

**Meadow v 205 E. 77th St. Tenants Corp.**

2010 NY Slip Op 31893(U)

July 21, 2010

Supreme Court, New York County

Docket Number: 400689/08

Judge: Edward H. Lehner

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

EDWARD H. LEHNER

PRESENT: \_\_\_\_\_

PART 94R

Index Number : 400689/2008

MEADOW, JON C.

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

vs

205 EAST 77TH STREET TENANTS

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

Sequence Number : 002

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

HEAR AND REPORT

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

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

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

PAPERS NUMBERED

Answering Affidavits — Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this motion is decided in accordance with memorandum decision of even date herewith.

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

**FILED**

JUL 21 2010

NEW YORK  
COUNTY CLERK'S OFFICE

JUL 21 2010

Dated: \_\_\_\_\_

*[Signature]*  
JHO JSC

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST

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

-----X  
JON C. MEADOW,

Index No. 400689/08

Plaintiff,

- against -

205 EAST 77<sup>TH</sup> STREET TENANTS CORP.,

Defendant.  
-----X

**EDWARD H. LEHNER, JHO,**

**FILED**  
JUL 21 2010  
NEW YORK  
COUNTY CLERK'S OFFICE

By Order dated July 13, 2009, Justice Emily Jane Goodman directed a hearing before a "Special Referee" on the sole issue "as to whether, under the facts and circumstances of the instant case, plaintiff's past conduct, which (defendant) maintains was objectionable constituted de minimis violations of his proprietary lease with the (defendant), such that it would be bad faith for the (defendant) to consider such conduct grounds for termination." This factual issue was referred to me and I held hearings on March 10, March 11 and April 22, 2010.

The papers before Justice Goodman show that in deciding to terminate plaintiff's proprietary lease, based on objectional conduct, the defendant's board of directors (the "Board") made its determination based on a finding of a pattern of conduct that existed for several years. Considering plaintiff's conduct over such period, it is clear from the testimony and the exhibits submitted that the Board's decision was made in good faith as the conduct relied upon could hardly be deemed of a de minimis nature.

Plaintiff admitted that on numerous occasions he failed to grant defendant timely access to his apartment to make needed repairs to correct leaks to the storage space below (tr. 3/10, pp. 72 - 73), and that at numerous times he failed to timely pay maintenance charges (tr. 3/10 p. 97) which

resulted in litigation. But clearly the most crucial objectionable conduct that by itself would justify termination was the condition in which plaintiff maintained his apartment, which created both a health and fire hazard.

Plaintiff stated that he closed his business in 2001 and transferred material from his office to his one bedroom apartment, and that the apartment became more cluttered as time went on (tr. 3/11, p. 19). The apartment became so cluttered that in February 2005 plaintiff paid employees of the building to clean it. One of the said employees, Uke Hulaj (who was no longer employed by defendant at the time of his testimony), stated that plaintiff paid him \$4,200 for his work which consisted of six or seven hours per day over a three day period. He testified that the living room was then covered by trash two to three feet deep over 90% of the area, with a similar condition in both the bedroom and kitchen and that the garbage removed from the apartment filled 250 to 300 forty-two gallon bags (tr. 4/22, pp. 9 - 16). I found nothing that would detract from the credibility of this witness.

Joseph Manfredi, the current president of defendant, testified that he inspected plaintiff's apartment in March 2006 and in June 2007, and that the condition in 2007 was somewhat improved over 2006, and that on neither occasion was the depth of the debris similar to that demonstrated in photos showing the condition in 2005. However, he stated that there still remained many piles of debris in the apartment, in which there was a "very bad odor" (tr. 4/22, p. 60).

As a consequence of the foregoing, the Board authorized the sending of a notice on August 15, 2007 advising plaintiff of objectionable conduct, which concluded that the Board "considers the foregoing incidents to constitute objectionable conduct on your part, and any further instances of similar objectionable conduct shall cause the Board of Directors to consider termination of your

proprietary lease, in accordance with Paragraph 31(f), on the grounds that your tenancy is undesirable.”

Thereafter, in February 2008 the Board decided, after a hearing at which plaintiff and his counsel appeared, to terminate his lease pursuant to Paragraph 31(f) thereof based on objectionable conduct over a period going back to 2004. Plaintiff then instituted this action for a declaratory judgment and moved for a “Yellowstone” injunction. Defendant cross-moved for a judgment of ejection. These motions are being held in abeyance pending the instant report.

As aforesaid, from the evidence of plaintiff’s conduct regarding access and the health and safety hazard to other tenants of the building created by the manner in which he maintained his apartment, it cannot be said that the Board did not act in good faith in terminating his lease. See e.g., *Cabrini Terrace Joint Venture v. O’Brien*, 71 AD3d 486 (1<sup>st</sup> Dept 2010); *12 Broadway Realty, LLC v. Levites*, 44 AD3d 372 (1<sup>st</sup> Dept 2007); *Zipper v. Haroldon*, 39 AD3d 325, (1st Dept 2007) lv. To ap. Dism., 9 NY3d 919 (2007); *Stratton Cooperative, Inc. v. Fener*, 211 AD2d 559 (1<sup>st</sup> Dept 1995).

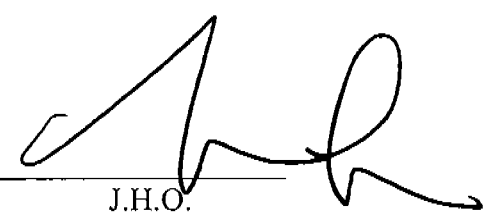
However, a legal issue, not presented on this reference, is raised by the fact that in July 2007 the parties stipulated to discontinue “with prejudice” a holdover proceeding pending in Civil Court to evict plaintiff based on substantially similar facts as shown herein. Defendant acknowledged that nothing occurred between the time of the said July 2007 stipulation and the sending of the August 2007 notice of objectionable conduct that caused the sending of the notice (tr. 4/22, pp. 81 - 82). Further, no evidence was presented as to the condition of the apartment or other problems between the time of the sending of the notice in August 2007 and the Board resolution to terminate in February 2008.

I find that the sending of the August 2007 notice was not in bad faith as the Board sought to

give plaintiff additional time to correct prior misconduct. However, if only conduct of plaintiff occurring after the July 2007 stipulation may be considered in determining the good faith of the Board in February 2008, the existence of good faith has not been shown as no evidence was presented as to conditions and conduct between July 2007 and February 2008 to justify the termination. It is only if conduct and conditions existing prior to July 2007 may properly have been considered by the Board in rendering its determination in February 2008 may it be said to have acted in good faith. Although the condition in June 2007 was not as bad as in 2005, the testimony of Manfredi which I find credible, showed that the extent of debris then in the apartment continued to create a fire and health hazard.

Since the legal issue as to the effect of the execution of the July 2007 stipulation with prejudice as to the conduct that may be considered was not one referred to me, such issue is left for determination by the Court.

Dated: July 21, 2010

  
\_\_\_\_\_  
J.H.O.

**FILED**  
JUL 21 2010  
NEW YORK  
COUNTY CLERK'S OFFICE