[*1]

Regency Towers, LLC v Nisanov

2006 NYSlipOp 51309(U)

Decided on July 6, 2006

Appellate Term, First Department

Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431.

This opinion is uncorrected and will not be published in the printed Official Reports.

Decided on July 6, 2006

APPELLATE TERM OF THE SUPREME COURT, FIRST DEPARTMENT

PRESENT: McCOOE, J.P., DAVIS, GANGEL-JACOB, JJ
570038/06.

Regency Towers, LLC, Petitioner-Landlord-Appellant,

against

Eitan Nisanov, Respondent-Tenant-Appellant, -and- Jacob Ofri, Karen Ofri, John Doe and Jane Doe, Respondents-Undertenants.

Landlord appeals from a final judgment of the Civil Court, New York County (Ulysses B. Leverett, J.), entered on or about February 15, 2005, after a nonjury trial, which dismissed the petition in a holdover summary proceeding.

Per Curiam:

Final judgment (Ulysses B. Leverett, J.), entered on or about February 15, 2005, reversed, with $30 costs, petition reinstated, and final judgment awarded to landlord.

Our authority to review the record developed at the bench trial and render judgment warranted by the facts is as broad as that of the trial court (*Nestor v Britt*, 213 AD2d 255 [1995]). Exercising that authority here, and adopting the trial court's own fully supported findings that landlord established a prima facie case and that tenant's presence in the apartment was "elusive," we conclude that tenant's occupancy of the

subject apartment "did not constitute the type of ongoing, substantial, physical nexus with the [regulated] premises for actual living purposes'...that would justify affording the tenancy continued protection under the rent stabilization laws." (*Berwick Land Corp. V Mucelli*, 249 AD2d 18,19 [1998]). The traditional indicia of primary residency was conspicuously absent. While the absence of documentation listing the subject apartment as respondent's residence is not, in itself, dispositive, tenant's testimonial evidence served only to show a sporadic presence in the apartment.

This constitutes the decision and order of the Court.

Decision Date: July 6, 2006

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J.H. Taylor Constr. Corp. v Liguori

2004 NYSlipOp 24449

Accepted for Miscellaneous Reports Publication

AT1

Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431.

As corrected through Thursday, March 03, 2005

[*1]

J.H. Taylor Construction Corp., Appellant,
v
Charles Liguori, Respondent.

Supreme Court, Appellate Term, First Department, November 12, 2004

APPEARANCES OF COUNSEL

Sperber Denenberg & Kahan, P.C., New York City (*Jacqueline Handel-Harbour* and *Steven B. Sperber* of counsel), for appellant. *Legal Aid Society*, New York City (*Marie A. Richardson* and *Marlen S. Bodden* of counsel), for respondent.

OPINION OF THE COURT

Per Curiam.

Final judgment entered May 5, 2003 reversed, with $30 costs, and final judgment of possession granted in favor of landlord on the holdover petition.

The authority of an intermediate appellate court to review a record is as broad as that of the trial court (*Northern Westchester Professional Park Assoc. v Town of Bedford*, 60 NY2d 492, 499 [1983]). Exercising that authority here, and considering the testimonial, documentary and photographic evidence presented at trial, we conclude that petitioner landlord met its burden to demonstrate that tenant engaged in a "recurring or continuing pattern" of objectionable conduct sufficient to constitute a nuisance (*Domen Holding Co. v Aranovich*, 1 NY3d 117, 125 [2003]).

Even accepting the trial court's conclusion that the proof adduced by landlord concerning the tenant's

alleged acts of vandalism and his threatening display of a knife outside of [*2]his apartment was "equivocal" or conjectural, the trial evidence supporting several other key allegations of violent and antisocial conduct underlying the holdover petition was overwhelming and uncontradicted. Thus, the evidence shows, at a minimum, that tenant was regularly seen in the building's common areas "half-dressed" and inebriated;[FN1] that tenant often banged on neighboring residents' apartment doors "at any given hour," conduct which several times resulted in the summoning of police; and that tenant maintained an extensive knife collection within his apartment and brandished and used a knife during a housing-related quarrel with the (now) former building superintendent on November 14, 2001. With respect to the factual underpinnings of the November 2001 altercation, the record establishes, and the trial court expressly found, that the tenant left his apartment on the morning in question and went downstairs to the building courtyard "to confront" the landlord's contractors about noise created by renovation work and, further, that when the superintendent came upon the scene, tenant "took a knife from his belt and a fight ensued," during which the superintendent "was cut on the thigh," resulting in a laceration requiring treatment at a local hospital. Tenant's violent behavior during this episode, appropriately described by the trial court as "disturbing," led to defendant's arrest on misdemeanor assault and related charges that were ultimately disposed of in Criminal Court by way of an adjournment in contemplation of dismissal.

It is significant to recognize that the building residents who appeared as witnesses for the tenant, though testifying credibly that tenant's presence in the building created no problems for them, did not directly controvert the landlord's persuasive evidence on any of the serious nuisance allegations outlined above, including the evidence relating to the tenant's use of a knife during the November 2001 incident. Nor was such evidence otherwise refuted by the tenant, whose failure to testify in his own behalf in defense of the holdover petition allows the court to draw "the strongest inference [against him] that the opposing evidence permits" (*Matter of Nassau County Dept. of Social Servs.* [*Dante M.*] *v Denise J.*, 87 NY2d 73, 79 [1995]). To the extent that the testimony offered by tenant when called by landlord as a rebuttal witness in connection with the tenant's (baseless) retaliatory eviction and discrimination defenses can be viewed, as the trial court styled it, as "a denial of claims regarding the alleged vandalizing of apartment doors and playing of loud music," we need emphasize that nowhere in his rebuttal testimony did tenant deny or offer any exculpatory explanation for the other ongoing nuisance conditions firmly established by landlord.

Thus, under any realistic interpretation, the evidence makes it painfully clear that the tenant's "continued residency in the building places the comfort and health of others in the building at a constant risk." (*Domen Holding Co. v Aranovich*, 1 NY3d at 125.)[FN2] A documented case of nuisance having

been established, the landlord is entitled to a possessory judgment (*see Frank v Park Summit Realty Corp.*, 175 AD2d 33 [1991], *mod on other grounds* 79 NY2d 789 [1991]).

McCooe, J.P., Davis and Schoenfeld, JJ., concur.

Footnotes

Footnote 1: While the trial court appears to have discounted the landlord's evidence concerning the nature and severity of the tenant's "alleged drinking," we note that several of the tenant's own witnesses testified to having seen tenant in an intoxicated or "altered" condition in the building's common areas and that tenant's counsel acknowledge during colloquy that at the time of trial tenant was participating in an alcohol abuse program pursuant to court order.

Footnote 2: In reaching this conclusion, we have considered neither the alleged misconduct attributed to tenant prior to the period covered in the underlying termination notice nor the stipulated fact of tenant's postpetition arrest on assault and menacing charges.

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: ~~DIANE A. LEDEDEFF~~ CAROL EDMEAD J.S.C. PART 35

0103395/2004

BRAUN, JURAJ
VS
AMERICAN-SCANDINAVIAN

INDEX NO. 103395/04

MOTION DATE 5/19/05

SEQ 3

MOTION SEQ. NO. 003

PARTIAL SUMMARY JUDGMENT

MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this motion to/for _____

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	
Answering Affidavits — Exhibits	
Replying Affidavits	

Cross-Motion: ☐ Yes ☐ No

Upon the foregoing papers, it is ordered that this motion

The motion is decided in accordance with the accompanying memorandum decision. It is hereby

ORDERED that Plaintiffs' motion for partial summary judgment on their second through fifth causes of action is granted to the extent that it is deemed established that defendant, without having been granted an easement, is continuously encroaching onto plaintiffs' property, and that the below-grade encroachment exceeds six inches; the motion is otherwise denied and summary judgment is granted against movant severing and dismissing the fifth cause of action alleging negligence. It is further

ORDERED ASF's cross-motion is denied. It is further

ORDERED that the parties are directed to appear for a status conference in Part 35 (Room 543), on September 27, 2005, at 3:15 p.m., a schedule for expeditious completion of outstanding discovery will be established. It is further

ORDERED that counsel for plaintiff shall serve all parties with a copy of this memorandum decision and order with notice of entry within twenty days of entry.

Dated: 8/15/05

CAROL EDMEAD J.S.C.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Check one: ☐ FINAL DISPOSITION ☐ NON-FINAL DISPOSITION

Check if appropriate: ☐ DO NOT POST ☐ REFERENCE