

242-248 Bainbridge Partners LLC v Almumit
2018 NY Slip Op 31799(U)
July 17, 2018
Civil Court of the City of New York, Kings County
Docket Number: 85522/17
Judge: Eleanora Ofshtein
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CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF KINGS: HOUSING PART C

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242-248 BAINBRIDGE PARTNERS LLC,

Petitioner,

-against-

MUJAHID ALMUMIT, 'JOHN DOE,' 'JANE DOE,'

Respondents.
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Hon. ELEANORA OFSHTEIN
Judge, Housing Court

L&T Index Nos. Joined Cases:
85522/17 & 62101/17

Motion Seq. No.: 001

62012/17

**AMENDED
DECISION/ORDER**

Recitation, as required by CPLR 2219(a), of the papers considered:

Papers	Numbered
Notice of Motion & Affidavits Annexed.....	<u>1</u>
Answering Affidavits/Opp with Memo of Law	<u>2, 3</u>
Replying Affidavits	<u>4</u>

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After argument and upon the foregoing cited papers, the decision/order is as follows:

The tangled history, detailed by Respondent's attorney, is not between the Petitioner and Respondent, but between the prior owner of the building and Respondent. Respondent's attorney alleges that Respondent was a rent-stabilized, Section 8 tenant, who was responsible for \$197 of the monthly rent of \$1,222.57, while he was living at a different apartment (300 Lincoln Road). It is further alleged that the owner of that building fraudulently induced Respondent, a mentally incapacitated Senior, into moving to another building (the subject premises), which was also owned or operated by the same company, with a promise of the same rent (\$1,222.57).

According to Respondent's attorney, Respondent transferred without his Section 8 voucher (thereby eventually causing the cancellation of his Section 8 program), and was offered, and signed, a "new lease" in the subject building. However, instead of the same legal rent of

\$1,222.57 (the rent in the prior apartment from which Respondent transferred), Respondent signed a lease that indicated a “preferential rent” of \$1,222.57.

Thereafter, the owner sold the building to the current Petitioner-landlord, who brought a non-payment action against Respondent in April 2017 (L&T Index No. 62012/17, joined herein), and subsequently commenced this Holdover proceeding, in September 2017, after serving a Termination Notice on Respondent for failure to renew the lease. The new owner, having chosen to charge the “legal” rent instead of the “preferential” rent, had offered the renewal lease at a rent of \$2,835.16 for one year and \$2,891.86 for two years. The two cases were joined in November 2017, since they share the same parties and raise the same issues.

Respondent’s attorney brings this motion seeking to depose a non-party witness, Ms. Marla Siegel, who is not within the control of this Petitioner-Owner. It appears that Ms. Siegel signed the leases, as “owner/agent,” for both buildings, 300 Lincoln Road and the subject building, and may be in the best position to have personal knowledge as to the transfer, as well as the inducements and/or any agreements as to the rent and the Section 8 program at the time of the transfer.

Although it is unclear what power the Housing Court would have if it is found that the transfer was fraudulently obtained by the prior owner, it is clear that if the inducement to transfer was the offer of “the same rent,” the prior owner’s lease for the subject unit, offered as a “preferential rent”, as well as the subsequent lease renewal offered by the new owner (the subject of this Holdover proceeding), would have been improper and against Public Policy. Whereas the current owner steps into the shoes of the prior owner, they are also subject to the agreements of the prior owner.

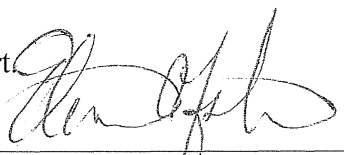
Under these circumstances, Respondent's attorney has shown ample need, pursuant to the Farkas elements, to warrant permission to subpoena Ms. Siegel, the non-party witness.

Additionally, the Court notes that this Holdover case, seeking to terminate the tenancy, was commenced in September 2017, nearly five months after the non-payment action, and it is unclear whether Petitioner still seeks to prosecute its non-payment case.

Therefore, the motion is granted and Respondent may serve its subpoena upon Ms. Siegel for testimony. The joined cases are adjourned to April 26, 2018 at 9:30 AM in Part C, Room 402, for all purposes.

This constitutes the decision and order of the court.

Dated: Kings, New York
July 17, 2018



HON. ELEANORA OFSHTEIN,
JHC