

Matter of Suydam Realty LLC v Vilenchik
2020 NY Slip Op 30903(U)
March 25, 2020
Supreme Court, Kings County
Docket Number: 503443/2020
Judge: Katherine A. Levine
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

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In the Matter of the Application of

SUYDAM REALTY LLC,

Petitioner,

ORDER

Index No. 503443/2020

For a Judgment Under Article 78 of the Civil Practice Law
and Rules and For Other Relief,

-against-

KAZIMIR VILENCHIK, AS BROOKLYN BOROUGH
COMMISSIONER OF NEW YORK CITY
DEPARTMENT OF BUILDINGS, MELANIE La ROCCA
AS COMMISSIONER OF NEW YORK CITY
DEPARTMENT OF BUILDINGS,

Respondents.
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WHEREAS, Petitioner SUYDAM REALTY LLC (“petitioner” or “landlord”) retained Walter C. Maffei (“Maffei”), registered architect, to inspect a building it owns at 159 Suydam Street, Brooklyn, New York, 11221 (“subject premises” or “subject building”) for certain structural issues, and Maffei, after inspecting the subject premises on January 12, 2020, determined that certain structural conditions existed that posed a danger to the viability to the building and might compromise the safety of tenants residing in apartments #2L and #3R; and

WHEREAS, Maffei contacted the New York City Department of Building (“DOB”) which, on January 31, 2020, inspected the building for structural issues and determined that shoring of the building should immediately take place, and

WHEREAS, the DOB onsite inspector Mr. Burton allegedly agreed with Mr Maffei’s opinion that the tenants safety would be compromised if they stayed in the subject premises

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during the shoring work, but that since he was not a professional engineer he was required to notify DOB's Forensic Engineering Unit about the compromised structural conditions, and that upon notification the Forensic Engineering Unit immediately dispatched DOB Principal Engineer, P.E. Ian King , who recommended the issuance of an Immediate Emergency Declaration ("IED") but determined that the tenants could remain in place and that a vacate order was unnecessary based on the condition of the building, and

WHEREAS, on February 3, 2020, the DOB issued an IED for the subject building which required immediate shoring to be performed in select locations of the subject building in order to remedy an imminently hazardous condition and that the shoring required by the IED could be performed without displacing the tenants residing in apartments 2L and 3R; and

WHEREAS, by Order to Show Cause and Verified Petition, dated February 11, 2020, Petitioner commenced the instant proceeding seeking, inter alia, a Temporary Restraining Order ("TRO") enjoining enforcement of the IED and enjoining the DOB, or any agency of the City at DOB's direction, from performing the work required by the IED pursuant to DOB's authority under New York City Administrative Code § 28-215.1; and a declaration that the order was arbitrary and capricious, and

WHEREAS, by Order dated February 14, 2020, over counsel for DOB's objection, the Court enjoined enforcement of the IED pending a framed issue hearing as to whether the work required by the IED could safely be performed with the Tenants in occupancy; and

WHEREAS, after reviewing the March 20, 2020 affidavit of DOB Principal Engineer Ian King, P.E., the March 21, 2020 affidavit of Walter Maffei, architect, and the January 31, 2020 report of DOB Inspector Richard Burton, and after posing a series of questions to, and receiving responses from counsel for the respective parties, and after due deliberation and

[*3] consideration of the current circumstances create by the COVID - 19, including the impossibility of holding the framed hearing and the safety of the tenants should they be forced into shelters, and DOB having still failed to answer the court's continued question as to why it had issued an IED mandating that shoring work start immediately due to the hazardous nature of the building yet not sought fit to relocate the tenants so as to err on the side of safety,

NOW THEREFORE IT IS HEREBY DETERMINED THAT the building is in imminent danger of collapse or will be in imminent danger of collapse if the shoring work required by the IED is not started immediately, and that in light of the impact of COVID-19, caution, and the incongruous position taken by of DOB, that the tenants physical safety cannot be ensured during the pendency of the shoring work, thus mandating that the tenants be vacated during this time period, and it is

ORDERED, that the Tenants of apartments 2L and 3R shall vacate their respective apartments at the subject building no later than Friday, March 27, 2020, to temporary housing located at 456 Grant Avenue #2L, Brooklyn, NY or 684 Linwood Street, #2, Brooklyn, NY ("temporary housing") secured by petitioner landlord at petitioner's expense for the duration of time it takes to complete the shoring work, and it is further

ORDERED, that petitioner shall arrange for and bear any costs associated with moving the tenants of the subject building to and from the temporary housing secured by petitioner, and that these tenants shall not be required to pay any rent during the period of their relocation, and it is further

ORDERED, that should the tenants not voluntarily vacate to the temporary housing provided by the petitioner that the New York Police Department and/or the New York City

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Sheriff shall forthwith assist the Petitioner in enforcement of this Order to remove all persons in possession of apartments #2L and #3R in the subject building, and it is further

ORDERED, that following the relocation of the tenants, petitioner shall immediately commence the shoring work required by the IED and that such work shall be completed by petitioner no later than April 27, 2020, and that petitioner shall not perform any shoring work in the subject building beyond that required by the IED, and that upon completion of said work, petitioner shall notify DOB, through its counsel, Darren Trotter at dtrotter@law.nyc.gov, that the shoring work has been completed, and that DOB will thereupon determine whether petitioner has fully complied with the IED, and it is further

ORDERED, that if petitioner cannot complete the shoring work required by the IED by April 27, 2020, due to issues or delays caused or exacerbated by COVID-19, petitioner shall immediately notify DOB by its counsel Darren Trotter at dtrotter@law.nyc.gov specifying the issue and the anticipated delay; and it is further

ORDERED, that if DOB determines that as of April 27, 2020 petitioner has failed to satisfactorily complete the shoring work, subject to delays or issues caused or exacerbated by COVID-19 issues, DOB By its counsel Darren Trotter shall immediately contact petitioner by its counsel Meryl L. Wenig, mwenig@ltattorneys.com and petitioner shall forthwith address any claimed deficiencies within five (5) days and DOB shall thereafter re-inspect; and it is further

ORDERED, that following Petitioner's notification to DOB's counsel that the shoring work has been completed, DOB will inspect and determine whether the subject building is safe for the tenants to return to their respective apartments, and that if DOB determines that the shoring work required by the IED has been satisfactorily performed, and that the subject building

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is safe for the tenants to re-occupy it shall advise Petitioner of same via email to its counsel, Meryl L. Wenig, mwenig@ltattorneys.com and it is further

ORDERED, that upon DOB's notification that the subject building is safe for re-occupancy, petitioner shall advise the Tenants of apartments 2L and 3R that they are being restored to occupancy of their respective apartments at petitioner's expenses and that petitioner shall within five (5) days move any possessions from the temporary housing back to the subject building; and it is further


ORDERED, that if petitioner fails to satisfactorily perform the shoring work required by the IED by April 27, 2020, DOB may perform or arrange for the performance of the emergency work required by the IED pursuant to its authority under New York City Administrative Code ("Admin. Code") § 28-215.1 and neither petitioner nor its agents may interfere with the performance of such work. The owner is responsible for repaying all expenses incurred by any agency of the City in connection with the performance of emergency work at the subject property in accordance with Admin. Code §§ 28-215.1.1, 27-2144. Failure to timely repay all amounts billed by any agency of the City in connection with the performance of emergency work will result in a lien against the property in accordance with Admin. Code § 27-2144. During this time period, tenants shall remain at the temporary housing at the petitioner's expense until DOB certifies that petitioner has satisfactorily completed the work required by the IED, at which point the tenants shall be immediately restored to occupancy, and it is further

ORDERED, that in the event that DOB determines that the subject building is not safe to re-occupy, although petitioner has complied with the IED, then petitioner's obligation to provide temporary housing ceases, the tenants shall vacate the temporary housing, and the DOB

[*6] shall provide emergency relocation services to them in accordance with New York City policy, and it is further

ORDERED, that either party may submit letter application to the Court via NYSCEF and e mail for further orders as necessary to effectuate or enforce the terms of this Order including extension of time to comply. If the court finds no good cause to extend the time to comply, DOB may perform or arrange for the performance of the emergency work required by the IED pursuant to its authority under New York City Administrative Code ("Admin. Code") § 28-215.1 and neither Petitioner nor its agents may interfere with the performance of such work. In such an event, in accord with statutory provisions, the owner is responsible for repaying all expenses incurred by any agency of the City in connection with the performance of emergency work at the subject property in accordance with Admin. Code §§ 28-215.1.1, 27-2144 and that failure to timely repay all amounts billed by any agency of the City in connection with the performance of emergency work may result in a lien against the property in accordance with Admin. Code § 27-2144.

SO ORDERED:


A handwritten signature in black ink, appearing to read 'Katherine A. Levine', is written over a horizontal line.

Hon. Katherine A. Levine, J.S.C.

Dated: March 25, 2020

Katherine A. Levine
EMTOR J.S.C.