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HOUSING SESSION
AT NEW HAVEN

NH-1005

DOCKET NO. NHH-CV-24-5006595-S : SUPERIOR COURT
MARIANNE HAYDUSKY : HOUSING SESSION
v. : AT NEW HAVEN
JOSEPH MAGER, III, FIDUCIARY : MAY 23, 2024

MEMORANDUM OF DECISION RE: ENTRY AND DETAINER PROCEEDING

This case was brought by the plaintiff, **MARIANNE HAYDUSKY**, as an entry and detainer/lockout case claiming damages from items allegedly removed and for dispossession from the premises at **85 Viscount Drive, Unit 9E in Milford**. The premises was once owned by the plaintiff's mother and is now part of her estate. **ATTORNEY JOSEPH MAGER, III** has been appointed by the Probate Court as the successor fiduciary of the estate and is named as the defendant in his capacity as fiduciary. By Order to Show Cause, the parties appeared before the Court remotely on May 14, 2024 and at the request of the plaintiff the matter was continued to a remote trial on May 22, 2024.

The Court notes that in addition to a prior summary process action, the parties are litigants in other proceedings, the Court does not need to recite all of the litigation history as it is not relevant to the specific findings in this matter, and it assumes the parties are already familiar with their other litigation against each other.



WALTER M. SPADER, JR.

JURIS NO. 438579

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In order to ensure that self-represented parties such as the plaintiff continue to

have access to our courts, “it is the established practice of the Connecticut courts to be solicitous of [self-represented] litigants and when it does not interfere with the rights of other parties to construe the rules of practice liberally in favor of the [self-represented] party.” Flater v. Grace, 291 Conn. 410, 424 (2009); Markley v. DPUC, 301 Conn. 56, 74-75 (2011). The plaintiff represented herself and the Court attempted to be solicitous of her positions over the defendant-attorney’s technical legal objections. The Court understands the defendant’s frustration with almost all of his objections over-ruled, as he was in a position of being accused of wrongdoing, but the Court wanted to assure that the plaintiff’s due process rights were protected to allow her to present her case to the best of her ability.

In reaching its decision, the Court has carefully and fully considered and weighed all of the testimony and evidence received at trial; evaluated the credibility of the witnesses; assessed the weight, if any, to be given specific evidence and measured the probative force of conflicting evidence; reviewed and considered all exhibits, relevant statutes and case law; and has drawn such inferences from the evidence, or facts established by the evidence, that it deemed reasonable and logical.

Connecticut General Statute §47a-43(a) provides, in relevant part:

When any person (1) makes forcible entry into any land, tenement or dwelling unit and with a strong hand detains the same, or (2) having made a peaceable entry, without the consent of the actual possessor, holds and detains the same with force and strong hand, or (3) enters into any land, tenement or dwelling unit and causes damage to the premises or damage to or removal of or detention of the personal property of the possessor, or (4) when the party put out of possession would be required to cause damage to the premises or commit a breach of the peace in order to regain possession, the party thus



ejected, held out of possession, or suffering damage may exhibit his complaint to any judge of the Superior Court.

To prevail in an entry and detainer proceeding, the plaintiff must allege and prove facts which show that she was in actual possession of the property subject to this action at the time of the defendant's alleged entry. See Berlingo v. Sterling Ocean House, Inc., 203 Conn. 103, 108 (1987) and Commuter Break CO. v. Scinto, 196 Conn. 390, 394 (1985). "A plaintiff suing under the forcible entry and detainer statute must prove [her] *actual* possession of the land or property from which [s]he claims to have been dispossessed ... The question of whether the plaintiff was in actual possession at the time of the defendant's entry is one for the trier of fact ... Generally, the inquiry is whether the individual has exercised the dominion and control that owners of like property usually exercise ... [I]t is not necessary that there be a continuous personal presence on the land by the person maintaining the action. There, however, must be exercised at least some actual physical control, with the intent and apparent purpose of asserting dominion." (Emphasis in original; internal quotation marks omitted.) Quinto v. Boccanfusco, 139 Conn. App 129, 134 (2012).

The standard of proof in the claims before this Court, a fair preponderance of the evidence, is "properly defined as the better evidence, the evidence having the greater weight, the more convincing force in your mind." (Internal quotation marks omitted.) Cross v. Huttenlocher, 185 Conn. 390, 294 (1981). "The general burden of proof in civil actions is on the plaintiff, who must prove all the essential allegations of the complaint." Gulycz v. Stop & Shop COs., 29 Conn.App 519, 523 (1992), citing Lukas v. New Haven, 184 Conn. 205 (1981).



In the complaint initiating this action, the plaintiff claims that a lockout occurred on April 30, 2024 by the defendant changing the locks to the condominium unit in an act of “self help” in violation of this Court’s Orders and various Probate Court Orders. The plaintiff claims that on account of the alleged lockout she has been dispossessed from the premises and been denied medically necessary supplies and accommodations present therein. She additionally claims the loss of furniture and believes the actions of the defendant have placed her in grave medical danger.

The plaintiff has provided a number of exhibits uploaded as Docket Entries #104 and #105 and the defendant has provided the Court with 15 exhibits uploaded to e-filing. The Court has accepted all exhibits as “full” except for the police report identified as defendant’s exhibit A. The Clerk has printed all of the exhibits to make them physical exhibits. Many of the exhibits from both parties are pleadings and Orders from the probate matters. The plaintiff provides this Court’s own Order denying an execution to the estate from a few short months ago and several photos are provided by both parties.

This action is not the forum to relitigate the probate matter nor the prior summary process action. The only issue before the Court is whether an unlawful entry and detainer occurred and, if so, what damages the plaintiff incurred directly related thereto. The probate background makes this situation somewhat convoluted and entirely contentious. The defendant has an obligation to perform his duties to the Probate Court faithfully. The condominium is no longer the condominium of the plaintiff’s mother, but it is an asset of her mother’s estate. On February 8, 2024, the Probate Court appointed the defendant as successor



fiduciary of the estate. On the same date, the Probate Court lifted its stay on its previous Order staying the former fiduciary's entry into the premises. As noted in the Court's Order lifting the stay, the stay from last year was not meant to be indefinite but was only to give the parties an opportunity to attempt to resolve outstanding issues and such a stay was no longer appropriate. To settle the estate, the premises must be sold and the fiduciary has an obligation to the creditors and beneficiaries of the estate to wind it up - securing the premises is in furtherance of that obligation – and is in fact one of his required duties. As the newly appointed fiduciary, he had an obligation to secure estate assets, changing the locks to protect assets that may be present in it is in furtherance of his required duties.

It is important to note that while many points of testimony were disputed, both sides agreed that the defendant offered keys to the plaintiff immediately upon the changing of the locks and he posted a sign offering keys to tenants. The plaintiff, citing other legal issues, would not answer the question regarding how she claims occupancy rights – as a tenant or other legal possessor. She has rights as an heir/beneficiary of the estate – but those are rights to the disposition of funds when the estate is settled. Her steadfast refusal to quantify her rights of possession – even as a plaintiff in this case where the issue of actual possession is part of her burden of proof – is harmful to her ability to prevail in this case, but it is not fatal. No matter how she wants to define – or not define – her possession, for the purposes of the entry and detainer statute, the Court finds her to have a possessory right potentially protected thereunder.



“Actual” possession contemplated by the statute is not simply where someone sleeps at night, but is broadly understood as a place where the complainant demonstrates dominion and control. Pursuant to the Court Order of his appointment, the defendant secured the premises. He posted a notice that he would provide keys to any tenant lawfully claiming a right to possession. The defendant, therefore, entered peacefully, under Orders and obligations of his appointment as fiduciary of the owner-estate. He properly secured the premises and had (and has) no intention to deny access to any tenants properly in possession of the premises. The pictures presented by the defendant indicate that the premises is not habitable and cannot be a residence for the plaintiff nor are there any “tenants” in possession thereof. The plaintiff is not occupying the premises as a tenant, but is claiming to store medical equipment and medicine there. The pictures provided by the defendant show an exercise bicycle, a grill, a scooter and a mattress.

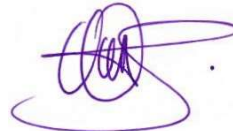
While the defendant’s request for an execution from this court in the summary process matter evidences his knowledge that the plaintiff did not relinquish possession and the assertions that he engaged in self-help are troubling, the plaintiff has not established her burden of proof to prevail herein – because she failed to establish that the defendant had an intent to detain or deprive the plaintiff from whatever possessory rights she has. All she established is that he changed the locks and under tortured legal theories, she would not acknowledge a right to possess the premises to obtain the key from him. As he offered the key and she would not accept it, he did not wrongfully dispossess her from the premises, instead he faithfully fulfilled his duty as successor fiduciary to secure the premises for the estate, and she failed to secure her property by refusing to accept the key.



The entry and detainer statute “seeks to discourage the owner’s resorting to self-help tactics so that peace and good order may be maintained.” Zapata v. Mora, 121 Conn.App. 790, 793 (2010). “Locking premises in order to secure them is far different from, for example, changing locks and removing or destroying [or detaining] belongings. In the former situation, courts have concluded there has been no forcible entry and detainer . . . while in the latter a violation is clear.” Karantonis v. East Hartford, 71 Conn.App. 859. 641 (2002). There is no evidence before the Court that any items in the premises were disposed of or that the defendant had any intention to deprive the plaintiff of any possessions that may belong to her.

Despite the plaintiff’s refusal to testify as to the description of her possessory interest, the Court finds that for the purposes of the entry and detainer statute, as her belongings were there and the Court did not issue an execution, she is protected as possessor of the premises. But, since the defendant offered a key, the Court cannot find that he violated the statute. Accordingly, the Court finds the defendant NOT GUILTY of entry and detainer. The defendant is, however, Ordered to make good on its own offer of providing the key to the plaintiff and shall mail it by regular mail to the defendant’s actual address at 100 Viscount Drive Unit #B5, Milford CT 06460.

BY THE COURT,



Walter M. Spader, Jr., Judge

