

**Stuyvesant Town-Peter Cooper Vil. Tenants' Assn. v  
Metropolitan Life Ins. & Annuity Co.**

2005 NY Slip Op 30541(U)

April 19, 2005

Supreme Court, New York County

Docket Number: 104220/05

Judge: Rolando T. Acosta

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK PART 61

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Stuyvesant Town-Peter Cooper Village Tenants'  
Association, John Marsh, Assembly Member  
Steven Sanders, and all other members of the class  
similarly situated as tenants of Peter Cooper Village,

Petitioners,

– against –

Metropolitan Life Insurance and Annuity Company,  
Rose Associates, Inc. and the New York State Division  
Of Housing and Community Renewal,

Respondents.

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**DECISION/JUDGMENT**

Index No. 104220/05

Seq. 1

Present:

Hon. Rolando T. Acosta  
Supreme Court Justice

The following documents were considered in reviewing petitioners' order to show cause for an order, inter alia, enjoining respondent Metropolitan Life Insurance and Annuity Company (Met Life) from changing the locks to the entrance doors of Peter Cooper Village and laundry room, and compelling the New York State Division of Housing and Community Renewal (DHCR) to accept jurisdiction and render an administrative determination prior to the implementation of the electronic key access system, and Met Life's cross-motion for an order dismissing the first, second, third and fourth causes of action:

<b>Papers</b>	<b>Numbered</b>
<b>Order to Show Cause, Petition, Affidavit &amp; Memorandum of Law</b>	<b>1-4 (Exhibits A-C)</b>
<b>Met Life's Notice of Cross-Motion, Affirmation &amp; Memorandum of Law</b>	<b>5-7 (Exhibits A-O)</b>
<b>DHCR's Verified Answer</b>	<b>8</b>
<b>Petitioners' Affirmation in Opposition to Cross-Motion and in Reply to Affirmation in Opposition to Petition</b>	<b>9</b>

This case stems from Met Life's decision to implement an new security system in its Peter Cooper Village property. The new system replaces the metal key used to gain access to the lobby doors with a cardkey that is sensed by a reading mechanism. A photograph of the tenant will be embossed on the cardkey. Petitioners had previously brought an action to prevent Met Life from implementing the new system.

#### Prior Decision

On June 29, 2004, the Hon. Jane S. Solomon, J.S.C., issued a decision and order addressing virtually the identical issues raised here. See Decision and Order dated June 9, 2004, Exhibit C in petitioners' Order to Show Cause. The tenants had alleged three causes of action in their initial complaint: first, that the new card system was an illegal hardship, breach of privacy, a diminution of services and breach of the implied warranty of habitability; second, that it represents an unlawful change in the lease; and, third, that Met

Life failed to seek approval from DHCR before implementing the new system. June 9, 2004 Decision at 3-4.

Justice Solomon found that “to the extent that Tenants claim that the proposed security system represents a diminution of service, a violation of the rent laws or an unauthorized change in the rent stabilized lease, . . . [Met Life’s] cross-motion must be granted because the court lacks jurisdiction to consider these claims until Tenants have exhausted their administrative remedies before the DHCR. Moreover, Tenants do not point to any provision of the lease violated by the proposed security system. Indeed, paragraph 6 of the lease provides that the tenant agrees to observe such rules and regulations adopted by Met Life relating to the building and grounds. Accordingly, the second and third causes of action are dismissed, and that part of the first cause of action complaining of diminution of services is dismissed.” June 9, 2004 Decision at 5-6 (emphasis added).

Justice Solomon also found that “[w]ith respect to the remaining claims in the first cause of action, that the proposed system is an illegal hardship, a breach of privacy and a breach of the warranty of habitability, Tenants have not set forth a cognizable cause of action.” June 9, 2004 Decision at 6.

### The Instant Petition

In the new petition, the tenants raise five causes of action: first, that Met Life is wrongfully withholding access to petitioners home in violation of 9 NYCRR 2504.1(a) by conditioning access and by creating a requirement or condition of access that is not set forth in the lease or in any applicable rent regulation, law or rule; second, that by changing the locks, Met Life is in violation of Section 26-521(3) of the New York City Administrative Code; third, that Met Life is compelling the involuntary production of photographs to be utilized for commercial, business and/or trade purposes in violation of Section 51 of the New York State Civil Rights Law; fourth, that in conditioning the provision of a key upon the providing of a photograph constitutes deceptive business practices in violation of general Business Law Article 22-A; and fifth, that DHCR's refusal to accept jurisdiction violates Justice Solomon's decision.

Met Life's cross-motion for an order dismissing the new petition is granted to the following extent. The entire action as against respondent, Rose Associates, Inc. (Rose), is dismissed as Rose is not alleged to have exceeded the scope of its agency for a disclosed principal. Savoy Record Company, Inc. v. Cardinal Export Corp., 15 N.Y.2d 1 (1964).

With respect to Met Life, the first, second, third and fourth causes of action are dismissed inasmuch as they are barred by principles of res judicata. It is well-settled that the doctrine of res judicata prevents a party from raising arguments which have previously

been decided or which could have been raised in a prior action or proceeding. Henry Modell and Co., Inc. v. Ministers, Elders and deacons of the Reformed Protestant Dutch Church of the City of New York, 68 N.Y.2d 458, 461 (1986)(“a party is not free to remain silent in an action in which he is a defendant and then bring a second action seeking relief inconsistent with the judgement in the first action by asserting what is simply a new legal theory”); O’Brien v. City of Syracuse, 54 N.Y.2d 353, 357 (1981)(“once a claim is brought to final conclusion, all other claims arising out of the same transaction or series of transactions are barred, even if based upon different theories or if seeking a different remedy”). Here, petitioners could have raised the new legal theories raised in the first, second, third and fourth causes of action in their first complaint, which was dismissed. Inasmuch as the new theories are based on the same transaction or series of transaction as those raised in the first complaint, petitioners are precluded from asserting them now. Their remedy would have been to appeal Justice Solomon’s decision, which petitioners chose not to pursue.

The fifth cause of action is dismissed as moot, without prejudice, inasmuch as DHCR has accepted jurisdiction and will make a determination on or before August 15, 2005, addressing the three remaining issues in Justice Solomon’s decision, namely: whether the new security system represents a diminution of service, a violation of the rent laws or an unauthorized change in the rent stabilized lease. The parties consent that the

three remaining issues will be decided within the context of the service complaints currently pending regardless of the remedies, if any, imposed by DHCR.

During oral argument the Court expressed its chagrin with the unnecessary posturing that has led to DHCR not adjudicating on the merits the issues left open by Justice Solomon. The Court now wishes to express its gratitude to the parties and their lawyers for graciously accepting the Court's sequestration until the expedited schedule was developed to permit administrative adjudication of the issues. Based on extensive discussion with the parties, they are ORDERED to adhere to the following schedule in resolving the issues before DHCR:

1. Petitioner-Tenants will submit a supplemental submission to their previously filed service complaints to DHCR by April 29, 2005. The parties are to serve each other by fax or by hand with each submission set forth in this order.
2. Met Life will submit a response addressing Petitioner-Tenants submissions and the issues reserved for DHCR determination by May 20, 2005.
3. DHCR will have until May 30, 2005 to ask for additional information from either or both the parties.
4. Parties will have until June 13, 2005 to make simultaneous submissions pursuant to such requests.
5. No further submission will be considered unless specifically requested by DHCR.
6. DHCR will issue an order by August 15, 2005.

7. Such order will be issued by the District Rent Administrator and in accordance with law will be subject to administrative review by the Commissioner and thereafter reviewable by CPLR Article 78.

8. All time periods set forth above are time of the essence. DHCR has the right to seek an extension under CPLR §2004 to extend the time frames set forth herein should it become necessary based on the pending renovation of its offices at Gertz Plaza.

9. All papers served by both parties will also be placed on file with Met Life's on site management office and the DHCR District Rent Office for examination during normal business hours. Extra copies for this purpose will be provided by the parties to DHCR.

10. Nothing herein shall be construed to modify the holding in Doyle v Division of Housing and Community Renewal, 1999 WL 177441, 98 Civ. 2161 (SDNY March 30, 1999) (JGK), or to grant class action status to the Complaint, this Proceeding, or any future action or proceeding.

It is further ORDERED that Met Life grant tenant access to the subject buildings in the interim period until DHCR issues its order as follows:

1. Authorized tenants and occupants will be issued a cardkey without a photograph and without a name.
2. Met Life may assign a number to the cardkey to allow it to identify the apartment associated with the cardkey.
3. Met Life will issue the cardkeys to adult tenant/occupants upon the presentation by the tenant/occupant of the metal key associated with the apartment and presentation with a form of identification. Such form of identification need not contain a photograph to be considered acceptable. Children will be issued cardkeys upon requests by their parents/guardians. All occupants who can establish that their occupancy has been authorized by the tenant of record shall receive a cardkey

without prejudice to the Met Life's rights.

4. Met Life shall notify the tenants who have not obtained a cardkey with a photograph to date, as to the date when cardkeys without photographs can be obtained. No more than two buildings per day will be scheduled for issuance of the cardkeys. Met Life will make reasonable accommodation to disabled/"shut-in" tenants to assure their ability to obtain cardkeys on a timely basis.

5. The laundry room may be converted to a cardkey system upon notice to the tenants. The laundry room will operate on a dual system (metal key and cardkey) for at least two weeks from the date of this order, but may not be operated solely on a cardkey system until all tenants/occupants have been given the opportunity to obtain cardkeys.

6. The court will retain jurisdiction over this matter. Counsel for the respective parties shall contact each other regarding any issues which arise regarding the cardkeys and seek to resolve them without court intervention. In the event it nevertheless becomes necessary, the parties may contact the court for further clarification.

7. The parties shall continue to act in good faith in a reasonable manner.

This constitutes the Decision and Judgment of the Court.

**FILED**  
**APR 25 2005**  
NEW YORK  
COUNTY CLERK'S OFFICE

Dated: April 19, 2005

ENTER

*Rolando T. Acosta*  
**SO ORDERED**

Hon. Rolando T. Acosta, J.S.C.

**ROLANDO T. ACOSTA**  
J.S.C.