

LANDLORD-TENANT

Landlord's Noncompliance Leads to Contempt Charge(s)



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Because it is far from common to see a decision from the New York City Civil Court involving a landlord being held in both civil and criminal contempt of court, we thought it would be of interest to report on a very recent decision from the Civil Court, Bronx County presenting just such a case. In *729 Prospect Realty Service Corp. v. Rodriguez*¹ (*Rodriguez*) the court held that the landlord was in both civil and criminal contempt of court for what the court considered “an obvious and flagrant failure” to comply with prior court orders.

‘Rodriguez’

The facts as recited by the court in *Rodriguez* are as follows. The landlord, 729 Prospect Realty Service Corp., had commenced a

summary non-payment proceeding against the tenant, Yaitza Rodriguez. In October 2015, the tenant, who had appeared pro se, entered into a stipulation with the landlord, which was “so-ordered” by

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the court, agreeing that she owed rent of \$4,642.03, and consenting to a final judgment of possession for that amount, which the tenant agreed to pay (together with November rent) by Nov. 30, 2015. Tenant had represented that she was attempting to obtain rental assistance from the city’s Family Eviction Prevention Subsidy program.

Because the tenant failed to pay the rent arrears, the tenant was evicted

on March 25, 2016. The tenant subsequently moved by order to show cause to be restored to possession, claiming that her failure to obtain the rental assistance was because she had surgery. The court, in an order issued in court on March 29, 2016, granted the motion only to the extent that landlord was “stayed” from re-letting the apartment through April 8, 2016 to permit the tenant to pay the sum of \$9,214.33 representing rent arrears and legal and marshal fees. The tenant was to be restored to possession if these amounts were timely paid.

On April 8, 2016, the deadline imposed by the court to pay the arrears, the tenant filed another order to show cause, this time claiming that she was waiting to receive assistance from the city Human Resources Administration. The court signed the order to show cause further “staying” the re-letting of the apartment. On April 12, 2016, the tenant showed up in court with checks sufficient

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to satisfy the arrears specified in the court's prior order. It was at this time that counsel for the landlord advised that the subject apartment had been re-rented and that the new tenant had moved in on April 8, 2016. The court adjourned the matter to April 14, 2016 for the landlord's agent to appear in court.

At this second appearance, the landlord's agent stated that while he was aware that the court's prior order had stayed any re-renting of the apartment through April 8, 2016, the landlord signed a new lease with a new tenant on March 28, 2016, which lease commenced on April 8, 2016. The landlord's agent further confirmed that the new tenant moved into the apartment on April 8, 2016. The landlord's agent claimed that the landlord had believed that the tenant had surrendered possession of the apartment before she was evicted, although the agent conceded that the tenant had never signed a surrender agreement. The agent also acknowledged that the March 28, 2016 new lease for the apartment was not provided to the court when the parties appeared on March 29, 2016.

On April 14, 2016, the court issued an order holding that the respondent retained her rights to the subject apartment. Furthermore, the landlord was directed to pay the cost of a hotel room until

the tenant was restored to possession, the costs of returning the tenant's possessions to the apartment once she was restored, and \$150 per day to the tenant until the tenant was restored.

The Contempt Charges

Based on the foregoing, the court, in its decision issued on May 12, 2016, found that the landlord was in both civil and criminal contempt of court.

The court observed that under Section 750(A)(3) of the Judiciary Law, a court of record has the power to punish for criminal contempt when there has been "willful disobedience of its lawful mandate."² The court further observed that Section 751 of the Judiciary Law provides that "the punishment for contempt under Section 750 may be by fine not exceeding \$1000 or by imprisonment not exceeding 30 days."³ The court also stated that Judiciary Law 753(A)(1) authorizes a court of record "to punish, by fine and imprisonment, for either 'a neglect or violation of duty, or other misconduct, by which a right or remedy of a party to a civil action or special proceeding, pending in court, may be defeated, impaired, impeded, or prejudiced....'"

The court, citing two decisions from the Court of Appeals—*McCormick v. Axelrod*, 59 N.Y.2d 574 (1983) and *State v. Unique Ideas*,

44 N.Y.2d 345 (1978)—observed that a "party can be held in criminal contempt where said party has shown willful disobedience and the intent to defy the dignity and authority of the court."⁴ The court stated that on the other hand, to be held in civil contempt:

a party must be found to have knowledge of the order in question and that the party's action or inaction has prejudiced the rights of other parties. As the Court of Appeals stated in *McCormack v. Axelrod*, ... the aim of civil contempt is the vindication of a private right of a party to litigation and 'the penalty imposed upon the contemnor is designed to compensate the injured private party for the loss of or interference with that right.'⁵

In explaining the difference between the two types of contempt, the court, citing to the Court of Appeals' decision in *McCormick*, stated:

[a]lthough the line between the two types of contempt may be difficult to draw in a given case, and the same act may be punishable as both a civil and a criminal contempt, the element which serves to elevate a contempt from civil to criminal is the level of willfulness with which the conduct is carried out.⁶

The court further observed that a finding of both civil and criminal contempt “does not violate the concept of double jeopardy because a civil penalty is applied to compensate the injured party while a criminal contempt is used to protect the integrity and dignity of the judicial authority.”⁷

The court went on to find that the landlord’s “flagrant disregard” for the court’s March 29, 2016 order, which “stayed” the re-letting of the apartment, mandated a finding that the landlord was in both civil and criminal contempt of court.

The court found that the landlord was aware of the court’s order staying the re-letting of the apartment and made no attempts to either appeal the order or to seek to renew or reargue. It further found that the landlord was also aware that the stay continued pursuant to the order to show cause signed by the court on April 8, 2016. The court found that despite the landlord’s knowledge of the court’s orders, the landlord “simply chose to ignore the order and to re-let the subject premises prior to the expiration of the stay.”

Thus, the court concluded that: the [landlord] knew that there had been a stay on re-letting the apartment. The court order was simply and flagrantly ignored. The [landlord’s] actions have clearly injured the [tenant]

since she has remained out of occupancy, in a hotel room, even though she has been able to pay the arrears and costs ordered by this court since April 8, 2016.

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Thus, based on the foregoing, the court held the landlord in both civil and criminal contempt. Pursuant to Judiciary Law Sections 750 and 751, the landlord was fined \$1,000 for the criminal contempt. The landlord was fined an additional \$1,000 for the civil contempt pursuant to Judiciary Law Section 753. The court also directed the landlord to pay to the tenant an additional fine of \$2,000, and to continue to pay to tenant the previously ordered sum of \$150 per day until such time as the tenant is restored to possession of the apartment.

Conclusion

The facts as recited in *Rodriguez* presented a pretty clear case for a finding of contempt, given the clear disregard of the court’s order

and the lack of any reasonable excuse proffered for the violation. *Rodriguez* thus serves as a potent reminder that while the courts are generally hesitant to find a party in contempt of court, particularly without giving the party the opportunity to purge the contempt, a party’s clear, willful disregard of a court order will have serious consequences.

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1. NYLJ 1202761611720 (Civ. Ct. Bronx Co. May 12, 2016).
2. *Id.* at *4.
3. *Id.* (internal citation omitted).
4. *Id.* at *4-5.
5. *Id.* at *5.
6. *Id.*
7. *Id.*