his nephew. Sanchez also asserts that Rivera locked him out of the storage room where Sanchez keeps his tools, and out of the laundry room which contains Sanchez's washer and dryer, and that Rivera altered the electric meter that measures his electricity usage. The parties appeared before this Court to address whether the sought temporary restraining order was warranted. Counsel for defendants explained that the room used by Granados as her bedroom, which plaintiffs refer to as Room 5, is actually one of the offices on the second floor, Office No. 2, pursuant to the building's Certificate of Occupancy. Plaintiff did not challenge that assertion. Defendants pointed out that there is no insurance in place for residential occupancy of Office No. 2, and none will be permitted because such occupancy is illegal.

While defendants did not dispute their intent to evict Granados from Office No. 2, they disputed any assertions that they intended to evict Sanchez and his family from the apartment they live in, Apartment No. 2. Indeed, they affirmatively agreed that, pending the determination of the litigation, plaintiff Sanchez may reside with family members in Apartment No. 2 (subject to defendants' reservation of rights to collect back rent for such usage at a future date upon a

determination that defendant Bustar is the rightful fee owner of the Property).

As to the dispute regarding Sanchez's use of storage space, defendants protested that Sanchez was improperly seeking to have use of multiple storage areas contained in the building. Defendants maintained that Sanchez could use the basement below the 904 Main Street section of the property, and agreed not to dispute that use, pending the determination of this litigation. As to Sanchez's use of the laundry room, defendants argued that plaintiff's washer and dryer are situated in a section of the storage areas to which defendants claim a right of access. Defendants propose that Sanchez move his washer and dryer into the 904 basement space, or into his apartment.

When defendants made these proposals at the parties' court appearance regarding the sought temporary restraining order, plaintiffs did not make a counter proposal or argue that defendants' proposal was unworkable; they simply insisted on the full sought injunction against any limitation on their use of the property. Following argument, this Court granted a temporary restraining notice only to the extent that, as conceded by defendants, they were restrained from "taking any further actions to remove the plaintiff or any member of his family from their residence in apartment #2 of 900 South Street, or from the use of the basement space under the 904 section of the property," and further, defendants were directed to "cooperate in plaintiffs' access to electrical service from Con Ed for apartment #2 and, if necessary, for electrical service for their laundry appliances."

Upon full review of the submitted papers, the Court finds that the only relief to which plaintiffs are entitled is that contained in the temporary restraining order; those decretal provisions are continued as preliminary injunctive relief pending determination of this action.

Neither party shall install locks to prevent the other from access to those portions of the building to which they are entitled to access.

Defendants ask this Court to post a bond upon the grant of any injunctive relief, arguing that their potential losses due to unpaid rent, and the loss of any ability to refinance the property due to plaintiffs' notice of pendency, "may exceed \$200,000." However, defendants offer no information as to how they calculated that amount. Moreover, this Court's injunctive relief in almost all respects tracks the language of defendants' voluntary agreement. Therefore, no bond will be directed.

According, it is hereby

ORDERED that plaintiffs' motion for injunctive relief is granted only to the extent of the provisions of the temporary restraining order, which shall remain in effect pending the final determination of this action; and it is further

ORDERED that all parties are directed to appear, *as previously directed*, in the Compliance Part on August 2, 2018 at 9:30 a.m., at the Westchester County Courthouse located at 111 Dr. Martin Luther King Jr. Boulevard, White Plains, New York, 10601.

This constitutes the Decision and Order of the Court.

Dated: White Plains, New York
July 2, 2018


HON. TERRY JANE RUDERMAN, J.S.C.