

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF KINGS: HOUSING PART E

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364 93RD STREET LLC,

Petitioner-Landlord,

Index No. L&T 74872/16

-against-

**DECISION AND ORDER
AFTER TRIAL**

GISELLE CLEMENTINE,

Respondent-Tenant,

“JOHN DOE” and “JANE DOE,”

Respondent-Undertenants.
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Present: Hon. BRUCE E. SCHECKOWITZ
Judge, Housing Court

After trial, the decision and order of the court is as follows:

In this holdover proceeding, petitioner 364 93rd Street LLC (“Petitioner”) seeks to recover possession of the rent-stabilized premises located at 364 93rd Street, Apt. C-11, Brooklyn, New York 11209 (“Premises”) on the grounds that Giselle Clementine (“Respondent”) has engaged in a course of conduct that constitutes nuisance behavior. The notice of termination annexed to the petition is a seven page document which alleges that during the period of June 2015 through June, 2016 Respondent harassed and/or threatened at least thirteen other tenants, as well as the super, in the subject building. The claims in the notice specify instances where Respondent took unauthorized video footage of tenants in the building, shouted obscenities and threats, blocked entry to the building, banged on the floor and ceiling of her apartment, and created other disturbances.

Both sides in this proceeding were represented by counsel at trial. The trial was conducted over the course of seven days during which time seventeen witnesses testified. At the conclusion of trial, the proceeding was adjourned to March 1, 2017 for the submission of post trial briefs. However, prior to the submission date, Respondent's counsel filed a motion to be relieved as counsel. The motion was granted on February 23, 2017 and the proceeding was adjourned to March 24, 2017 for Respondent to obtain a new attorney. Respondent returned to court on March 24, 2017 without new legal representation and the court marked the case as "submitted" and reserved decision on the underlying trial.

Through its first witness, David Adelsberg, Petitioner established ownership of the building by introduction of a certified deed for the property into evidence. (Pet. Ex. 1). Petitioner also introduced into evidence a certified copy of the Multiple Dwelling Registration (Pet. Ex. 2) and registration with DHCR (Pet. Ex. 3). Petitioner established that the Respondent is the tenant of the Premises pursuant to a rent stabilized lease which commenced on February 3, 2014 and expired on February 28, 2015 and which was renewed for the period October 1, 2015 through September 30, 2016. (Pet. Exs. 4 and 5). Mr. Adelsberg testified that he manages the building for the Petitioner and has received complaints from many tenants in the building regarding Respondent's behavior, which were codified in the notice of termination. The witness explained that he collected footage, via surveillance cameras in the building, that supports the statements in the notice of termination.

The Nuisance Standard:

The Rent Stabilization Code ("RSC") defines nuisance behavior where a tenant "engages in a persistent and continuing course of conduct evidencing an unwarrantable, unreasonable or unlawful use of the property to the annoyance, inconvenience, discomfort or damage of others, the primary purpose of which is intended to harass the owner or other tenants or occupants of the same ...building...by interfering substantially with their comfort or safety." RSC § 2524.3(b). The Appellate Division, First Department, has described nuisance as "a continuing or recurrent pattern of objectionable conduct or a condition that threatens the comfort and safety of others in the building." *Domen Holding Co. v. Aronovich*, 302 A.D.2d 132, 134 (A.D. 1st Dept. 2003), *affd.* 1 N.Y.3d 117 (2003) (citing *Frank v. Park Summit Realty Corp.*, 175 A.D.2d 33, 36 (1st Dept. 1991)). This inquiry involves consideration of the totality of evidence. *17th Holding, LLC v. Rivera*, 21 Misc.3d 55, 57 (App. Term 2nd Dept. 2008).

Petitioner's witnesses:

At trial, in addition to Mr. Adelsberg, fifteen witnesses testified on behalf of Petitioner. The witnesses consisted of fourteen tenants, and the superintendent who lives at the building. Each of these witnesses testified to specific instances where Respondent recorded them or their children without authorization. The recording occurred in the building, and would often consist of Respondent moving closer in physical proximity to the tenants, or their children, while pointing her mobile device and/or the device's flashlight, in their faces. Petitioner's witnesses testified that such behavior made them fear for their safety, as well as the safety of their children.

Many of Petitioner's witnesses expressed that they would like Respondent to be removed from the building.

One tenant, Celeste Hernandez, who resides in Apartment D-1, recounted two altercations which occurred between herself and the Respondent. On such interaction was in March 2016 when she was pregnant and walking her dog. When she returned to the building on that day, Respondent blocked her entry into the doorway and began to film her. Despite repeated requests, Respondent would not clear the door. As a result, the witness testified that she suffered abdominal pain and was taken to the hospital by ambulance. Celeste Hernandez also maintained that Ms. Clementine, who lives below her, knocks on the ceiling every time her baby cries and that Respondent makes noise "day and night," and constantly points her camera phone in her face when she sees her in the building.

Another witness, Mohamed Ibrahim testified that he has been the tenant of apartment E-7 for 6 years. He stated that on October 15, 2016, he propped open the door of the building so that he could dispose of furniture. Respondent, observing what he was doing, closed the door to the building and barred him from reentry. The next day, while speaking to a friend in the building, Respondent began recording him. This occurred again on March 18, 2016 when Respondent followed the witness and came closer to him with her camera. He asserted that Respondent filmed his children when they were walking in the lobby on September 21, 2016. The witness stated that the Respondent's behavior made him feel unsafe.

Many of the witnesses testified that Respondent made derogatory comments and used racial and ethnic slurs against them. Yelizaveta Cohen, of Apartment D-5, testified that Respondent called her a child molester in front of her thirteen year old daughter. Ms. Cohen also

stated that Respondent tried to push her daughter in the hallway. The witness asserted that when she sees Respondent in the building, she takes the stairs in order to avoid her.

Suko Basic, the building's superintendent asserted that Respondent has called him a drug addict, criminal and "fucking Muslim" and told him that he needs to be in jail. Respondent also accused him of being a bad father and threatened to contact child services. Child Services opened a case against Mr. Basic but closed it after finding no evidence to support a claim of misconduct. (Pet Exs. 8A-C). He maintained that Respondent is constantly filming him and his family and that his children are afraid of her. Suko Basic further asserted that Respondent hit him with her phone in May 2016 and slammed an elevator door against him in November 2016. He explained that Respondent goes into the backyard and films his children on a daily basis, often scaring his children. In an emotional testimony, the superintendent explained that his children have nightmares about Respondent.

Leila Kogan testified that she used to reside in Apartment C-8 at the building and eventually moved in November 2016 because of Respondent's behavior. She asserted that in addition to Respondent constantly filming her, and thrusting the phone flashlight in her face, Respondent accused her of being a prostitute and having a gun in her purse. The witness also testified that she witnessed Respondent yelling at and filming other tenants in the building. Ms. Kogan maintained, "I was living in fear because she attacks people."

Natalia Buyanova, tenant of Apartment F-5 at the building, explained that Respondent filmed her and her one year old child with the flashlight on, until the child started crying. Respondent also followed Ms. Buyanova and her child as they went to visit another tenant in the

building on March 17, 2016, and filmed them as they entered the apartment, leaving the witness fearful of being attacked.

Francisco Osorio, who resides in Apartment F-6, recounted several instances where Respondent accused him of committing a crime, being a rapist and murderer, and abusing her. Respondent threatened to call the police against Mr. Osorio on many occasions. Mr. Osorio also witnessed Respondent blocking Nancy Crispi, a fellow tenant, from entering the elevator. The witness recounted that he observed the Respondent following the superintendent with her camera phone accusing him of committing crimes.

Nancy Crispi, tenant of Apartment F-11, testified to hearing Respondent yell racial slurs in the building such as “fucking Muslims,” and Respondent claiming that she would “get them.” Respondent also accused Ms. Crispi of assaulting her and being a terrorist, and threatened to have her arrested. The witness explained that on November 21, 2015, the elevator door opened on the third floor and Respondent put her foot in the door so that it would not close and began filming Ms. Crispi with her cellular phone. Respondent slammed the door on her hand. She also testified to other instances where Respondent prevented the elevator door from closing and would not leave until Ms. Crispi called 911. Nancy Crispi maintained that Respondent once followed her for five blocks after she left the building, while filming her the entire time. She asserted that she is fearful of Respondent and would like her removed from the building.

Ibrahim Agdar, who resides in Apartment E-15, explained that Respondent accused him of being a sexual harasser on several occasions, in front of other people. He maintained that he eventually filed a police report against Respondent because of Respondent’s constant threats, accusations, and filming. The witness stated that he once lost a lucrative deal because a

customer heard Respondent yelling accusations at him. Mr. Agdar testified that he suffers from stress and lack of sleep because of the Respondent's actions.

Petitioner also introduced into evidence 66 surveillance videos taken during the period of July 3, 2015 through October 6, 2016 throughout the building. The footage depicts Respondent following and filming tenants and their children in their building, in particular the superintendent Suko Basic, and his family. The videos also show Respondent, holding the elevator door, preventing the elevator from leaving the lobby, and blocking the entrance to the elevator and building. At times, the people and children being filmed, followed or yelled at appear agitated or frightened.

Respondents' Defense

Respondent, Giselle Clementine, called herself as her only witness on her defense. Ms. Clementine explained that she moved into the building on February 15, 2014. At that time she requested from the superintendent, Suko Basic, that repairs be performed, but the super was reluctant to complete repairs. She also asserted that there was constant noise from the apartment above her but that the tenant in that apartment was arrested and moved out on December 23, 2014. Respondent stated that she felt unsafe at the building and was being harassed by other tenants. She maintained that she was assaulted in the building a few times, and that people hit the phone out of her hands and spit on her. Respondent also alleged that the superintendent and his wife are stalking her, which compelled her to complain to DHCR regarding the superintendent. The DHCR complaint also included the tenant from the apartment above, who has since vacated, and the case has been closed. The witness stated that she was instructed by

DHCR to record incidents of harassment around the building. Accordingly, she commenced filming other tenants in the building in July 2015.

Respondent also introduced video evidence to support her testimony, which evidence was permitted over Petitioner's counsel's objection that the videos appeared edited and doctored. Respondent testified that she once came home and found dog feces on her apartment doorknob. She introduced into evidence a video which purportedly depicts her discovering the feces. The other videos introduced into evidence portray altercations between the Respondent and other tenants in the building. Often, they are each shouting at each other. Some of the videos contain a commentary by Respondent regarding other peoples' behavior. In one video she exclaims, "These people are totally on drugs." In another video, Respondent and the super are yelling at each other, Respondent yells, "you are here illegally!" A separate video shows one tenant telling Respondent that she should be in an insane asylum. A few of the videos depict tenants asking the Respondent to stop harassing them and to leave the superintendent alone. Another video shows an altercation between the superintendent and his children and Respondent where the children are apparently mocking Respondent and Respondent yells that the children will be taken away from their parents by child services.

At trial, Respondent testified that there were over 200 police reports filed against her, which resulted in her being handcuffed by the police. She introduced into evidence a video of the bruises she allegedly received from the police, which she claimed was the fault of the "criminals" in her building. Respondent became visibly agitated while describing the footage in each of the videos and the alleged wrongdoings of her neighbors. Respondent believed herself to

be a victim of collective abuse by the other tenants in the building and evidenced a severe dislike for them.

The Court's Findings:

After trial, it is clear to this court that an acrimonious relationship exists between Respondent and the superintendent, Suko Basic. The testimony and evidence reflects that Ms. Clementine and Mr. Basic engaged in frequent verbal, and sometimes physical altercations. Furthermore, Ms. Clementine testified that she filed a DHCR complaint against Mr. Basic and Mr. Basic believes that Ms. Clementine called Child Protective Services against him, and the videos observed by the court show both parties shouting obscenities at each other. It is uncertain how or when the relationship soured, or who threw the first proverbial punch, but it is also irrelevant to this court. Of greater importance is the negative effect of the relationship on other tenants in the building, and more specifically, Respondent's conduct towards other tenants in the building. While some of Petitioner's witnesses testified that their troubles with Respondent occurred once they expressed an alliance with the superintendent or Respondent observed a friendship between themselves and Mr. Basic, others seemed mystified as to why Respondent constantly filmed them or behaved aggressively towards them.

Here, the court must examine whether the totality of the circumstances merits a finding of nuisance. *17th Holding, LLC v. Rivera*, 21 Misc.3d at 57. In *405 East 56th Street, LCC v. Morano*, 9 Misc.3d 62, 63 (App. Term 1st Dept. 2008), the court held that, where an "intolerable burden" is placed on "neighboring tenants and the building staff" their interests should be balanced in the totality of evidence consideration against that of the individual accused of

nuisance. In this proceeding, the totality of the evidence supports a finding that Respondent's "persistent and continuous course of conduct" threatens the comfort and safety of the residents in the building. *Domen Holding Co. v. Aronovich, Id.*

In *Acorn Realty v. Torres*, 169 Misc.2d 670 (App. Term 1st Dept. 1996), the Appellate Term, First Department, found that recurrent and well-documented anti-social behavior by a tenant's children, including repeated instances of vandalism, urination on the premises, marijuana use in the hallways, and verbal abuse of other residents and actual assaults on building staff, to be sufficiently objectionable behavior substantially threatening the comfort and safety of others in the building, so as to constitute a nuisance warranting eviction. Similarly, in *Stratton Cooperative v. Fener*, 211 A.D.2d 559 (1st Dept. 1995), the Appellate Division found that health and safety ramifications arising from a tenant's chronic accumulation of newspapers and debris, that posed a fire hazard coupled with the tenant's refusal to cure, constituted a basis for eviction on the grounds of nuisance.

Petitioner's credible witnesses testified that Respondent Clementine has harassed other tenants in the building by constantly following them and their children with a camera phone, yelling at them, threatening them, cursing and shouting racial slurs at them. Petitioner's witnesses also testified that Ms. Clementine prevents them from entering and leaving the building, entering and exiting the elevator. They asserted that Ms. Clementine's behavior frightens them and their children and prevents them from feeling secure in the building. Some witnesses claimed that they purposefully avoid Respondent in the building, and one witness moved out of the building because of Respondent's behavior. Petitioner also presented video evidence which supported the testimonies at trial, as well as the notice of termination.

Importantly, Respondent's own recordings from her mobile device, which she introduced into evidence, demonstrate that she engaged in a continuous course of conduct that constitutes a nuisance.

One of these issues on its own may not have been sufficient for this court to make a finding of nuisance. However, the totality of the circumstances shows a pattern of conduct which interferes with the comfort and safety of other residents in the building, as considered by the court in *Domen Holding Co. v. Aronovich* and *Acorn Realty v. Torres, Id.* Petitioner's witnesses explained that the behavior occurred during the time frame alleged in the notice and is ongoing.

Accordingly, the Petitioner is awarded a final judgment of possession against the Respondent. Execution of the warrant is stayed thirty days after Petitioner's service of a copy of this decision, along with notice of entry, on the Respondent. Proceeding is dismissed as against "John Doe" and "Jane Doe" as there are no other occupants residing at the Premises.

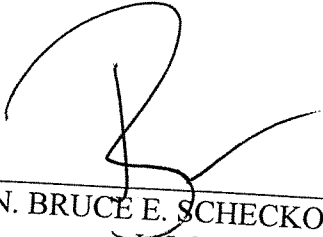
Post-Judgment Cure

The court notes that it will not afford Respondent a post-judgment cure of the objectionable conduct, pursuant to R.P.A.P.L § 753(4). In *City of New York v. Rodriguez*, N.Y.L.J., April 24, 1993, p. 22, col. 2 (App. Term 1st Dept.), the court found that "since the proceeding was not premised upon a breach of lease and given the objectionable nature of [the tenant's] conduct, [the tenant] was not entitled to the remedy of a post-judgment cure." *See also, CHI-AM Realty, Inc. v. Guddahl*, 7 Misc.3d 54 (App. Term 2d & 11th Jud. Dists., 2005). Likewise, in the instant case, the proceeding was not premised on a breach of lease, and

Respondent cannot, as a matter of law, be afforded a post-judgment stay to cure the objectionable conduct.

This constitutes the decision and order of this Court.

Dated: Brooklyn, New York
April 21, 2017



HON. BRUCE E. SCHECKOWITZ
J.H.C.