



3 of 8 DOCUMENTS



Analysis
As of: Jul 22, 2014

Richard Ogust, Respondent, v. 451 Broome Street Corp. et al., Appellants. (And a Third-Party Action.)

1442, 1443

SUPREME COURT OF NEW YORK, APPELLATE DIVISION, FIRST DEPARTMENT

4 A.D.3d 109; 770 N.Y.S.2d 864; 2004 N.Y. App. Div. LEXIS 964

**February 3, 2004, Decided
February 3, 2004, Entered**

SUBSEQUENT HISTORY: [***1]

Reargument denied by *Ogust v. 451 Broome St. Corp.*, 2004 NY App Div LEXIS 6785 (1st Dept, May 11, 2004)

PRIOR HISTORY: *Ogust v. 451 Broome St. Corp.*, 285 AD2d 412, 727 NYS2d 877, 2001 NY App Div LEXIS 7490 (1st Dept 2001)

CASE SUMMARY:

PROCEDURAL POSTURE: Defendant landlords appealed orders by the Supreme Court, New York County (New York), that denied their cross motion for recusal on the ground of bias and denied their motion to confirm a special referee's report and directed them to pay plaintiff tenant's relocation costs.

OVERVIEW: The landlords had been ordered to commence certain repairs to the tenant's two apartment units within 14 days after service of a copy of the order. The trial court also ordered the landlords to pay the

tenant's relocation costs at the rate of \$ 22,500 per month. The appellate court held that because the landlords' motion for recusal was not based on any of the grounds specified in N.Y. Jud. Law § 14, the trial judge was the sole arbiter of recusal. The landlords substantially complied with the order directing them to commence repairs. Any failure to timely commence repairs on a water pressure system was excused by the tenant's refusal to permit the installation of the pump necessary to address the problem. In view of the tenant's decision to permanently relocate, he was not entitled to recover the specified monthly amount of relocation costs through the time the repairs were completed.

OUTCOME: The order denied the cross motion for recusal was unanimously affirmed, the order denying the motion to confirm a special referee's report was unanimously reversed, and the direction to pay relocation costs was vacated.

4 A.D.3d 109, *; 770 N.Y.S.2d 864, **;
2004 N.Y. App. Div. LEXIS 964, ***1

HEADNOTES

Motions and Orders--Motion Affecting Prior Order.--Defendant landlords were entitled to confirmation of Special Referee's report since they substantially complied with prior order directing them to commence certain repairs to plaintiff's two apartment units within 14 days after service of copy of order, even if repairs to water pressure system were not commenced within such period; in any event, any failure to commence repairs on water pressure system within period was excused by plaintiff's refusal to permit defendants to install pump necessary to address problem--in view of plaintiff's subsequent decision to permanently relocate from premises before repairs were completed, plaintiff would have received windfall if he were to recover, as directed by prior order, specified monthly amount of relocation costs through time repairs were completed.

COUNSEL: Morrell I. Berkowitz, for Plaintiff-Respondent.

Kevin Oates & Arthur P. Xanthos, for Defendants-Appellants.

JUDGES: Concur--Nardelli, J.P., Tom, Andrias, Sullivan, Friedman, JJ.

OPINION

[*109] [**864] Order, Supreme Court, New York County (Louise Gruner Gans, J.), entered April 3, 2002, which, insofar as appealed from, denied defendants' cross motion for recusal on the ground of bias, unanimously affirmed, without costs. Order, same court and Justice, entered on or about December 31, 2002, which, inter alia, denied defendants' motion to confirm a Special Referee's report, granted plaintiff's cross motion to reject the report, and directed defendants to pay plaintiff relocation costs

of \$ 22,500 per month in a total amount to be determined subsequently, unanimously reversed, on the law and the facts, without costs, the motion to confirm the report granted, the cross motion to reject the report denied, and the direction to pay relocation costs vacated.

Defendants' motion for recusal was not based on any of the grounds specified in Judiciary Law § 14, and, absent such grounds, "a Trial Judge is [***2] the sole arbiter of recusal" (*People v Moreno*, 70 N.Y.2d 403, 405, 516 N.E.2d 200, 521 N.Y.S.2d 663 [1987]). We therefore affirm the order denying the recusal motion.

We reverse, however, the order rejecting the report of the [*110] Special Referee and directing defendants to pay plaintiff relocation costs at the rate of \$ 22,500 per month. We find, upon our review of the record, that defendants substantially complied with the prior order, dated January 6, 2000, directing them to commence certain repairs to plaintiff's two apartment units within 14 days after service of a copy of such order with notice of entry. Repairs on the roof over plaintiff's units and of the heating system for his units were commenced within the relevant period (the 14 days ending on January 25, 2000), even if, as the motion court found, repairs to the water pressure system were not commenced within such period. Moreover, any failure to commence repairs on the water pressure system within the 14-day period was excused by reason of plaintiff's refusal to permit defendants to install the pump necessary to address the problem in either of his two units. We further note that, in view of plaintiff's subsequent decision to permanently relocate [***3] from the subject premises, plaintiff would receive a [**865] windfall if he were to recover, as directed by the January 6, 2000 order, the specified monthly amount of relocation costs through the time the repairs were completed.

Concur--Nardelli, J.P., Tom, Andrias, Sullivan and Friedman, JJ.