

2007 WL 214410

Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK  
COURT RULES BEFORE CITING.

Superior Court of Connecticut,  
Judicial District of Hartford.

HOUSING AUTHORITY OF THE  
TOWN OF WEST HARTFORD

v.

**Richard SPENCER.**

No. HDSP-1349.

|  
Jan. 24, 2007.

MEMORANDUM OF DECISION PLAINTIFF'S  
AFFIDAVIT RE: NONCOMPLIANCE WITH  
STIPULATION / REQUEST FOR EXECUTION

[BENTIVEGNA, J.](#)

I

#### STATEMENT OF CASE

\*1 This is a summary process action based on violation of lease. The plaintiff requests the issuance of an execution based on the defendant's noncompliance with the May 31, 2006 Stipulation. This matter was heard on December 13, 2006 and January 24, 2007.

II

#### FINDINGS OF FACT

The defendant has lived in the premises in question since 1996. On December 21, 2005, the plaintiff filed this summary process action alleging that the defendant had violated his lease by not complying with the housekeeping provisions. On or about May 31, 2006, the parties entered into a stipulated agreement which included non-monetary conditions relating to housekeeping. On September 25,

2006, the plaintiff filed an affidavit of noncompliance with stipulation.

Although the defendant has made some efforts to maintain his apartment in a clean, safe and sanitary condition, these efforts have not been completely successful. The defendant suffers from cognitive and mental health issues that are difficult to diagnose and treat. He engages in hoarding behavior which has greatly contributed to his housekeeping difficulties.

The plaintiff has substantially complied with the stipulation and is not at fault here. The plaintiff has acted in good faith in assisting the defendant with his multiple issues. Unfortunately, this assistance has met with only limited success. The plaintiff has reasonable concerns regarding how the defendant's behavior impacts the safety of the other tenants in the building.

III

#### DISCUSSION

[Practice Book § 17-53](#) provides: “Whenever a summary process execution is requested because of a violation of a term in a judgment by stipulation or a judgment with a stay of execution beyond the statutory stay, a hearing shall be required. If the violation consists of nonpayment of a sum certain, an affidavit with service certified in accordance with Sections 10-12 through 10-17 shall be accepted in lieu of a hearing unless an objection to the execution is filed by the defendant prior to the issuance of the execution. The execution shall issue on the third business day after the filing of the affidavit.”

In *Portland Housing Authority v. Kachadoorian*, Superior Court, judicial district of Middlesex Housing Session, Docket No. CV9-12354 (January 7, 2002, Fischer, J.), the court considered the equities in ruling on an execution issued pursuant to an affidavit of noncompliance. The court held: “In *Fellows v. Martin*, 217 Conn. 57, 66-67 (1991) the court determined the factors to be considered in a post-judgment request for equitable relief. The factors are: 1) whether one party will suffer a loss wholly disproportionate to the injury to the other party if the equitable relief is denied and, 2) whether the injury to the other party is repairable. Applying these factors in this case, the court finds that the injury the defendant

would suffer were her request for equitable relief denied is wholly disproportionate to the injury the plaintiff would suffer if the relief is granted. The defendant is a single mother of two small children. The amount owed is modest and will be paid by a third party per the representations of defendant's counsel. The court finds that the defendant's breach was not willful or grossly negligent." *Portland Housing Authority v. Kachadoorian*, supra. After considering the equities, the court granted equitable relief subject to the defendant complying with the original stipulated agreement, as modified. Id.

\*2 In *Sammy Redd & Associates v. Goforth*, Superior Court, judicial district of Hartford-New Britain, Docket No. SPH 91808 (June 27, 1997, Beach, J.), the court assessed a number of factors in determining post-judgment equitable relief. The court considered the following: "As mentioned in *Fellows v. Martin*, 217 Conn. 57, 66 (1991), factors include whether one party would, in the absence of relief, suffer a loss wholly disproportionate to the injury to the other party and whether injury to the other side is reparable. Equity also ought not come to the aide of a party whose breach has been willfull or grossly negligent, but even this maxim is apparently not without exception. *Fellows v. Martin*, supra, at 67; see also *East Hartford Housing Authority v. Parker*, H-976 (Housing Session 1992) (Holzberg, J.)." *Sammy Redd & Associates v. Goforth*, supra. In deciding in favor of the defendant, the court held: "Applying the factors in this case, I find that the injury sustained by the defendant were her request for relief to be denied is manifestly greater than the injury to the plaintiff if the stipulation is modified as requested by the plaintiff, especially in light of her losing the subsidy. Except for undeniable annoyance and some transactional cost, the landlord will presumably be made whole. Although the defendant's breach was not altogether unforeseeable, to put it mildly, it also was not willful, and she now seems to have a plan which is viable. Perhaps most significantly, she now reportedly has employment, and thus will not have to rely on borrowing in the future." Id. After evaluating these factors, the court granted equitable relief subject to the defendant complying with the original stipulated agreement, as modified. Id.

In this case, the court has considered the following equitable factors in deciding whether an execution may issue.

The court must determine whether, in the absence of equitable relief, the defendant will suffer a loss wholly disproportionate to the plaintiff. It is undisputed that the defendant's loss would be substantial if he is evicted. He has lived in the apartment since 1996. The loss of the defendant's subsidized housing would be a substantial hardship. He is on a limited income and cannot afford market rate housing. Even considering the plaintiff's good faith efforts and reasonable concerns regarding the safety of the other tenants, the defendant's loss would be substantially more harmful than the plaintiff's loss. If the defendant is evicted under these circumstances, he would suffer a loss wholly disproportionate to the plaintiff's loss.

Whether the injury to the plaintiff is reparable must be considered. Although the housekeeping issues have resisted significant efforts, the defendant has recently made some demonstrable progress in his ability to maintain a clean, safe and sanitary home. Since the parties entered into the stipulation, the defendant has made efforts to comply. He is also apparently making some progress in his mental health treatment. He recognizes that he has a hoarding problem. Although this is a very challenging situation, it is not an irreparable one.

\*3 The reason for the noncompliance and the defendant's responsibility must also be examined. The court is troubled by the continuing nature of these problems. Nevertheless, the defendant's actions did not rise to the level of unclean hands. The defendant has significant cognitive and mental health issues. His conduct was not willful or grossly negligent.

Finally, the court must assess the extent to which the defendant has demonstrated good faith in its dealing with the plaintiff. The court finds that the defendant has demonstrated good faith in attempting to comply with the stipulated agreement. Considering his cognitive and mental health issues, he has made significant efforts to comply with the stipulation.

Based on the evidence presented, the court finds the equitable considerations do decidedly favor the defendant. Under the circumstances of this particular case, invocation of the equitable doctrine against forfeiture is appropriate to bar the issuance of an execution.

IV

CONCLUSION AND ORDER

Having considered the law and equity, the court grants equitable relief from forfeiture subject to the defendant complying with the original stipulated agreement, as modified.

The May 31, 2006 Stipulation is modified as follows. The non-final stay of execution is extended through May 31, 2007. The defendant must satisfy the following housekeeping standards: he is required to keep the apartment and such other areas as may be assigned to him in a clean and safe condition and to keep the building and the areas in which his apartment is located in a clean and safe condition; he is also required to dispose of all garbage, rubbish, and other wastes from the premises in a sanitary

and safe manner. The defendant must fully cooperate with the plaintiff and all agencies offering services.

The plaintiff may conduct inspections of the defendant's home based on the following schedule: by the end of January 2007, during the week of March 25, 2007, and during the week May 27, 2007. The plaintiff must comply with the notification provisions of the stipulation. Otherwise, the terms of the May 31, 2006 Stipulation remain in effect.

If the defendant fails to comply with the modified stipulation by May 31, 2007, the plaintiff may file an affidavit of noncompliance. The matter will be scheduled for a hearing as soon as possible thereafter. Any hearing will focus on events since January 24, 2007.

**All Citations**

Not Reported in A.2d, 2007 WL 214410