

**JM Green Realty LLC v Department of Bldgs. of the
City of N.Y.**

2020 NY Slip Op 32847(U)

August 27, 2020

Supreme Court, New York County

Docket Number: 157885/2016

Judge: Lucy Billings

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 46

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JM GREEN REALTY LLC and LARMIC
REALTY LLC,

Index No. 157885/2016

Plaintiffs

- against -

DECISION AND ORDER

DEPARTMENT OF BUILDINGS OF THE CITY
OF NEW YORK, ELVIN NEGRON, MARBELIS
GUTIEREZ, GERMOSEN NAZARIA, RUBI
VIVAR-SEVILLA, and JOHN/JANE DOE 1-10,

Defendants

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LUCY BILLINGS, J.S.C.:

I. BACKGROUND

Defendant Nazaria Germosen is a rent stabilized tenant in a residential building owned by plaintiffs. After plaintiffs received multiple notices of violations from former defendant Department of Buildings of the City of New York on or about June 29, 2016, plaintiffs commenced this action to eject defendant and other similarly situated rent stabilized tenants, claiming that the only permissible way to correct the violations is by removing the tenants and demolishing their apartments. Defendant Germosen moves for summary judgment dismissing the complaint against her, based on plaintiffs' failure to serve her with a notice of termination before commencing this action. C.P.L.R. § 3212(b). For the reasons explained below, the court grants her motion.

II. SUMMARY JUDGMENT STANDARDS

To obtain summary judgment, Germosen must make a prima facie showing of entitlement to judgment as a matter of law through admissible evidence, eliminating all material issues of fact. C.P.L.R. § 3212(b); Friends of Thayer Lake LLC v. Brown, 27 N.Y.3d 1039, 1043 (2016); Nomura Asset Capital Corp. v. Cadwalader, Wickersham & Taft LLP, 26 N.Y.3d 40, 49 (2015); Voss v. Netherlands Ins. Co., 22 N.Y.3d 728, 734 (2014); Vega v. Restani Constr. Corp., 18 N.Y.3d 499, 503 (2012). If she satisfies this standard, the burden shifts to plaintiffs to rebut her prima facie showing, by producing evidence, in admissible form, sufficient to require a trial of material factual issues. De Lourdes Torres v. Jones, 26 N.Y.3d 742, 763 (2016); Nomura Asset Capital Corp. v. Cadwalader Wickersham & Taft LLP, 26 N.Y.3d at 49; Morales v. D & A Food Serv., 10 N.Y.3d 911, 913 (2008); Hyman v. Queens County Bancorp, Inc., 3 N.Y.3d 743, 744 (2004). In evaluating the evidence for purposes of Germosen's motion, the court construes the evidence in the light most favorable to plaintiffs. Stonehill Capital Mgt. LLC v. Bank of the W., 28 N.Y.3d 439, 448 (2016); De Lourdes Torres v. Jones, 26 N.Y.3d at 763; William J. Jenack Estate Appraisers & Auctioneers, Inc. v. Rabizadeh, 22 N.Y.3d 470, 475 (2013); Vega v. Restani Constr. Corp., 18 N.Y.3d at 503.

III. GERMOSEN'S MOTION

Before plaintiffs commenced this ejectment action, the Rent Stabilization Code required them to provide Germosen, a rent stabilized tenant, written notice of the termination of her tenancy. The notice was to include the grounds plaintiffs rely on for her removal or eviction, the facts supporting those grounds, and the date when she is required to surrender possession. 9 N.Y.C.R.R. § 2524.2(a) and (b); Domen Holding Co. v. Aranovich, 1 N.Y.3d 117, 123 (2003); 406 W. 48th LLC v. Vaituzis, 74 A.D.3d 549, 549-50 (1st Dep't 2010); Hirsch v. Stewart, 63 A.D.3d 74, 77 (1st Dep't 2009); Quiles v. Term Equities, 22 A.D.3d 417, 420 (1st Dep't 2005). See Pinehurst Constr. Corp. v. Schlesinger, 38 A.D.3d 474, 475 (1st Dep't 2007). The parties agree that Germosen is a rent stabilized tenant and that plaintiffs failed to serve her with a notice of termination.

Instead of presenting admissible evidence to rebut Germosen's prima facie showing, plaintiffs simply insist that they were not required to serve Germosen with a notice of termination. As set forth above, however, plaintiff owners' service of a notice of termination on defendant rent stabilized tenant is a condition precedent to commencing this action to remove her from her residence. Domen Holding Co. v. Aranovich, 1 N.Y.3d at 123; 406 W. 48th LLC v. Vaituzis, 74 A.D.3d at 549-50;

Hirsch v. Stewart, 63 A.D.3d at 77; Quiles v. Term Equities, 22 A.D.3d at 420. Because defendant has made a prima facie showing that plaintiffs failed to serve her with the required notice before commencing this action, which plaintiffs do not rebut, defendant has eliminated all material factual issues. 406 W. 48th LLC v. Vaituzis, 74 A.D.3d at 549-50; Quiles v. Term Equities, 22 A.D.3d at 420. Therefore the court grants defendant Germosen's motion for summary judgment dismissing the complaint against this defendant. C.P.L.R. § 3212(b); 9 N.Y.C.R.R. § 2524.2(a) and (b).

DATED: August 27, 2020



LUCY BILLINGS, J.S.C.

LUCY BILLINGS
J.S.C