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4/12/07

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: Hon Joan A. Madden PART 11

Justice

George And Antonia Pavia

-v-

James + Marlene Couri

INDEX NO. 124625/02

MOTION DATE

MOTION SEQ. NO. 030

MOTION CAL. NO.

The following papers, numbered 1 to _____ were read on this motion to/for _____

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	
Answering Affidavits — Exhibits	
Replying Affidavits	

Cross-Motion: ☒ Yes ☐ No

Upon the foregoing papers, it is ordered that this motion is decided in accordance with the annexed memorandum Decision + Order.

FILED
APR 12 2007
COUNTY CLERK'S OFFICE
NEW YORK

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Dated: April 12, 2007

HON. JOAN A. MADDEN J.S.C.

Check one: ☐ FINAL DISPOSITION ☒ NON-FINAL DISPOSITION

Check if appropriate: ☐ DO NOT POST

J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 11

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GEORGE PAVIA and ANTONIA PAVIA,

Plaintiffs,

INDEX NO. 124625/02

-against-

JAMES COURI and MARLENE COURI,

Defendants.

JOAN A. MADDEN, J.:

This action involves a landlord tenant dispute in which plaintiffs George Pavia ("Pavia") and Antonia Pavia (together "the Pavias") seek to eject the defendants James Couri ("Couri"), who is pro se,[1] and Marlene Couri[2] (together "the Couris") from an apartment in a brownstone which the Pavias own on the grounds that Couri is a nuisance. In two separate consolidated actions, Couri asserts claims against the Pavias for, inter alia, harassment, interference with quiet enjoyment of his apartment, breach of the warranty of habitability, and for fraud.[3] Couri alleges that a glass enclosed area[4] which is part of his apartment, is illegal and entitles him to an

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[1]Although he is pro se, J. Couri has extensive litigation experience representing himself and has been involved in multiple law suits. His experience is evident from the manner in which he has conducted this litigation, including the numerous motions he has made in these actions.

[2]Marlene Couri, who is Couri's wife, is represented by Jon Paul Robbins, Esq.

[3]The fraud claim is for fraud in the inducement in connection with the lease of the Couri's apartment. Couri also asserts a malicious prosecution claim related to the criminal complaint that Pavia filed against him.

[4]At the most recent hearing, the area was referred to as an enclosed terrace. Earlier in this litigation, the area had been referred to as a greenhouse and/or a terrace and in certain documents

abatement of rent.

In motion sequence number 30, the Pavias move to preclude the introduction of evidence at trial of violations of the Building Code codified in the Administrative Code of the City of New York which were issued by the Department of Buildings ("DOB") regarding the enclosed area. Couri opposes the motion,[5] which is granted in part and denied in part. Couri moves in motion sequence number 34, inter alia, to stay the trial, to amend the complaint to add rent impairing violations, and to reopen the hearing on plaintiffs' motion in limine;[6] that motion is denied in its entirety for the reasons stated below.

A central issue presented in connection with the motion in limine and Couri's motion for a stay is whether the DOB violations are relevant and material to Couri's claim that he is entitled to an abatement of rent due to such violations. The Notices of Violation ("NOV's) at issue relate to violations of the following provisions of the Administrative Code, : § 27-147 work without a permit (NOV 34431375M, issued on February 27, 2004, Pavia asserts this was dismissed on July 22, 2004,[7] NOV 344116Y, issued August 12, 2004, Pavia asserts this was dismissed September 4, 2004); § 27-201 work not in conformance with approved plans (NOV 344159R, issued August 12, 2004, Pavia asserts this was dismissed September 14, 2004); § 27-331 lack of an independent self supporting wall so as to prevent exterior fire spread (NOV

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the area is referred to as a solarium.

[5]Couri also filed a cross-motion which is identical to an order to show cause he filed under motion sequence number 31, and was decided by this court's decision and order dated January 30, 2007.

[6]Motion sequence numbers 30 and 34 are consolidated for disposition.

[7]The dismissal of this and the other NOVs is asserted in letter dated March 27, 2006 from Pavia' architect to DOB Deputy Commissioner for technical Affairs, Fatma Amer and Couri does not challenge this information.)

34451615K, issued August 12, 2004, sustained September 8, 2005; NOV 34505601K issued October 10, 2005, sustained April 6, 2006); § 26-126.3a failure to comply with an order of the commissioner pursuant to § 26-126.2 (NOV 34505600Z, issued October 18, 2005, sustained April 6, 2006).

Evidence regarding the NOVs was heard by this court during a three-day hearing held in September 2005 to determine the amount of use and occupancy owed by Couri[8] and at a hearing held in February/March, 2007 in connection with the instant motion in limine to determine what evidence regarding the DOB violations would be allowed a trial.[9] Following the September 2005 hearing the court issued a decision and order dated March 8, 2006, and certain findings in this decision have been considered in reaching the determination herein and will be referenced in accordance with such consideration.

The evidence at the hearing in September 2005 indicated that the building, located at 18 East 73rd Street, is a brownstone of four stories, including the basement. The Couris' apartment, 3B, is on the fourth floor. According to the testimony, sometime prior to 1991, plaintiffs constructed an extension to the rear of the building which extension consisted of three stories and was built with an independent wall on the east side of the property abutting the adjoining building on 20 East 73rd Street. The enclosure in issue was built on top of this extension. The photographs of this area indicate that on top of the extension is a parapet wall made of brick,

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[8]The hearing was held to address Couri's failure to comply with this Court's February 9, 2005 order directing him to pay use and occupancy to the Clerk of the Court; at the time, Couri had not paid use and occupancy since November 2002. In its decision and order dated March 8, 2006, this court found that even if Couri's allegations regarding the use of the enclosed area were proven at trial, he would not be entitled to a full abatement of rent and, at best, Couri's allegations would, if proved at trial, entitle him to a partial abatement of rent, and ordered that pending trial, Couri pay use and occupancy in an amount which reflected the partial abatement.

[9]The hearing was held on February 5,6,21 and March 7, 2007.

appearing to be approximately three feet high. A metal frame with panes of glass forming the upper walls and roof of the enclosed area is attached to the three parapet walls, and on the east side, the enclosed area is attached to be attached to the wall of the adjoining building at 20 East 73rd Street.

To the extent relevant to the issues herein, in addition to the NOVs, evidence at the hearings, referred to two determinations by the DOB, the first dated October 2004, and the second dated April 2006. The October 5, 2004 determination by the then Assistant Deputy Commissioner Christopher Santulli ("Santulli") found that "the greenhouse [the enclosed area] was accepted as built prior to 1991, RCNY Chapter 23-01 dated 11/30/91, as existing non-complying structure." At Couri's request, the then Manhattan Borough Commissioner Laura Osorio, reviewed this determination, and on October 22, 2004 added that the "[g]reenhouse [the enclosed area] cannot be used as a habitable or occupiable room, use/occupancy must comply with Memorandum of April 8/1977 and RCNY Chapter 23-01 dated 11/30/91[10]."

The April 4, 2006 determination[11] by the current Deputy Commissioner Fatma Amer ("Amer") stated that it was "[okay] to accept temporary glass and metal enclosure of terrace as

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[10] Commissioner Osorio pointed to Administrative Code § 27-232 which defines a habitable room as "[a] residential room or space...in which the ordinary functions of the domestic life are carried on, and which includes bedrooms, living rooms, studies, recreation rooms, kitchens, dining rooms and other similar spaces, but does not include closets, halls, stairs, laundry rooms or bathrooms." She also pointed to the definition of an occupiable room as "[a] room or space other than a habitable room designed for room occupancy or use in which persons may remain for a period of time for rest, amusement, treatment, education, dining shopping or other similar purposes, or which occupants are engaged in work." Commissioner Osorio testified that since neither definition includes the cultivation of plants, the enclosed area is neither "habitable" nor "occupiable."

[11] The determination was issued in response to a March 27, 2006 request from plaintiffs, through their architect, to inter alia, accept the use of the area as an enclosed terrace.

shown on plans... provided such enclosed terrace shall be used for residential functions commonly found in open terraces with terrace/outdoor like furniture. No living or sleeping shall be allowed in such space.[12]"

At the 2007 hearing Santulli, now the Manhattan Borough Commissioner, and Amer variously testified about violations of Administrative Code § 27-201, work not in conformance with plans, Administrative Code § 27-147 relating to the failure to obtain permits for construction of the enclosed area and as to the violation of Administrative Code § 331, relating to the lack of a self-supporting wall to prevent exterior fire spread. Evidence at the hearings indicated that the NOVs citing Administrative Code §27-331 were based on a DOB inspector's observation that the metal and glass frame is attached to and supported by the wall of the adjoining building. The inspectors issued the NOVs on the grounds that the structure therefore lacked an independent self supporting wall required to prevent the exterior spread of fire. While Pavia agrees that the structure is attached to the wall of the adjoining building, he disputes that the structure is supported by the wall, and Amer's testimony supports this position, of paramount significance to this issue is Amer's testimony that the purpose of Administrative Code § 27-331 is to prevent the exterior spread of fire to the adjoining building.

It is well settled that not every violation of the Building Code is of significance or establishes a breach of the warranty of habitability. See Park West Management Corp. v.

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[12] On September 18, 2006, Manhattan Borough Commissioner Christopher Santulli ("Santulli") issued another order indicating that it was "[o]kay to accept 4/4/06 reconsideration by Deputy Commissioner Amer as satisfaction of DOB/ECB Violations 34505601K and 34505600Z written in error." As indicated above, these violations related to failure to prevent exterior fire spread and the failure to correct the condition. The September 18, 2006 order was issued by DOB at the request of the Pavias' architect after the ECB issued a determination dated April 6, 2006, which upheld violations 3450601K and 34505600Z, despite DOB's April 4, 2006 order.

Mitchell, 47 NY2d 316, 327 (1979). To establish a breach of the warranty of habitability, the law provides that:

> Substantial violation of a housing, building, or sanitation code provides a bright-line standard capable of uniform application and, accordingly, constitutes prima facie evidence that the premises are not in [a] habitable condition. However, a simple finding that conditions on the leased premises are in violation of an applicable housing code does not necessarily constitute [an] automatic breach of the warranty. In some instances, it may be that the code violation is de minimus or has no impact upon habitability. Thus, once a code violation has been shown, the parties must come forward with evidence concerning the extensiveness of the breach, the manner in which it impacted on the health, safety or welfare of the tenants and the measures taken by the landlord to alleviate the violation.

Id at 327-328 (citations omitted).

In Park West Management Corp. v. Mitchell, the court specifically rejected the contention that the warranty was intended to make the landlord "a guarantor of every amenity customarily rendered in the landlord tenant relationship." The court explained that the implied warranty protects only against conditions that materially affect the health and safety of tenants, or deficiencies that "in the eyes of a reasonable person...deprive the tenant of those essential functions which a residence is expected to provide." Id at 328.

Thus, the issue is whether the NOVs which were sustained are relevant and material to the warranty of habitability, or the use of the space by the Couris. This court concludes that the violations relating to the lack of work permit and work not in conformance with plans and failure to comply with prior orders do not impact on the health, safety or welfare of the Couris or their use of the space and thus are not relevant or material to the breach of the warranty of habitability. Likewise, as to the violations issued relating to the lack of a self-supporting wall to prevent exterior fire spread, this court also concludes that such violations are not material and relevant to

the Couris' use of the enclosed area or to their health safety or welfare as the purpose of this section of the Administrative Code is to protect the occupants of the adjoining building. See Park West Management Corp. v. Mitchell, 47 NY2d at 327.

In any event, Amer's testimony at the 2007 hearing reflects that the NOV's relating to the lack of a self supporting wall to prevent exterior fire spread are not relevant to the enclosed area which is a temporary structure. Specifically, in her April 6, 2006 determination Amer found that the structure is a "temporary metal and glass enclosure." According to Amer, in this context, "temporary" is not used in the temporal sense but rather refers to the type of construction. Amer testified that as the structure has light weight structural members and glass or slow-burning plastic, and can be dismantled quickly without damage to the main structure, it is considered "temporary" in nature. Amer further testified that because the structure is temporary, it need not have a fire retardant wall. This testimony has not been undermined or challenged.

Furthermore, Amer's testimony has not been undermined that based upon her review of the plans the metal and glass frame is supported on three sides by the parapet walls, and that there are vertical posts and existing steel beams and supports in the corners. Significantly, as to the frames attachment to the wall of the adjoining building, Amer distinguished between attached to and supported by the wall and stated that in her opinion the frame is attached to the wall as opposed to supported by the wall. Furthermore, Amer viewed the photographs in evidence and delineated on the photographs the parapet walls supporting the enclosure on the three sides as well as the existing beams and supports in the corners. Amer admitted her opinion was not based on an inspection and that if the plans upon which she relied were inaccurate her opinion as to whether the structure was supported by the wall might be different.

Couri relies on the NOVs issued by the DOB Inspectors which are based on the

inspector's observation as to the manner in which the metal and glass frame is attached to the wall of the adjoining building. As previously stated, based on the attachment, the inspector issued various NOVs alleging that the frame is supported by the wall of the adjoining building and therefore the structure lacked an independent self supporting wall required to prevent the exterior spread of fire. It must be noted that the DOB inspectors are not engineers and that Amer is a professional engineer. Couri points to the fact that NOVs were sustained by the Environmental Control Board (the "ECB") the adjudicative body to which NOVs are referred for determination. Based on the grounds upon which the ECB determinations rest, this court concludes that these determinations are insufficient to undermine Amer's testimony or to establish that an independent self supporting wall is required.

As explained more fully below, the first NOV 344516K was sustained prior to Amer's determination that the enclosure was acceptable as a temporary structure and was based on the acceptance of an inspector's testimony who is not an engineer; the second NOV 34505601K on the grounds that notwithstanding the acceptance of the structure, Pavia was unable to establish that the condition which existed on 8-12-04, the date of the prior NOV had been corrected on the date of this NOV 9-18-05; and the third NOV 34505600Z on the grounds that although there was a waiver, the acceptance as a temporary structure, the waiver did not indicate Pavia did not have to comply with the prior order.

Based on the foregoing, plaintiffs' motion in limine is granted to the extent of precluding evidence regarding the violations relating to the prevention of exterior fire spread, the violations relating to the lack of work permits, and the failure to comply with prior orders regarding these violations as these violations do not impact on the Couris' use of the enclosed area, or the health, safety or welfare of the Couris.

However, a different conclusion is reached regarding the October 2004 and the April 6, 2006 determinations that the enclosed area is accepted respectively as a greenhouse and an enclosed terrace. As noted above, Osorio determined and testified that the space could not be used as a habitable or occupiable room, while Amer testified and determined that no living or sleeping was allowed in the space. Amer's determination that the enclosed area is acceptable as an enclosed terrace, like Osario's determination of October 5, 2004, that the enclosed area was acceptable as a greenhouse limiting the use of the area to uses permitted, respectively, for enclosed terraces and greenhouses, is arguably relevant to the Couris' use of the space.

Pursuant to Real Property Law (RPL) § 235 (b), every residential lease contains an implied warranty of habitability which is limited by its terms to three covenants: (1) that the premises are "fit for human habitation", (2) that the premises are fit for the "uses reasonably intended by the parties," and (3) that the occupants will not be subjected to conditions that are "dangerous, hazardous or detrimental to their life, health or safety" Solow v Wellner, 86 NY2d 582, 586 (1995)(citations omitted)

Thus, a jury is entitled to consider Osario's and Amer's determinations as to the permitted uses of the enclosed area under the Building Code, and whether these determinations impacted on the Couris' use of the space so as to constitute some evidence of a breach of the warranty of habitability, or a breach of a lease provision or other representation.

As to Couri's motion for a stay[13] based on a March 30, 2007 NOV 34572037Z,[14] which

[13]The court notes that the notes of issue were filed in these consolidated actions in May and August 2004, and that the trial has been adjourned since April, 2005 primarily due to Couri's health complaints. Significantly, in August, 2005, after a jury was selected a mistrial was declared based on Couri's health complaints. Notwithstanding his health issues, Couri has actively litigated before this court through extensive and voluminous motions and appearances, and has actively pursued issues related to this action with the DOB and the ECB. The court also notes that while the majority of requests for adjournments have been made by Couri, the last two

is for "work without a permit" under Administrative Code §27-147[15] and which is scheduled for a hearing before the ECB on May 24, 2007, this is the same section of the Administrative Code cited in prior violations. The motion is denied for the identical reasons stated above, that such violation does not impact on the Couris' use of the space or their health, safety or welfare and the NOV is an insufficient basis to undermine Amer's testimony or to stay the trial .

Couri also argues, without citing any law, that the doctrine of collateral estoppel applies to the ECB determinations. Couri's argument is without merit based on the grounds on which the determinations were made and based on the undisputed facts. As to NOV 34451615K regarding an alleged violation of Administrative Code § 27-331, as noted above, after a hearing on April 5, 2005, the Administrative Law Judge ("ALJ") found that respondent (Pavia) "failed to rebut the credible testimony of the issuing Inspector with respect to the absence of an independent self-supporting exterior east wall...[and] that the Audit was accepted on August 11, 2005..does not constitute a written in error letter from the Department to warrant the dismissal of the violation. NOV sustained and the Board approved penalty is imposed." Couri's argument ignores that the subsequent to the ECB determination the area was accepted an enclosed terraced based on the April 6, 2006 determination.

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adjournments on March 27, 2007 and April 9, 2007, were at the request of the Pavias' new attorney, due to the unavailability of witnesses and his need for time to prepare.

[14]In Couri's affidavit in support of his motion for a stay, Couri states that he contacted the DOB and other governmental offices to complain, and that the most recent inspection on March 30, 2007 and the NOV were a result of these complaints. It appears that many of the earlier inspections which resulted in the NOV's were conducted in response to Couri's complaints, and that Couri is the driving force behind the majority of inspections and the NOV's. In addition, Couri moved for and was granted leave to intervene at the ECB.

[15]The NOV states that "work without a permit illegal work noted at 3rd FL Apt 3B Terrace at rear is covered by glass metal framed shed roofed greenhouse unsupported at east side, affixed improperly to 20 East 73rd Street." The stated remedy is to "obtain permits and or approvals or restore to prior legal condition." Although in the text relating to the basis of the NOV, it states "illegal work ... greenhouse unsupported at the east side, affixed improperly to 20 East 73rd Street," this NOV fails to allege any violation of § 27-331 regarding the prevention of fire spread, and in any event, standing alone does not provide a basis for a stay.

As to the NOV 34505601K issued on October 18, 2005 for an alleged violation of violation of Administrative Code § 27-331 (b) relating to exterior fire spread, a hearing was held on April 6, 2006. Notwithstanding the acceptance of the area as an enclosed terrace, the ALJ sustained the violation writing that "respondent [Pavia] was unable to establish that the conditions that existed on 8-12-04 (the date of the occurrence of the prior violation) had been corrected at any time prior to the date of occurrence herein (i.e. on 10-18-05).[16]"

As to NOV 34505600Z, which involved an alleged failure to comply with the commissioner's order to correct the violation and file a certificate of correction, the ALJ found that respondent (Pavia) relied on a waiver (the April 6, 2006 acceptance as an enclosed terrace) but that waiver did not say that Pavia did not have to comply with the commissioner's prior order.

Next, Couri's argument that Amer's April 4, 2006 determination should not be considered based on the doctrine of collateral estoppel is rejected as without merit. Specifically, Couri argues that NOVs sustained by the ECB which were either not appealed by the plaintiffs or not appealed beyond the ECB, are conclusive and binding, and, therefore, Amer did not have the authority to reconsider whether the area was acceptable as an enclosed terrace. Significantly, Couri fails to support this argument with law that principles of collateral estoppel apply to an ECB determination sustaining a DOB violation such that an applicant is prevented from having a DOB review under other applicable Code sections. Moreover, the violations in issue did not relate to whether the area was acceptable as an enclosed terrace. Additionally, Amer testified that procedures at DOB permit a Deputy Commissioner to review and reconsider applications and, significantly, the inspectors whose determinations are subject to such review are not engineers. The evidence here indicates Amer's review considered whether the area was acceptable as an enclosed terrace which, as noted above, had not been previously determined.

To hold otherwise and to apply the doctrine of collateral estoppel under these circumstances, would foreclose an applicant from having a structure considered under different sections of the Administrative Code or other DOB rules if a violation was sustained. Such

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[16]The decision does not reference the October 2004 decision by Osorio.

foreclosure is unjustified and unsupported by statute or precedent.

In addition, as this court has concluded that the NOV's relating to the failure to obtain work permits and to prevent exterior fire spread are not material and relevant, Couri's argument that Santulli's September 18, 2006 determination that two of the violations relating to such failure were "issued in error," is prohibited under the doctrine of collateral estoppel, need not be considered by this court.

Marlene Couri submits a separate Memorandum of Law arguing that the Pavia's nuisance claim is barred by collateral estoppel based on certain determinations by the DHCR, and a decision and judgment of Justice Rolando T. Acosta dated July 26, 2005. Notably, Marlene Couri, who as indicated above is represented by counsel, makes no separate motion for this relief which does not relate to the motion in limine Furthermore, the DHCR determinations which allegedly provide the basis for collateral estoppel are not specifically identified. Significantly, this argument, which has been made numerous times by Couri, has been repeatedly rejected by this court, most recently in its decision and order dated January 30, 2007 (motion seq. no. 31). In that decision the court found that the argument was based on a mischaracterization of the DHCR determinations and Judge Acosta's decision and judgment which are primarily related to violations in connection with the enclosed area and are irrelevant to the nuisance claim which is based on Couri's alleged campaign of harassment against the Pavias. Furthermore, insofar as a version of the argument that collateral estoppel bars Pavias' claims has been made numerous times by Couri and rejected by this court, any further requests for relief on this ground, will be deemed frivolous and result in the imposition of sanctions.

Next, Couri's argument that the hearing should be reopened and that he was denied an opportunity to present a case in connection with the motion in limine is without merit and belied by the record. The hearing was conducted over four days. Couri introduced numerous records from DOB and ECB, and this court took steps to ensure that the records were produced in admissible form. Furthermore, Couri questioned both Santulli and Amer. Couri's affidavit contains verbiage and accusations without foundation or specification of the evidence that he was purportedly precluded from offering.

As to Couri's motion to amend his complaint to add claims pertaining to rent impairing

violations, this application is also without merit. Multiple Dwelling Law § 302-a(2)(a) provides that:

> A 'rent impairing' violation within the meaning of this section shall designate a condition in a multiple dwelling which, in the opinion of the department, constitutes, or if not promptly corrected, will constitute a fire hazard or a serious threat to the life, health or safety of the occupants thereof.

Since the NOV's at issue do not allege a condition that poses "a serious threat to the life, health or safety" of the Couris, there is no basis for granting leave to amend the complaint to include the proposed claims. As to Couri's motion to add claims related to mold, that motion has been denied on numerous grounds, including untimeliness as note of issue was filed by Couri in May 2004, and will not be revisited in this motion.

Couri also argues that the enclosed area is heated and electrified and therefore not used in accordance with permissible uses for an enclosed terrace. Amer testified that while portable heating units are consistent with the designated use of an area as an enclosed terrace, a permanent heating unit is not. The photographs introduced by Couri show a heating unit installed in the wall which Amer indicated would be considered as a permanent unit. However, Couri installed this heating unit in the wall when he made renovations to this area. In accordance with this decision which permits consideration of the April 6, 2006 determination that the area is accepted as an enclosed terrace, the evidence regarding the unit installed by Couri and whether the unit impacts on Amer's acceptance of the enclosed area, may be considered during trial.

In reaching this conclusion and in considering the issues present at the hearing, the parties are advised that they are entitled to a trial, not to a predetermination of every issue that may arise based on the evidence. Furthermore, significant judicial resources have been expended not only in connection with the two hearings conducted (which encompassed seven days), but with the numerous and voluminous motions submitted, particularly by Couri which, in may instances, duplicate and seek reargument where reargument has been denied or which recast the same issues under a different guise.

Only a trial will resolve the various causes of action, and this case, which has been on the trial calendar since 2004, and adjourned on numerous occasions, must go forward to trial.

As to Couri's application to incorporate by reference a prior motion he made (motion seq. no. 033), there is no legal basis for such request and it is denied. Furthermore, as Couri made the motion by notice of motion, it violates this court's order that all motions are to be made by order to show cause, and Pavia denies being served with the papers.

Finally, as to the NOV relating to the filing of a false certification of correction by plaintiff Antonio Pavia (NOV 34505603Y) which was sustained by the ECB, this violation may be used for impeachment purposes. Thus, the motion in limine is denied as to this violation.

In view of the above, it is

ORDERED that plaintiffs' motion in limine is granted only to the extent of precluding the introduction of evidence at trial regarding violations relating to the failure to obtain work permits for construction of the enclosed area, violations relating to the failure to comply with prior orders, and violations relating to the lack of a self-supporting wall to prevent exterior fire spread; and it is further

ORDERED that defendant James Couri's motion to stay the trial, to reopen the hearing on the motion in limine, and to amend the complaint, is denied in its entirety.

DATED: April 12, 2007

J.S.C.

HON. JOAN A. MADDEN