

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF KINGS
PART Q

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MENACHEM GUREVITCH,

Petitioner,

L&T Index No.: 72639/18

DECISION /ORDER

-against-

Hon.: Thomas M. Fitzpatrick

**HELEN ROBINSON, ALI TORAIN,
SHEREASE ROBINSON, IDA ROBINSON,
JOHN DOE, JANE DOE**

Respondents.

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Appearances:

For Petitioner: Stern & Stern by David Lyle Stern, Esq

For Respondents: Helen Robinson and Ali Torain: Ronald P. Hart, Esq

For Ida Robinson's property: GAL Veras Institute by Sara Verbil, Esq and Edward Deignan, Esq.

Petitioner commenced this Holdover proceeding to recover possession of the entire house located at 964 Park Place Brooklyn, NY on ground that respondents remain in possession after service of a thirty day notice of termination. Respondents' Answers were general denial.

Trial was conducted on October 2, 2019 commencing at 3:30 pm, and continued October 18, 2019 at 2:30 pm in Room 405.

BACKGROUND

In a Supreme Court proceeding under Index number 52117/16 the Robinsons et al sought a declaratory judgement declaring Gurevitch's deed to the subject premises is invalid. In an Order dismissing that proceeding, Hon. Dawn Jimenez Salta found:

Ida Robinson who fell behind on her home mortgage sought to rescue the property from foreclosure by entering into a "buy back" arrangement with petitioner's predecessor in interest, 964 Park Place, LLC. When Robinson failed to consummate the sale, 964 Park Place brought an action in Supreme Court to compel specific performance. That action was settled per stipulation. When Ida Robinson transferred the property she became a tenant of the property, along with Helen Robinson and Ali Torain.

964 Park Place LLC transferred the property to Gantz Brooklyn, which transferred the property to Gurevitch.

Gurevitch contended that in March 2016 plaintiffs (Robinsons) stopped paying rent without any justification or cause. Gurevitch commenced a holdover proceeding in Housing Court under L&T index 75670/16. Gurevitch was awarded a judgment and warrant of eviction in the prior housing court proceeding. Execution of that warrant was stayed temporarily.

By Order dated July 26, 2017 Justice Jimenez Salta dismissed Robinson's declaratory judgment action on the merits, and lifted the stay of eviction.

GAL

Ida Robinson is a 95 years old woman who suffers from dementia. In an Article 81 Proceeding under Supreme Court index number 100219/18, the Veras Institute was appointed guardian for Ida Robinson's property. Helen Robinson was appointed guarding for Ida Robinson's person.

TRIAL

Petitioner called Edo Furman as its primary witness. Mr. Furman testified that he manages properties for petitioner including the subject premises. Petitioner established ownership through the certified deed admitted as Exhibit 1. Petitioner also established the landlord tenant relationship with introduction of the decision of Justice Salta, discussed above. The court took notice of the pleadings and predicate notice.

Mr. Furman testified that rent was \$5,500 per month and that petitioner last received rent in March 2016.

Petitioner presented the testimony of Michael Pavlakos, a New York State Certified Appraiser. He testified that in his opinion, the fair market rental value of the subject building is \$8,450 per month. Upon direct testimony and cross-examination, Mr. Pavlakos admitted that he did not have access to the interior of the subject premises. He did not know if the interior was renovated or how many bathrooms are in the house. His appraisal was based in part upon the "extraordinary assumption" that the property was in "average condition" His assumption was based upon his observation of the building's exterior.

Mr. Pavlakos appraisal was also based upon geo data, square footage, age and location and comparison of rents for comparable nearby properties as reported on a website, Streeteasy.

Respondent's called only Ali Torain, who testified that he moved out of the subject premises during February 2017. He also testified that there are three full bathrooms in the house.

Discussion

Petitioner established its prima facie case and is entitled to possession.

Although Ali Torain testified that he moved away in February 2017, he never surrendered possession. On the contrary, he was party to the Supreme Court action which sought to invalidate Gurevitch's deed. He also defended against this action.

In setting use and occupancy, the Court shall consider not only the testimony of petitioner's expert and his appraisal report admitted into evidence, it will also consider the rental amount through March 2016 set forth in the parties' contract and stipulation. The Court hereby sets use and occupancy at \$6,500 per month.

The prior holdover proceeding under L&T 75620/16 in which the same petitioner sought the same relief against the same respondents is dismissed. The judgment and warrant entered therein are hereby vacated.

Accordingly, a final judgment of possession shall enter against all respondents. A warrant of eviction may issue forthwith, but execution of the warrant is stayed through March 31, 2020 for respondents to vacate. The stay of eviction is conditioned upon payment of use and occupancy for November 2019 through January 2020 by January 30th, 2020, and payment of ongoing use and occupancy by the tenth day of each month beginning in February 2020.

In addition, a money judgment in the amount of \$279,000.00 representing use and occupancy due from April 2016 through October 2019, shall enter against Ida Robinson, Helen Robinson and Ali Torain.

The foregoing constitutes the decision and order of the Court.

January 15, 2020


Thomas Fitzpatrick, JHC