

**609 W. Assoc., L.P. v Garcia**

2007 NY Slip Op 33618(U)

November 7, 2007

Supreme Court, New York County

Docket Number: 0109093/2007

Judge: Marilyn Shafer

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

PRESENT: HON. MARILYN SHAFER, JSC PART \_\_\_\_\_

Index Number : 109093/2007

609 WEST ASSOCIATES, L.P.

vs

GARCIA, MARIA

Sequence Number : 001

OTHER

INDEX NO. \_\_\_\_\_

MOTION DATE \_\_\_\_\_

MOTION SEQ. NO. \_\_\_\_\_

MOTION CAL. NO. \_\_\_\_\_

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

*Petition*  
Notice of ~~Motion~~ Order to Show Cause — Affidavits — Exhibits ...  
Answering Affidavits — Exhibits \_\_\_\_\_  
Replying Affidavits \_\_\_\_\_

PAPERS NUMBERED

*3*

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this motion

*is denied in accord with attached decision.*

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

**[FILED]**  
NOV. 09 2007  
COUNTY CLERK'S OFFICE  
NEW YORK

**MARILYN SHAFER**  
*[Signature]*  
J.S.C.

Dated: 11-7-07

Check one:  FINAL DISPOSITION

NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST

REFERENCE

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

PRESENT: HON. MARILYN SHAFER  
*Justice*

PART 8

609 WEST ASSOCIATES, L.P.,

Petitioner-Landlord,

-against-

MARIA GARCIA - Tenant

609 West 196<sup>th</sup> Street, Apt. Bsmt2 a/k/a "B2 Left"  
New York, NY 10040

Respondent-Occupant,

"JOHN DOE" and "JANE DOE"

Respondent-undertenant.

INDEX NO. 109093/07

MOTION SEQ. NO. 001

**FILED**  
NOV 09 2007  
COUNTY CLERK'S OFFICE  
NEW YORK

The following papers, numbered 1-3, were read on this motion:

	<u>PAPERS NUMBERED</u>
Notice of Petition Holdover	1
Amended Notice of Petition Holdover	2
Petition Holdover	3

Cross-Motion:  Yes  No

Upon the foregoing papers, It is ordered that the unopposed petition by Petitioner-Landlord, 609 West Associates, LP for a final judgment of possession is denied.

The petitioner-landlord seeks to initiate a summary proceeding, pursuant to Real Property Actions and Proceedings Law § 701, to regain possession of an apartment located in the basement of a multiple dwelling. The subject apartment is not a legal dwelling, as defined by MDL § 301, and the summary proceeding may not be maintained in the Housing Court Part of the Civil Court of the City of New York. MDL § 302. Respondent-occupants have submitted no opposition papers.

Although not enumerated in § 701, the Supreme Court has concurrent jurisdiction over summary proceedings as a court of general jurisdiction. (*Mahshie v Dooley*, 48 Misc 2d 1098 [Onandaga Cty 1965]). However, it has been recognized by the Courts that, as a matter of practice, summary proceedings should not be tried in the Supreme Court. (*Mahsie, supra. See also, Sherer & Fisher, Residential Landlord-Tenant Law in New York*, § 7:43 ["Supreme Court has discretion to decline jurisdiction over summary eviction proceedings and usually will transfer them to a court of more limited jurisdiction."])

Moreover, a summary proceeding for possession of real property is a statutory remedy and, as such, the petition must be strictly construed. If petitioner can not fit his situation into one of the categories in the statute, he must be relegated to his action in ejectment. (*Datta v Dasrath-Mark*, 16 Misc 3d 1118(A) [2005]). The subject apartment, an illegal dwelling, does not fit into one of the categories of the statute. Since a summary proceeding may not be maintained in the Civil Court for the subject apartment, it cannot be maintained in the Supreme Court.

Accordingly, it is hereby

ORDERED that the unopposed petition by Petitioner-Landlord, 609 West Associates, LP for a final judgment of possession is denied.

This constitutes the decision and order of this Court.

Dated: 11/7/07

~~MARILYN SHAFER~~  
~~J.S.C.~~  
J.S.C.

Check one:  FINAL DISPOSITION

NON-FINAL DISPOSITION

**[ FILED ]**  
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