WILLIAM APONTE, Vs. ALEKSANDAR B. BRANCIC

WESTERN DIVISION

Docket # 02-CV-00087

Parties: WILLIAM APONTE, Vs. ALEKSANDAR B. BRANCIC

Judge: /s/Dina E. Fein

Associate Justice

Date: October 26, 2004

FINDINGS, RULINGS, AND ORDER

The above-captioned matter came before the court for trial on September 21 and 28,2004, after which the following findings of fact and rulings of law are to enter, as provided for under Mass. R. Civ. P. 52(a):

FINDINGS OF FACT

1 . The events which gave rise to this litigation occurred in March, 2002, at which time the plaintiff William Aponte (Mr. Aponte) resided in an apartment building owned by the defendant Aleksandar Brancic (Mr. Brancic). At specific issue is a "no trespass" notice which Mr. Brancic issued as to Mr. Aponte's girlfriend on March 3, 2002, and revoked 9 days later. Mr. Aponte claims that issuance of the "no trespass" order interfered with his quiet enjoyment, was in reprisal against him for various protected activities, and constituted an unfair and deceptive trade practice. Mr. Brancic argues that the "no trespass" order was justified and, in any event, revoked in such short order as to deprive Mr. Aponte of any claim for damages. As the background interactions between the parties inform the ruling herein, they will be addressed, as follows:

2. Mr. Aponte moved into the Mr. Brancic's building on July 5, 2001. The parties agreed to

rent in the amount of $395 per month. Several months into this tenancy, Mr. Aponte began seeing a woman named Luz Soto. Ms. Soto and her two daughters visited with Mr. Aponte at his apartment 2 or 3 times per week, including overnight on alternate weekends, when the girls would stay with friends who lived in the same building.

3. In December, 2001, Mr. Aponte began withholding rent, allegedly due to substandard conditions at the premises.[1] Sometime thereafter, the Holyoke Board of Health inspected the premises, and cited the landlord for State Sanitary Code ("Code) violations, some of which were deemed emergencies. Following reinspections, the Board of Health initiated criminal proceedings against the landlord in this court. By notice dated February 28, 2002 the Clerk's office scheduled the criminal case for a show case hearing on March 12, 2002.

4. On or around January 13, 2002, Mr. Brancic served and Mr. Aponte received a 14 day notice to quit for nonpayment of rent. A summary process action followed, which was tried on February 28, 2002, the same day on which the court issued notice of the show cause hearing. Both Mr. Aponte and Ms. Soto testified at the summary process trial, Ms. Soto's testimony focusing on various photographs which depicted conditions at the premises, and were entered into evidence.

5. It is against this backdrop that the events of Saturday, March 2 and Sunday, March 3, 2002 occurred. Ms. Soto spent Saturday night at Mr. Aponte's apartment, and her daughters stayed elsewhere in the building. Although the parties dispute precisely how the events unfolded

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[1] Mr. Aponte's claims concerning conditions at the premises were adjudicated in previous litigation between the parties, Alexander (sic) Brancic v. William Aponte, Western Division Housing Court, #02-SP-0466, Abrashkin, J. Mr. Aponte's rent withholding is therefore mentioned only by way of background to the events which gave rise to this litigation.

the next morning, I find, based upon my assessment of the witnesses' credibility and demeanor ~evidence, that the following occurred:

6. On Sunday morning, Mr. Aponte and Ms. Soto were watching television. Mr. Brancic came to the apartment and gave Mr. Aponte a written "notice of violation," setting forth various alleged violations by Mr. Aponte of his lease. Mr. Brancic was familiar with Ms. Soto, having previously observed her at the premises in Mr. Aponte's company, and as a witness at the summary process trial several days earlier. Nevertheless, Mr. Brancic questioned Ms. Soto, who was still wearing her pajamas at the time, asking her who she was, and informing her, in effect, that she did not have the right to be there.

7. Mr. Aponte and Ms. Soto argued with Mr. Brancic, who informed them that he was delivering notices of lease violations to other tenants as well. In preparing and delivering these notices, Mr. Brancic was motivated in large part by his concern over the Code violations for which he had been cited by the Holyoke Board of Health, the upcoming show cause hearing, and the need to make repairs and remedy the substandard conditions, some of which were attributable to the tenants. Ms. Soto indicated that she wanted to see whether he was giving notices to other tenants, and followed him to Vanessa Bernard's unit, where a group of individuals, including other tenants of the building, were gathered. Mr. Brancic delivered a "notice of violation" to Ms. Bernard. As he was doing so, Ms. Soto indicated that she and Mr. Aponte were going to call

Juana Massa, the Board of Health agent who had inspected the building. Mr. Brancic interpreted Ms. Soto's remarks as encouraging Ms. Bernard not to cooperate with his efforts to have the tenants correct violations for which they were responsible, objected to Ms. Soto's involvement, and asked for her name. Mr. Aponte and Ms. Soto declined to provide her name, which was eventually provided to Mr. Brancic by another tenant in the building, Elsa Beardly.

8. After his confrontation with Ms. Soto and Mr. Aponte, Mr. Brancic was "all shook up." After consulting with other landlords, and based upon his assessment that Ms. Soto was not a tenant and therefore did not have any right to be at the premises, he went to the police station and obtained a "no trespass" notice. Mr. Brancic then returned to Mr. Aponte's building, delivered the "no trespass" notice to Ms. Soto, and told her that she must leave within 2 hours. Ms. Soto did not leave the premises. Mr. Brancic returned to the building again, saw Ms. Soto's car there, and called the police.

9. Police officers came to the building, informed Ms. Soto that she was required to leave the premises, and escorted her out. Ms. Soto was upset, embarrassed, and crying. Although the "no trespass" order was revoked nine days later, Ms. Soto never returned to the building. This had an adverse effect on the relationship between Ms. Soto and Mr. Aponte. Pursuant to the decision in the summary process case between the parties, which entered on March 15, 2002, Mr. Aponte recovered a judgment in his favor for possession of the premises. He nevertheless vacated the premises on June 4, 2002, in part because Ms. Soto did not feel comfortable returning to the building following receipt of the "no trespass" notice in March. 10. When Mr. Aponte vacated the premises on June 4, 2002, the parties agreed that rent totaling $592 was unpaid through May, and that Mr. Aponte would pay the arrearage at the rate of $ 100 per month. Mr. Aponte failed to make any such monthly payments. Mr. Brancic was required to do minor cleaning of the premises after Mr. Aponte vacated, including removing plastic stars which were stuck onto one ceiling. Mr. Brancic was also required to remove a desk, bedframe, and end table which Mr. Aponte left behind, as well as arrange for restoration of gas service to the premises. Mr. Brancic incurred expenses totaling $310 for repairs and cleaning, beyond ordinary wear and tear, when Mr. Aponte vacated.

RULINGS OF LAW

11. Interference With Quiet enjoyment: Mr. Aponte alleges that Mr. Brancic's conduct in obtaining and enforcing a "no trespass" order against Ms. Soto constituted interference with quiet enjoyment in violation of G.L. c. 186, s. 14, which prohibits a landlord from "directly or indirectly interfer[ing] with the quiet enjoyment of any residential premises by the occupant."

The covenant of quiet enjoyment protects a tenant's right to freedom from serious interferences with his tenancy, from acts or omissions that "impair the character and value of the leased

premises." Simon v. Solomon, 385 Mass. 91,102,431 N.E.2d 556,565 (1982), quoting Winchester v. O'Brien, 266 Mass. 33, 36,164 N.E. 807 (1929). "[T]o support the imposition of liability under the quiet enjoyment statute, there must be a showing of at least negligent conduct by a landlord" Al-Ziab v. Mourgis, 424 Mass. 847, 851, 679 N.E.2d 528, 530 (1997).

12. As measured against the proper legal standard, it is clear that Mr. Brancic's conduct breached the covenant of quiet enjoyment. Visiting with family and friends is among the defining activities which make a place "home," and Mr. Brancic, at least temporarily, interfered with Mr. Aponte's right to that experience. Having Ms. Soto as his guest at the premises was central to the character and value of Mr. Aponte's tenancy, and barring this guest from the premises, as was the consequence of Mr. Brancic's "no trespass" order, severely degraded the value of that tenancy.

13. The court must also conclude that Mr. Brancic was "at least negligent" with respect to the "no trespass" order, and did not act as a reasonable landlord in his situation. Mr. Brancic is a professional landlord, and had been in the residential rental business for a number of years before the events complained of herein. He had pending in court a summary process case with Mr.

Aponte, in which Ms. Soto was a witness, as well as a Code Enforcement proceeding with the

Board of Health. Even crediting, as I do, Mr. Brancic's testimony that, in seeking to bar Ms. Soto from the premises, he was motivated by his perception that she was interfering with his efforts to correct Code violations, Mr. Brancic knew or should have known that there were alternative methods for stopping the alleged interference, including by petitioning the court in one of his two pending cases. Rather than using a tool reasonably calculated to protect his legitimate interest in making repairs, Mr. Brancic invoked an overly broad and intrusive remedy, the effect of which was not merely to insure against interference by Ms. Soto, but was also to ban Ms. Soto from Mr. Aponte's unit, over which Mr. Aponte had exclusive possession, and where she was welcome. If Mr. Brancic did not know better than to do this, he should have. 14. Mr. Brancic's conduct did not, however, rise to the level of being "outrageous." Mr. Brancic was very agitated, worried about his building and exposure in the Code Enforcement proceeding, and frustrated by his inability to deal with Mr. Aponte. His response to these various stressors was not motivated, in my view, by a gratuitous desire to harm Mr. Aponte, although it was seriously misguided. In addition, Mr. Brancic did revoke the "no trespass" after nine days. While his doing so did not have the effect of restoring Mr. Aponte's tenancy to its original character, this was due in significant part to Ms. Soto's personal and unforeseeable response to the experience, namely to avoid the premises thereafter. Mr. Aponte not having proved consequential damages in excess thereof, he is therefore entitled under G.L. c. 186, s.14 to an award of three months' rent, or $1,185, plus attorney's fees and costs.

15. Reprisal: Within six months prior to Mr. Brancic's service of the "no trespass" order against Ms. Soto, Mr. Aponte had engaged in at least four protected activities: complaining in writing about substandard conditions at the premises; withholding rent; contacting the Board of Health; and pursuing defenses and counterclaims in his summary process case. As indicated

above, service of the “no trespass” order constituted a substantial, if temporary, alteration in the terms of Ms. Aponte’s tenancy. This sequence of events gives rise to a rebuttable presumption, under G.L. c. 186, s. 18, that Mr. Brancic’s action was in reprisal (retaliation) against Mr. Aponte for his protected activity. The presumption is rebutted only upon clear and convincing evidence that Mr. Brancic’s action was not in reprisal, that he had sufficient independent justification for taking this action, and that he would in fact have taken the action, in the same manner and at the same time, notwithstanding the protected activity.

16. Mr. Brancic’s explanation with respect to the “no trespass” order does not suffice to rebut the presumption of reprisal. I credit Mr. Brancic’s testimony that the events which occurred at the premises on March 3, 2002, in the context of his then pending legal actions, left him “all shook up.” I believe that he was worried about his building and his business, and that he subjectively believed Ms. Soto was interfering with his rights and responsibilities as a landlord.Mr. Brancic’s testimony itself makes it clear, however, that he has not rebutted the presumption of reprisal; he would not have obtained the “no trespass” order but for the pending Code Enforcement action, the trigger for which was Mr. Aponte’s protected activity in contacting the Board of Health. No other justification for a “no trespass” order against Ms. Soto, such as alleged illegal activity on her part at the premises, was offered. It is clear that Mr. Brancic wanted Ms. Soto away from the property precisely because of his perception that she was playing a role in the Code Enforcement process which, even if true, was protected, and not an independent justification for a “no trespass” order.

17. As a result of Mr. Brancic’s reprisal, Mr. Aponte is entitled to an award of between one and three months’ rent. I am exercising my discretion to award the minimum amount, or one month’s rent. Although he exercised poor judgment, I do not believe that the action Mr. Brancic

took was motivated by an intention to retaliate per se. I am also mindful that the Holyoke Police Department assisted Mr. Brancic in utilizing the “no trespass” order the way he did, thereby lending support to an ill-advised approach. Pursuant to G.L. c. 186, s. 18, Mr. Aponte is therefore awarded $395, plus attorney’s fees and costs. 18. Unfair and Deceptive Trade Practice: The record does not establish that Mr. Brancic committed a “willful” violation of G.L. c. 186, s. 14 (interference with quiet enjoyment), but rather only that Mr. Brancic’s action was “at least negligent.” Under the Attorney General’s regulations, however, it is an unfair and deceptive trade practice, in violation of G.L. c. 93a, for a landlord to “[r]etaliate or threaten to retaliate in any manner against a tenant for exercising or attempting to exercise any legal rights as set forth in M.G.L. c. 186, s. 18.” 940 CMR 3.17(6)(b). In serving Ms. Soto with a “no trespass” order, Mr. Brancic violated G.L. c. 186, s. 18, the Attorney General’s regulation quoted herein, and G.L. c. 93a. Mr. Aponte served Mr. Brancic with a proper demand latter under G.L. c. 93a, s.9, thereby satisfying the statutory prerequisites to suit. Mr. Brancic responded timely to the demand letter, and offered settlement in the amount of $700, less unpaid rent of $592. 19. Mr. Aponte’s

actual damages under Chapter 93a are coextensive with his damages in the underlying claim giving rise to the unfair and deceptive trade practice, here G.L. c. 186, s. 18. G.L. c. 93a further provides that the court will award "up to three but not less than two times" the actual damages, upon a finding "that the use or employment of the act or practice was a willful or knowing violation of [the statute] or that the refusal to grant relief upon demand was made in bad faith…" G.L. c. 93a, s.9(3). Mr. Brancic's response to Mr. Aponte's demand letter was not made in bad faith. The question of whether Mr. Aponte's 93a damages are subject to a multiplier turns, therefore, on whether Mr. Brancic's violation of the statute was willful or

knowing, a conclusion determined by his knowledge, or disregard, of the facts, not the law.

20. In this case, Mr. Brancic knew that Ms. Soto was a welcome guest of Mr. Aponte, that Mr. Aponte had engaged the Board of Health in a Code Enforcement process, and that both Mr. Aponte and Ms. Soto had testified at the summary process trial just days earlier. In obtaining the "no trespass" order, Mr. Brancic clearly knew that he was acting against the wishes of Mr. Aponte and Ms. Soto, and willfully persisted in so doing. Mr. Brancic's deliberate decision to invoke the "no trespass" order under these circumstances requires an award of multiple damages, irrespective of whether he specifically knew that in so doing he was violating G.L. c 186, s. 18. "Neither the failure of the defendant to apprise himself fully of the law, nor his misapprehension of what he did know about his obligations, is sufficient in the circumstances to negate the conclusion that his conduct runs afoul of the penalty provisions of G. L. c. 93a…" Montanez v. Bagg, 24 Mass. App. Ct. 954 (1987). The court awards double damages, or $790, plus costs and attorney's fees, subject to one recovery with claims under G.L. c. 186, s. 18.

21. June's Rent. A final dispute between the parties concerns whether Mr. Aponte is liable for rent for June, 2002, having vacated the premises on June 4, 2002. The parties agreed on June 4, 2002 that Mr. Aponte owed $5 92 for March, April and May rent, which he would repay in monthly installments of $ 100. Mr. Aponte failed to make any such payments. As such, the parties had an accord, but no satisfaction, and are not bound by their agreement of June 2. Mr. Aponte is therefore liable to pay use and occupancy through June 4, the day on which he actually vacated the premises. [2] The total unpaid rent/use and occupancy is $592 through May, 2002 plus

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[2] Mr. Brancic does not argue that Mr. Aponte failed to give proper notice terminating the tenancy, but rather that Mr. Aponte did not follow through with the repayment agreement.

$13.47 (daily rate) x 4 = $53.88 = $645.88 [3]

21. Conclusion: Based upon the foregoing, the plaintiff Mr. Aponte is awarded $1185 + 790= $1975 (Mr. Aponte's damages) – $645.88 (unpaid rent) + $3 10 (move out repairs) = $95 5.88 (Mr. Brancic's damages) = $1019.12, plus costs and attorney's fees. Counsel for the plaintiff shall have ten days from the entry date of this order in which to file and serve his petition for costs and attorney's fees. Mr. Brancic shall have ten days thereafter in which to file his opposition, if any. The court will then rule on the papers, after which final judgment will enter.

So entered this 26th day of October, 2004.

cc: Michael Gove

Law Clerk

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[3] The record appears to indicate that the fair rental value of the premises returned to the contract rate of $395 effective with May's rent, up from the reduced rate established at the summary process trial for March and April.

End Of Decision