

STATE OF VERMONT

SUPERIOR COURT  
Washington Unit

CIVIL DIVISION  
Docket No. 21-CV-3672

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GRACE HOSPITALITY LLC,  
Plaintiff,

v.

MICHAEL MASON and JENNILEE  
MASON and OCCUPANTS OF 1015 N.  
MAIN ST., BARRE, VT.,  
Defendants

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RULING ON PENDING MOTIONS (Motions #2, 3 and 4)

This is a no-cause eviction suit arising out of the termination of an employment relationship between the parties. Plaintiff Grace Hospitality LLC is the landlord/former employer, and Defendants Michael and Jennilee Mason are the tenants/former employees. There is another suit pending in federal court between the same parties; the federal court suit was filed prior to this eviction suit.<sup>1</sup>

On December 13, 2021, this court issued a rent escrow order requiring the Defendants to pay their rent into court pending a final decision on Plaintiff's request to evict them. Presently before the court are Defendants' motions for reconsideration of the rent escrow order and for a temporary restraining order enjoining the Plaintiff from pursuing this eviction action. Also pending before the court is Plaintiff's motion to set this matter for a prompt hearing on the merits. For the reasons explained below, the motions are all *denied*.

*Factual Background*

In September of 2019, Defendants Jennilee and Michael Mason were allegedly hired to serve as the live-in managers of two motels in Barre, Vermont, owned by Plaintiff Grace Hospitality LLC. At first the Masons and their three children lived in one of the motel rooms, but in the spring of 2021, they were offered a two-bedroom apartment located at the so-called "Knoll Motel" located at 1015

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<sup>1</sup> The federal suit, which is pending in the U.S. District Court for the District of Vermont, is captioned Mason et al. v. Grace Hospitality et al., 5:21-cv-267.

North Main Street in Barre. On April 29, 2021, the parties signed a “Residential Lease Agreement, paragraph 2 of which stated as follows:

This agreement is a part of the employment package with zero dollars rental cost to the tenant and runs congruent to the employment. The tenancy will be terminated with the termination of the employment by either the employer (also the landlord) or the employee (also the tenant),

It is mutually agreed by both parties that effort is made that the termination of employment should accommodate for adequate time for the tenant to find suitable lodging and that effort is made to make the termination of employment and tenancy simultaneous so as to make it seamless for both parties. However, if this is not the case, the tenants rights to zero rent will end on the first day of the month following the termination of employment.

If tenants fail to vacate the premises at that time, they will be considered a hold over tenant and will be responsible for a rent payment of \$1500 (One thousand five hundred dollars)/month.”

The Masons allege that Grace Hospitality paid them less than minimum wage, paid them for no overtime, and often failed to pay them anything at all. When their complaints to Grace Hospitality went unheeded, the Msons consulted a lawyer who sent Grace Hospitality a letter dated July 26, 2021, making a formal demand for unpaid and untimely paid minimum and overtime wages. Four days later, on July 30<sup>th</sup>, Grace Hospitality terminated the Masons’ employment.

The termination of employment triggered the provision in the lease requiring the Masons to either leave the apartment where they had been living with their children or begin to pay rent in the amount of \$1,500 a month. The Masons did neither, so, on August 6, 2021, Grace Hospitality sent the Masons a notice that their lease was being terminated for non-payment of rent. The Masons promptly cured their default by paying their rent for August and September. Nevertheless, on September 8, 2021, Grace Hospitality sent the Masons a notice stating that their lease was being terminated for no cause effective November 1, 2021.

The following day, November 2, 2021, the Masons sued Grace Hospitality in federal court. Their suit alleged that Grace Hospitality had violated both state and federal minimum and overtime wage laws. The Masons further alleged that Grace Hospitality had unlawfully retaliated against them for asserting their rights to minimum and overtime wages by terminating their employment and then terminating their lease. In Counts VI and VII of their complaint in federal court,

the Masons specifically allege that Grace Hospitality's termination of their employment and lease violated 21 V.S.A. §§ 348 and 397. Those statutes state:

- (a) An employer shall not discharge or in any other manner retaliate against an employee because:
  - (1) the employee lodged a complaint of a violation of this subchapter;
  - (2) the employee has cooperated with the Commissioner in an investigation of a violation of this subchapter; or
  - (3) he employer believes that the employee may lodge a complaint or cooperate in an investigation of a violation of this subchapter.
- (b) Any person aggrieved by a violation of this section may bring an action in the Civil Division of the Superior Court seeking compensatory and punitive damages or equitable relief, including restraint of prohibited acts, restitution of wages or benefits, reinstatement, costs, reasonable attorney's fees, and other appropriate relief.

On November 18, 2021, Grace Hospitality commenced this eviction suit in this court. Grace Hospitality alleged in its complaint that it was entitled to evict the Masons for no cause pursuant to 9 V.S.A. § 4467(e) based upon the termination notice it had sent to the Masons on September 8, 2021. In addition to its complaint for eviction, Grace Hospitality also filed with the court a motion for an order requiring the Masons to pay their rent into court pending a final hearing on the merits.

On December 13, 2021, the court held a hearing on Grace Hospitality's motion for a rent escrow order. At the hearing the Masons argued that the court should not issue a rent escrow order because they had filed suit in federal court alleging that Grace Hospitality's effort to evict them violated state and federal anti-retaliation laws. The court concluded, however, that Grace Hospitality was entitled to a rent escrow order pursuant to the clear provisions of 12 V.S.A. § 4853a(d), "unless the federal court enjoins plaintiff from proceeding with this eviction action" (*see* this court's Entry Order of 12/13/21). Therefore, the court issued a rent escrow order requiring the Masons to pay rent into court consisting of \$1,100 by December 31, 2021, plus \$1,000 by January 15, 2022, plus \$1,500 a month starting on January 1, 2022.

On December 27, 2021, the Masons filed their answer and counterclaim with this court. In their answer, the Masons deny that Grace Hospitality has the right to evict them for no cause, and in Counts I and II of their counterclaim the Masons assert that, by terminating their lease and commencing this eviction suit, Grace Hospitality is unlawfully retaliating against them for asserting their rights to minimum and overtime wages in violation of 21 V.S.A. §§ 348 and 397. This claim

is essentially identical to the one the Masons asserted in Counts VI and VIII of their federal suit.

*Discussion*

The Masons ask this court to vacate its rent escrow order and enjoin this eviction suit from going forward on the grounds that Grace Hospitality filed this eviction suit in retaliation for their assertion of their rights to minimum and overtime wages. The Masons point out that 21 V.S.A. § §348 and 397 make such retaliatory actions unlawful and entitle them to “equitable relief, including restraint of prohibited acts.” The Masons further contend that they are entitled to an order enjoining Grace Hospitality from pursuing this eviction suit because they are “virtually certain” to prevail on their retaliatory discharge and evictions claims, and they will suffer irreparable harm if they and their children are evicted from their home, whereas the only harm Grace Hospitality would incur is “the rent it lost when it elected to proceed with evicting the employees it had just fired before they had secured adequate income to seek alternative housing” (Defendants’ Verified Application for Temporary Restraining Order and Preliminary Injunction Without Surety, at 4-6).

Grace Hospitality argues that this court should not reconsider its rent escrow order. Grace Hospitality contends that the rent escrow order was clearly mandated by 12 V.S.A. § 4853a(d), because it is undisputed that the Masons are continuing to reside in the apartment without paying the monthly rent called for under the lease agreement. Therefore, Grace Hospitality contends that the rent escrow order should be enforced, not vacated. Grace Hospitality also argues that this court should not use the wage and hour statutes to enjoin this eviction suit because those statutes do not apply to an eviction action. Moreover, Grace Hospitality argues that, if those statutes did apply to an eviction suit, the Masons would still not be entitled to an injunction because they cannot demonstrate any irreparable harm. According to Grace Hospitality, “Defendants claim that having to vacate the Rental Premises represents irreparable damage, but under the Rent Escrow Order if the Defendants pay rent into Court they can remain in the Rental Premises until there is a final judgment on the merits” (Plaintiff’s Opposition to Defendants’ Verified Application for Temporary Restraining Order and Preliminary Injunction, at 3). To the contrary, if the court granted the Masons an injunction, Grace Hospitality argues that it would be the party suffering irreparable harm because it “is currently receiving no rent for the Rental Premises but is not able to use it” (Id., at 4). Grace Hospitality asks the court to deny the Masons’ and “schedule the final merits trial on the eviction action for the next available trial court date” (Plaintiff’s Motion for a Merits Trial, at 2).

The court agrees with the Masons that the anti-retaliation provisions of Vermont’s wage and hour laws could be used to enjoin an eviction suit that was filed

against a tenant/employee in retaliation for asserting his or her rights under Vermont's minimum and overtime wage laws. Although 21 V.S.A. §§348 and 397 are part of the wage and hour statutes, there is nothing in their provisions precluding a court from applying them to a residential eviction action. The Masons have asked the court to do exactly that in Counts I and II of their counterclaim. Therefore, this court has jurisdiction to determine whether Grace Hospitality brought this eviction action against the Masons in retaliation for their having asserted their rights under Vermont's wage and hour laws.

However, this claim is essentially identical to the claim that the Masons have asserted in Counts VI and VIII of their federal suit.<sup>2</sup> Therefore, the federal court also has jurisdiction to determine whether Grace Hospitality brought this eviction action against the Masons in retaliation for their having asserted their rights under Vermont's wage and hour laws. Moreover, the Masons filed their federal court suit before Grace Hospitality filed its eviction suit in this court. "In general, where two tribunals have concurrent jurisdiction, the first tribunal to obtain jurisdiction should adjudicate the case, and the second should defer to the first." Barnet Hydro Company v. Public Service Board, 174 Vt. 464, 467 (2002) (mem.). The only exception to this general use is when "the second tribunal may offer relief not available in the first." Secretary v. Upper Valley Regional Landfill Corp., 167 Vt. 228, 237-38 (1997). The exception does not apply here. Therefore, this court will defer to the federal court on the question whether Grace Hospitality brought this eviction action against the Masons in retaliation for their having asserted their rights under Vermont's wage and hour laws in violation of 21 V.S.A. §§ 348 and 397.

Having decided to defer to the federal court on that question, this court must also defer ruling on the Masons' request that this court vacate its rent escrow order and enjoin this eviction suit from going forward, until after the federal court has determined whether Grace Hospitality brought this eviction action in violation of the foregoing anti-retaliation statutes. For the same reason this court must also defer scheduling a final hearing on Grace Hospitality's request for a writ of possession until after the federal court has determined whether Grace Hospitality violated the anti-retaliation statutes by bringing this eviction action.

This court's rent escrow order will remain in effect until the federal court determines whether Grace Hospitality violated the aforesaid anti-retaliation statutes by bringing this eviction action. Having to comply with the rent escrow order will not cause the Masons irreparable harm. So long as they comply with the

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<sup>2</sup> The Masons suggest that the claims in the two cases are not the same because the retaliation claim in the federal case relates to Grace Hospitality's August 6<sup>th</sup> termination notice for non-payment of rent, whereas the retaliation claim in this eviction case relates to Grace Hospitality's September 8<sup>th</sup> termination for no cause. The suggestion is unpersuasive. The Masons cured their non-payment default by paying their rent for August and September of 2021, so the August 6<sup>th</sup> termination notice was no longer in effect when the Masons filed their suit in federal court. At that point in time, only the September 8<sup>th</sup> no-cause termination notice was in effect. Therefore, the retaliation claims in both cases are based on the same September 8<sup>th</sup> termination notice.

order, they can remain in the apartment. They will only be evicted if they fail to make the required rent payments into court.

On December 28, 2021, this court stayed enforcement of its rent escrow order until the Masons' motions for reconsideration and an injunction could be ruled on. Now that the court has denied the motions, the stay is hereby lifted. Because the dates set forth in that order have all expired, however, the court needs to now set new dates comparable to the dates set in the original order. Therefore, the Masons are hereby ordered pay rent into court consisting of \$1,100 by March 22, 2022, plus \$1,000 by April 6, 2022, plus \$1,500 a month starting on April 1, 2022. All other provisions of the court's rent escrow order of December 13, 2021, remain unchanged.

Except for enforcement of the rent escrow order, all other proceedings in this matter are hereby stayed until the federal court has made a final determination as to whether Grace Hospitality violated 21 V.S.A. §§ 348 and/or 397 by seeking to evict the Masons in retaliation for their having asserted their rights under Vermont's wage and hour laws.

SO ORDERED this 3<sup>rd</sup> day of March, 2022.



Robert A. Mello  
Superior Judge