

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK

INDEX NO. 58678/11

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JSB PROPERTIES LLC,

Petitioner,

-against-

DECISION/ORDER

EDWARD S. COHEN,

Respondent.

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SCHNEIDER, J.

This holdover proceeding came before me for a hearing on petitioner's claim that respondent had breached a stipulation of settlement. The stipulation, dated June 30, 2011, provided that for a probationary period of five years, "Respondent will not engage in any of the conduct set forth in the Petition or any substantially similar conduct, i.e., shouting, screaming, yelling in his apartment and/or the public areas of the building and/or jumping up and down in his apartment or other similar conduct." The petition to which the stipulation refers alleges in pertinent part that respondent yells, shouts and screams, both in his apartment and in public areas of the building, disturbing other tenants.

The stipulation of settlement provides that if respondent violates the agreement, petitioner may restore the case to the calendar for a hearing, and that if petitioner proves at the hearing that respondent has engaged in the prohibited conduct to an extent that constitutes a nuisance, petitioner shall be entitled to a judgment of possession and a warrant of eviction. The question

before me, then, is whether respondent has engaged in prohibited conduct since the date of the stipulation and, if so, whether respondent's conduct constitutes a nuisance.

Paul Drost testified at the hearing that he has lived next door to respondent since 1990. The two apartments share a common wall. Mr. Drost testified that he hears respondent through the wall, loud enough to distinguish particular words, on a regular basis. He produced a log for a one month period which he testified was typical of his experience with the respondent. The log has notations on 22 out of 31 days. Most of the notations are made during normal working hours, a few are in the evening, and a very small number are late at night or very early in the morning. For the most part the log indicates that respondent is shouting at himself, criticizing himself, calling himself names, and, on a few occasions, saying that he will kill himself.

Petitioner's superintendent, Soloo Lorick, who lives on the same floor with respondent and Mr. Drost, testified that he heard respondent shouting at himself inside his apartment 15 or 20 times between the date of the stipulation and the date of the hearing. Mr. Lorick said that on these occasions respondent was inside his apartment and Mr. Lorick was standing in the hallway outside respondent's apartment door. The building manager heard respondent shouting once, also when respondent was inside his apartment and the manager was in the hallway.

Respondent testified that he has lived in the subject apartment for 42 years. He lives alone and works two or three days a week as a freelance editor. He uses the internet access at a local library to receive and return his editing assignments. He testified that he is not suicidal but that he sometimes says he is going to kill himself when he is frustrated. He says he has no desire to disturb his neighbors and has made an effort to comply with the stipulation. He also says it is hard for him to judge how loud his voice is when he is alone.

Respondent is a client of Adult Protective Services ("APS"), a part of the New York City

Human Resources Administration. A psychiatrist for APS who evaluated respondent in March 2011 at the court's request gave Asperger's Disorder as his diagnosis.

To establish that respondent's conduct arises to the level of nuisance, petitioner must show that respondent has engaged in a persistent and continuing course of conduct evincing an unreasonable use of the property that substantially damages others. Frank v. Park Summit Realty Corp., 175 AD 2d 33 (AD 1st Dept. 1991), modif. On other grds 79 NY 2d 789 (1991). Not every annoyance is a nuisance. A nuisance is a continuous invasion of rights, a pattern of continuity or recurrence of objectionable conduct. Domen Holding Co. v. Aranovitch, 1 NY 3d 117 (2003).

In cases involving noise, the courts have recognized that New York City apartment living is not, by its very nature, a silent experience, and that apartment dwellers must expect to put up with a certain amount of noise. 442 Sterling Place v. Smith, 9/30/98 NYLJ 28, col. 5 (Civ. Ct. NY Co.), Gerber v. Gentry, 4/18/90 NYLJ 23, col. 1 (Civ. Ct. NY Co.), Mariani v. Rogers, 25 Misc. 3d 1206(A)(City Ct. 2009).

In the case before me, there is no evidence that any disturbing behavior has occurred outside of the respondent's apartment. He does not confront others, nor does he berate himself in public spaces. The only complaint made about him is that he berates himself, in the privacy of his own apartment, at a volume that can be heard through a common wall in one other apartment. It is clear that respondent means no one any harm.

There is no way to know, on this record, what the volume of respondent's statements actually is. We do not know how sound-proof the wall is, or how loud one has to speak to be heard through it.

Respondent is a man with certain challenges. He leads a simple existence and is able to

take care of his own needs. He has lived in the same apartment since 1970. Some of his behavior is unorthodox, but he does his best to control it, and he means no harm to anyone. He is not someone who needs additional care or cannot successfully live on his own, and he has to live somewhere. I find that respondent's behavior since the June 30, 2011 stipulation does not rise to the level of nuisance. Accordingly the petitioner's application for a judgment and warrant is denied.

Dated: 8/26/13



J. H. C.