

<b>Matter of Puello v Perine</b>
2004 NY Slip Op 30375(U)
March 17, 2004
Supreme Court, New York County
Docket Number: 100217/04
Judge: Lewis Bart Stone
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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 50S

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In the Matter of Otto Vladimir Puello and :  
Jessica Cintron, :

Petitioners, :

-against- :

DECISION AND  
ORDER

Index Number

Jerilyn Perine, as Commissioner of the Department of :  
Housing, Preservation and Development of the City : 100217/04  
of New York and New Amsterdam Associates, :

Respondents. :

For Judgment Pursuant to CPLR Article 78  
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Hon. Lewis Bart Stone, J

**FILED**  
APR 07 2004  
NEW YORK  
COUNTY CLERK'S OFFICE

Otto Vladimir Puello ("Puello") commenced this proceeding by Order To Show Cause issued on January 8, 2004, under Civil Practice Laws and Rules, Article 78, to set aside a decision of Respondent, Jerilyn Perine, as Commissioner of the Department of Housing Preservation and Development of the City of New York ("HPD") issuing a certificate of eviction to Respondent New Amsterdam Associates ("New Amsterdam") relating to Apartment 28-B, 733 Amsterdam

Avenue, New York, New York (the “Apartment”).

The Apartment was rented to Betty Orviedo, who moved out in November 1999. Before Orviedo moved out, Puello moved in. After Orviedo moved out, Jessica Cintron (“Cintron”) and her daughter moved in. When New Amsterdam found out, it acted to dispossess Puello and Cintron. Because the Apartment is in a building developed under Article 2 of the Private Housing Finance Law (“PHFL”, Article 2, is also known as the “Mitchell Lama Law”), New Amsterdam was required to first obtain a certificate of eviction from HPD as a condition of commencing a dispossession proceeding in court to regain possession of the Apartment.

New Amsterdam applied to HPD for such certificate, and, after a hearing, the certificate was issued by HPD on December 31, 2003. After adjournments, the parties appeared before this Court. At the hearing, Puello and Cintron conceded on the record they had no successor rights to the Apartment and that the sole issue for the Court to consider was whether they had rights to the Apartment on an estoppel theory.

The parties agreed that an initial question was “whether, as a matter of law, estoppel may be claimed against an Article 2 company so as to create a tenancy or at least an occupancy right.” The parties further agreed that if the first issue was

determined in the affirmative, the Court would then have to determine whether HPD had decided this issue properly or whether the Court should set aside the HPD determination under the standards of an Article 78 review. The parties were given an opportunity to submit memoranda on those issues and HPD was instructed to provide a transcript of its hearing to the parties and the Court. The Court also established a payment schedule for current and back use and occupancy and or rent. Subsequent submissions have been made

It is clear that estoppel is unavailable as against the government acting in the exercise of its governmental function. See e.g., Daleview Nursing Home v. Axelrod, 62 NY2d 30 (1984); City of New York v. Civil Service Comm., 60 NY2d 436 (1983); Hamptons Hospital & Medical Cent. Inc. V. Moore, 52 NY2d 88(1980). This rule is not dispositive as New Amsterdam is a private entity. Although New Amsterdam is a private entity under the PHFL, it performs a quasi-government function through the Mitchell Lama Law in providing below market housing to persons of limited income, utilizing tax subsidies and public agency financing made available to it for such purposes. The allocation of this public subsidy to tenants and their rights to retain such benefits is strictly regulated by the PHFL to assure that the public purposes of the Mitchell Lama program are carried out in a fair and proper way, and that the public subsidies are properly allocated to

appropriate beneficiaries. Thus, the question of tenant identity, sublets and succession, are tightly regulated to carry out these competing public goals. New Amsterdam is required by law to comply with these rules, and accordingly this Court should not act to allow a concept of estoppel to operate in circumvention of the rules. To do so would authorize a Mitchell Lama company to allocate these scarce apartments and public subsidies by their own acts and omissions in violation of the policies established by law for such purpose through law, rules and regulations. See e.g., Scruggs-Leftwich v. Riverside Tenants Corp., 70 NY2d 849 (1987), which held that representations of a Mitchell Lama company to a tenant had no effect on regulations to the contrary. Although Scruggs considered whether a representation in the offering statement of a Mitchell Lama cooperative that an owner could sell an apartment to anyone (subject to limitations on price), and whether waiting lists requirements of law were thus superceded, it stands for the proposition that no representation is effective to countermand a rule or regulation regulating such companies. As the basis for an estoppel would be actions or representations of New Amsterdam's employees, Scruggs is effectively dispositive to preclude the use of an estoppel theory to create rights in the Apartment for the benefit of Petitioners.

As estoppel is unavailable to establish a right to the Apartment, the Court

need not determine whether under Article 78, HPD, at the hearing, properly rejected evidence of facts which might have constituted an estoppel.

The petition is therefore denied.

This constitutes the Decision and Order of the Court.

DATED: March 17, 2004  
NEW YORK, NEW YORK



Hon. Lewis Bart Stone  
Justice of the Supreme Court

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