SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ALEXANDER M. TISCH **PART** IAS MOTION 18EFM

Justice

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79 WEST 12TH STREET CORP.,

Plaintiff,

- v -

ARLENE KORNBLUM, ERICA STEIN

Defendant.

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INDEX NO. 154129/2017

MOTION DATE 12/18/2019

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141

were read on this motion to/for JUDGMENT - SUMMARY.

Upon the foregoing documents, defendants move for summary judgment pursuant to CPLR 3212. For the reasons set forth below, the motion is denied.

BACKGROUND

Plaintiff is the Board of Directors (Board) for 79 West 12th Street Corporation, a cooperative building in the County, City and State of New York. Defendants Arlene Kornblum Stein (Kornblum) and her daughter Erica Stein (Stein) own and occupy apartment 3E in the building. Stein suffered a stroke at the age of 12 and is now legally disabled suffering from major depressive disorder and generalized anxiety disorder. Because Stein's sister lives in the building, Kornblum purchased apartment 3E in 1999 for her daughter Stein to live in in an effort to keep Stein close to her sister. Per Stein's psychiatrist's recommendations, Stein acquired dogs for the purpose of reducing her medical ailments. Presently, she has eight dogs that reside in the

apartment with her and two cats. Stein believes her dogs are therapeutic and are permitted in her apartment as a reasonable accommodation under city, state and federal disability laws.

Plaintiff, along with its staff and other residents in the building, have dealt with multiple complaints over the years regarding Stein's dogs. When Stein moved into the apartment building in 1999, her mother was contractually obligated to abide by the 1999 Proprietary Lease and House Rules. Kornblum and Stein both admit to never requesting permission to harbor pets (NYSCEF Doc. No. 49, Stip; NYSCEF Doc. No. 59, Stein Aff.).

Plaintiff filed suit on June 29, 2017, seeking injunctive relief in removing all but three dogs from the Stein's apartment. The complaint asserts three claims for breach of the proprietary lease for harboring a pet, causing a disturbance, and non-compliance with flooring requirements,[1] as well as attorneys' fees for this action. Stein filed an amended answer and counterclaims seeking attorneys' fees, reasonable accommodation for a person with disabilities, and a declaratory judgment dismissing plaintiff's remaining claims. By stipulation, Stein withdrew relief for an award of attorneys' fees with prejudice. Finally, Kornblum filed her answer and counterclaims on August 28, 2017, seeking an award for attorneys' fees.

DISCUSSION

Pursuant to CPLR 3212, summary judgment shall be granted if the cause of action or defense shall be established sufficiently to warrant judgment as a matter of law. "The proponent of a motion for summary judgment must demonstrate there are no material issues of fact in dispute, and it is entitled to judgment as a matter of law" (*Dallas-Stephenson v Waisman*, 39 AD3d 303, 306 [1st Dept 2007], *citing Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]). On a movant's motion for summary judgment, "facts must be viewed in the light

[1] Pursuant to the Lease agreement, tenants are required to carpet 80% of their apartment, except for kitchens, foyers, and bathrooms. Plaintiff withdrew this cause of action with prejudice as Stein was deemed in compliance.

most favorable to the non-moving party" (*William J. Jenack Estate Appraisers & Auctioneers, Inc. v Rabizadeh*, 22 NY3d 470, 475 [2013]).

Defendants argue they are entitled to judgment as a matter of law on four grounds. First, plaintiff is barred from seeking injunctive relief in removing four of the eight dogs because plaintiff has waived their right to bring suit under NYC Administrative Code § 27-2009.1 (Pet Waiver Law).[2] Next, plaintiff's second cause of action enjoining defendants under breach of covenant, should instead be decided under a private nuisance theory, for which the elements have not been met. Third, since Stein is disabled, she is entitled to the reasonable accommodation of keeping all eight of her dogs under federal, state, and city law. Finally, defendants claim that the current covenants do not require residents to seek Board permission to harbor a pet.

In opposition, plaintiff argues the Pet Waiver Law is inapplicable, and that even if it was applicable, plaintiff has not waived their rights under the statute. Additionally, plaintiff maintains Stein violated the cooperative's covenants, specifically: Stein did not seek permission in harboring her pets; her pets create an odor and noise annoyance to other residents; and her dogs and apartment lack proper hygiene. Moreover, harboring eight dogs is not a reasonable accommodation under city, state or federal disability laws. Therefore, plaintiff argues defendants have failed to meet their burden for a motion for summary judgment.

I. Pet Waiver Law

The Pet Waiver Law states:

> Where a tenant in a multiple dwelling openly and notoriously for a period of three months or more following taking possession of a unit, harbors or has harbored a household pet or pets, [...] and the owner or his or her agent has knowledge of this fact, and such owner fails within this three month period to commence a summary proceeding or action to enforce a lease provision prohibiting the keeping of such household pets, such lease provision shall be

[2] Plaintiff is seeking removal of four of the eight dogs, as the fifth dog was purchased after commencement of this action.

deemed waived.

(NYC Admin Code § 27-2009.1[b]). The City Council enacted this legislation "to protect pet owners from retaliatory eviction" "for reasons unrelated to their pet's nuisance" "and to safeguard the health, safety and welfare of tenants who harbor pets" (NYC Admin Code § 27-2009.1[a]). This law was designed to require landlords with no-pet provisions in their tenancy contracts to enforce the provision promptly (i.e., within 90 days) or be deemed to have waived the breach of lease (*see Seward Park Housing Corp. v Cohen,* 287 AD2d 157, 161 [1st Dept 2001]).

Under the Pet Waiver Law, a tenant has the burden of demonstrating that: 1) they openly and notoriously harbored a household pet, 2) the landlord/owner is with knowledge of this fact, and 3) the landlord/owner failed to bring suit within 90 days upon finding out about the tenant harboring a pet (*see Silverleaf LP v Matthew*, 58 Misc 3d 1212[A] [Civ. Ct. Bx. Co. 2018]; *see also* NYC Admin Code § 27-2009.1). A waiver with respect to one pet does not constitute a waiver with respect to another (*1725 York Venture v Block*, 64 AD3d 495 [1st Dept 2009]). If harboring a "pet causes damage to the [...] premise, creates a nuisance or interferes substantially with the health, safety or welfare of other tenants or occupants", the waiver provision shall not be deemed waived (NYC Admin Code § 27-2009.1[d]).

The Pet Waiver Law's element of knowledge can either be actual or imputed (*see Seward* at 164). A landlord has been deemed to have knowledge when a tenant regularly walks a dog in front of their building's doorman (*see 1725 York Venture*, 64 AD3d 495). Knowledge can also be imputed when a pet is not displayed in public, but the landlord's staff views pet paraphernalia within the tenant's apartment (*see e.g. 184 West 10th Street Corp. v Marvits*, 59 AD3d 287 [1st

Dept 2009]; *see also Parkchester Pres. Co., L.P. v Randolph,* 2014 NYLJ Lexis 7506, [Civ. Ct. Bronx Co., December 11, 2014, L&T 75992/2013].

Defendants maintain that the Pet Waiver Law applies to the current action and Stein has satisfied the requirements under the statute.[3] Specifically, plaintiff and its employees/agents have had actual or imputed knowledge of all seven dogs for over 90 days prior to the commencement of this suit as Stein openly and notoriously harbored her dogs. Therefore, plaintiff has waived its right to bring suit under the Pet Waiver Law. In opposition to defendants' motion for summary judgment, plaintiff maintains knowledge should not be imputed because Stein did not harbor her dogs openly and notoriously and Stein has not demonstrated as a matter of law the building employees knew she had eight dogs. Superintendent Michael De La Cruz (Cruz), President of the cooperative corporation and a member of the Board of Directors (Board) Eric Wallar (Wallar), Board member Delia Guazzo (Guazzo), and the building's managing agent Janusz Sikora (Sikora), all maintain that prior to the filing of this action, they were under the belief Stein only possessed two or three dogs at most. Finally, plaintiff argues the Pet Waiver Law does not apply to Stein because Stein is an "occupant" and not a "'tenant' of a multiple dwelling" unit (*see* § 27-2009.1 [b]), thereby, negating a landlord-tenant relationship existing between plaintiff and Stein.

The Court finds the Pet Waiver Law applies to Stein,[4] but defendants have not satisfied the elements of knowledge and openly and notoriously harboring a pet. Furthermore, defendants have not established a prima facie entitlement to the Pet Waiver Law defense as a matter of law as to each and every individual pet.

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[3] Defendants concede only seven dogs are eligible for protection under the Pet Waiver Law as the eighth dog was acquired after the action was commenced.

[4] Plaintiff relies on *Bell Apt. Owners Corp. v. Melamed,* (1995 NYLJ Lexis 9753, [Civ. Ct. Queens Co., Nov 1, 1995]) which held the Pet Waiver Law does not apply to family members living in a cooperative owned by a lessee who does not reside in the apartment. However, plaintiff's reliance is misguided because in *Bell* the family member was occupying an apartment without the permission of the cooperative's Board. Here, Stein was interviewed and granted permission to stay in the apartment by the Board.

Defendants believe plaintiff has imputed knowledge as Stein openly and notoriously harbored her dogs by using pet strollers/dog carry bags in front of plaintiff's staff. In opposition, plaintiff avers building staff are unable to see the contents when Stein takes her dogs out using the stroller/bags, and staff were unaware Stein possessed more than three dogs. The Court finds Stein's use of the pet stroller(s) and bags imputes knowledge that she owns dogs, but it does not impute knowledge Stein was harboring additional dogs because the contents are not visible based on the semi-opaque mesh obstructing plaintiff's staff's view, and the bag/stroller is limited in how many dogs they can carry. The record further shows Sikora, Cruz, Guazzo and Wallar were all of similar belief that Stein was only harboring three dogs (NYSCEF Doc. No. 99, Sikora depo, p. 48-49; NYSCEF Doc. No. 93, Wallar Aff, ¶ 23; NYSCEF Doc. No. 79, Cruz depo, p. 16:6-8). Although Stein regularly walked three dogs at a time in front of building staff, Stein would also walk/sit other people's dogs and other people would walk her dogs (e.g. her boyfriend).

Stein testified that building staff posed with Stein's dogs but does not provide specifics.[5] In addition, Cruz testified to having performed maintenance 20-30 times in Stein's apartment but has never seen more than two or three dogs nor any pet paraphernalia. (*see e.g. Gidina Partners LLC v Marco*, 11 Misc 3d 21, 22 [App Term 2005] [Scant evidence on the open and notorious element will negate a finding of knowledge]). The Court agrees with plaintiff that the instances defendants rely on do not show how many dogs the building staff were aware of and does not rise to the level of actual or imputed knowledge. Therefore, based on the aforementioned

[5] Plaintiff finds this self-serving. The Court does not find Stein's statements self-serving as Stein's deposition testimony is in conformity with her affidavit. (*Lewis v Rutkovsky*, 153 AD3d 450, 455-56 [1st Dept 2017], *citing Capuano v. Tishman Const. Corp.*, 98 A.D.3d 848, 851, [1st Dept 2012] ["an affidavit that does not contradict one's prior deposition testimony and 'provides additional details illuminating' the prior testimony is not considered self-serving"]).

evidence, defendants have not established a prima facie entitlement to judgment as a matter of law with the Pet Waiver Law defense as to each of the dogs at issue.[6]

II. Nuisance / Breach of Covenant

Defendants treat plaintiff's second cause of action as one for a private nuisance and argue the evidence does not show the dogs' actions/behavior rises to the level of an actionable private nuisance. In opposition, plaintiff argues their second cause of action is one founded in contract law. Specifically, multiple provisions within the two covenants are being violated due to Stein's dogs creating: unreasonable noise; unreasonable annoyance to other lessees; and a lack of hygiene being maintained. The relevant 2010 "Amended and Restated House Rules and Policies and Procedures" state as follows:

> 14. Supervision of Pets: Pets must be maintained in a clean, sanitary condition. When a pet is outside its owner's apartment, it must be on a leash, in a container or held by a person who is capable of restraining it. [...][7]
>
> 16. Disturbances: Residents may not make or allow any disturbing noise in the building or do or permit anything to be done which will interfere with the rights, comfort and convenience of other tenants.[8]

(NYSCEF Doc. No. 65). The 1999 and 2005 House Rules state:

> (5) No Lessee shall make or permit any disturbing noises or odors in the Building or do or permit anything to be done therein which will interfere with the rights, comfort or convenience of other Lessees. [...]

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[6] As plaintiff similarly mentioned (NYSCEF Doc. No. 129 at 9, n 3), the Court notes, without holding, that the Pet Waiver Law may very well be inapplicable entirely to plaintiff's complaint as plaintiff is not seeking to evict defendant, which is the law's stated purpose (*see* NYC Admin Code § 27-2009.1 [a]). Further, even if it were applicable, as plaintiff notes (NYSCEF Doc. No. 129 at 13), the waiver provision would "not apply where the harboring of a household pet causes damage to the subject premise, creates a nuisance or interferes substantially with the health, safety or welfare of other tenants or occupants of the same or adjacent building or structure" (NYC Admin Code § 27-2009.1 [d]). Whether the harboring of eight dogs constitutes a nuisance and/or endangers the health, safety and welfare of other residents, in violation of the proprietary lease and house rules, remains at issue, as discussed *infra*.

[7] This provision is the same as provision "14" of the 2005 "Amended and Restated House Rules and Policies and Procedures" (NYSCEF Doc. No. 97).

[8] This provision is the same as provision "16" of the 2005 "Amended and Restated House Rules and Policies and Procedures" (NYSCEF Doc. No. 97).

> (16) No bird or animal shall be kept or harbored in the Building unless the same in each instance be expressly permitted in writing by the Lessor; such permission shall be revocable by the Lessor. [...]"

(NYSCEF Doc. No. 64 & 66).

Defendants rely on the case of *Brodcom W. Dev. Co. v Best* for their claim that Stein's dogs' conduct does not rise to the level to warrant a nuisance unlike the holding in *Broadcom* (*see* 23 Misc 3d 1140[A] [Civ. Ct. Ny. Co. 2009] ["When a tenant uses her apartment in a way that interferes with the use and enjoyment of other tenants of their apartments that behavior can constitute a nuisance."]). However, defendants' reliance is misguided because in *Brodcom* the petitioner plead nuisance law in their complaint, unlike the present case where plaintiff plead breach of contract (*see Sharp v Norwood,* 223 AD2d 6, 11 [1st Dept 1996]["the type and degree of evidence required to establish a nuisance differs from the proof needed to show a breach of a leasehold obligation"; a landlord "chose to proceed by way of a nuisance [claim] and is bound by the degree of proof needed to establish such claim."]). Moreover, defendants have not provided authority that directs this Court to consider a different theory than the one plead in plaintiff's complaint.

The building's logbook evidences multiple noise complaints that have been reported to the building from February 2013 to August 2017, regarding Stein's dogs (NYSCEF Doc. No. 67), specifically scratching and barking noises, odor and hygiene complaints made by Steven Jacobson, Jane Prokop (a prior neighbor of Stein) and Laura Khoudari (Khoudari) (neighbor to Stein), and documented emails between Cruz and Sikora (NYSCEF Doc. No. 74, Cruz email to Sikora).[9] Moreover, Khoudari's daughter witnessed Stein's dogs unattended and unleased on the third floor's hallway (NYSCEF Doc. No. 83, Khoudari depo, p. 20:19).

[9] Cruz testified that in March 2017 when he came into Stein's apartment, the floors were sticky and the apartment smelled (NYSCEF Doc. No. 79, Cruz depo, p. 187).

The evidence shows alleged breaches from the 2010 Proprietary Lease provisions 14 (Supervision of Pets) and 16 (Disturbances), and the 1999 and 2005 House Rule provisions 5 (disturbing noises and odors) and 16 (permission to harbor pets) of the House Rules, as Stein has allowed her pets to enter a public space unleashed and uncaged; Stein's pets have created odors and noises that disturbed other residents; building staff have witnessed unhygienic conditions of Stein's floors; and Stein has failed to seek permission in harboring a pet (NYSCEF Doc No. 64, 65, 66). Therefore, the Court finds defendants have not met their burden on summary judgment with respect to the second cause of action, as the evidence in the record fails to demonstrate that the defendants did not violate the applicable portions of the Proprietary Lease and House Rules regarding unreasonable annoyances to other tenants, odors and cleanliness.

III. Issue of reasonable accommodation to a person with disabilities

Defendants maintain Stein, who suffers from generalized anxiety and depression, is entitled to the accommodation of harboring eight dogs and two cats. Defendants invoke the Fair Housing Act (*see* 42 USC § 3601[f][3][b] [FHA]), the New York State Human Rights Law (*see* Executive Law § 296 [NYSHRL]) and New York City Human Rights Law (*see* NYC Admin. Code §§ 8-107, 8-108[10] [NYCHRL]) (*see also* 42 USC § 12101 et seq.; 29 USC § 794), as they believe Stein has been discriminated against. Defendants believe a housing provider has the burden of proving that the requested accommodation would be a fundamental alteration to the premises, and that plaintiff has not provided evidence nor shown how it would be a financial burden to accommodate Stein.

[10] Although defendants cite to this provision in their motion papers, "NYC Admin. Code § 8-108" is marked as reserved and does not exist in law.

As a preliminary matter, plaintiff does not contest that Stein is disabled.[11] Plaintiff rejects Stein's accommodation request as it is unreasonable to harbor eight dogs and two cats. Plaintiff does not seek eviction or the removal of all of Stein's dogs, only that she continue to harbor her two cats and not more than three dogs. Plaintiff believes the request for a reasonable accommodation must take into consideration the other residents living in the building, and the long-standing and on-going disturbances Stein's dogs have exhibited (NYSCEF Doc. No. 99, plaintiff's denial letter). Furthermore, plaintiff finds Stein's psychiatrist's opinion to be suspect and insufficient. Finally, whether the accommodation is reasonable, plaintiff avers is a question of fact that must be determined at trial.

Under the relevant disability laws, in order:

> "[t]o prove a discrimination claim based upon a failure to accommodate a person's disability, the person must establish that he or she is disabled within the meaning of the statute, that the charged party knew or reasonably should have known about the disability, 'that the accommodation was likely necessary to afford the [disabled] person an equal opportunity to use and enjoy the dwelling,' that the requested accommodation was reasonable and that the charged party refused to make the accommodation"

(*Hollandale Apartments & Health Club, LLC v Bonesteel*, 173 AD3d 55, 60-61 [3d Dept 2019], quoting *Olsen v Stark Homes, Inc.*, 759 F3d 140, 156 [2d Cir 2014]). "Whether an accommodation is reasonable depends on specific circumstances" (*Terrell v. USAir,* 132 F.3d 621, 626 [11th Cir 1998]). "Reasonableness analysis is highly fact-specific, requiring a case-by-case determination" (*Austin v Town of Farmington*, 826 F.3d 622, 630 [2d Cir 2016] [internal quotation marks omitted]). "Whether an accommodation is reasonable is a question of fact, determined by a close examination of the particular circumstances" (*Jankowski Lee & Associates v Cisneros*, 91 F.3d 891, 896 [7th Cir 1996]). "The requirement of reasonable accommodation

[11] This Court need not discuss the disability elements of the statutes or the application of the statutes to public versus private housing, as neither are being contested.

does not entail an obligation to do everything humanly possible to accommodate a disabled person" (*Bronk v Ineichen*, 54 F3d 425, 429 [7th Cir 1995]).

In the instant matter, plaintiff requested that Stein remove all but three dogs on April 3, 2017. On June 28, 2017, Stein submitted her request for a reasonable accommodation. After reviewing the information, including that provided by Stein's psychiatrist Aneil Shirke, M.D., Ph.D. (Dr. Shirke), plaintiff denied Stein's request.

In support of their motion, defendants contend that Stein's harboring of eight dogs is a reasonable accommodation based on her doctor's testimony. Defendants submitted Dr. Shirke's examination before trial transcript, wherein Dr. Shirke testified that he observed Stein's symptoms return in two situations: once when her eighth dog died; and once when Stein had to temporarily have a friend take away two of her six dogs. Dr. Shirke testified that regardless of the number of dogs removed from Stein's apartment, it would result in a gradual increase in her adverse symptoms (*see* NYSCEF Doc. No. 118, Shirke depo, pp. 59:19-25, 60:2; *see also* NYSCEF Doc. No. 118, Shirke depo, p. 63:22-24). Dr. Shirke mentioned that Stein's symptoms began to subside again when she purchased a ninth dog.[12] Dr. Shirke stated the dogs prevent Stein from committing suicide because Stein is placed in a responsible role as a caretaker. (NYSCEF Doc. No. 85, Shirke depo, pp. 49:22-25, 50:1-3). Therefore, Dr. Shirke opines the removal of one of Stein's dogs would bring back Stein's adverse symptoms.

Plaintiff contends that Dr. Shirke cannot exactly state how many dogs can be removed to create the same adverse phycological effect. Moreover, the doctor was asked in his deposition why four dogs were not sufficient to support Stein's mental health and the doctor did not have an answer for the question. Plaintiff contests an article that the doctor relies on as it does "not

[12] Bringing the total number of dogs that Stein possessed back up to eight dogs, as "dog nine" replaced the deceased "dog eight".

suggest nor cite any studies to support the extraordinarily novel proposition that a multitude of emotional support dogs, let alone eight dogs, can be more effective in alleviating the symptoms of a physiological disorder than one emotional support dog" (NYSCEF Doc. No. 129, plaintiff's opp paper, p. 17). Moreover, Dr. Shirke testified that having eight dogs do not cure Stein, they only make her symptoms manageable (Shirke depo, pp. 55-56).

Plaintiff further argues that in a December 16, 2012 email to a friend, Stein stated that she wished she "could adopt another dog, but [...] it is not reasonable" (NYSCEF Doc. No. 105, Stein's email to friend). Stein in another email dated August 27, 2012 stated that "three [dogs] is enough [...] I am happy with my group! Very." [sic] (NYSCEF Doc. No. 117, Stein email to friend Aug 27, 2012). In addition, plaintiff argues defendants are unable to point to any case law where landlord was obligated under federal and local laws to allow a disabled person to harbor multiple emotional support dogs as a reasonable accommodation. Furthermore, plaintiff maintains it is a reasonable position to allow Stein to remain in the apartment with three dogs and two cats. Plaintiff also makes it known that Stein lived in the apartment for ten years prior to obtaining her first dog. In addition, a reduction from eight dogs to three dogs will most likely reduce the overall noise being emitted from Stein's apartment.

In *Crossroads Apartments Assoc. v LeBoo*, (152 Misc 2d 830, 831 [City Ct. 1991]), a disabled claimant, seeking an accommodation to harbor his cat as necessary to use and enjoy his apartment, submitted affidavits from his psychiatrist, social worker and a certified pet-assisted therapist in order to show an emotional and psychological dependence to his animal.[13] In opposition, the landlord submitted the claimant's psychiatrist's affidavit concluding the pet was not necessary to use and enjoy the apartment and that the claimant was placed on Prozac during

[13] This case was seeking protection under the Rehabilitation Act of 1973, 29 U.S.C. § 794(a).

the same period the cat was acquired, and the claimant's clinical course had been slightly less tumultuous from the Prozac. The property manager in her affidavit stated the cat causes an undue administrative burden and creates health problems to tenants. The Court held that there were genuine issues of fact as to the affidavits and whether the cat was necessary for the resident to use and enjoy his apartment based on the conflicting evidence.

Here, the Court finds that defendants have not met their prima facie burden showing that the harboring of eight dogs is a reasonable accommodation to Stein's disability as plaintiff has demonstrated that there are issues of fact remaining. Even if they did meet their burden, plaintiff's evidence and arguments raised in opposition demonstrates that whether the requested accommodation is reasonable is a highly fact-intensive question that cannot be resolved on a motion for summary judgment.

IV. Permission to Harbor Pets

The original 1999 House Rule paragraph 16 (Pet Consent Provision) states: "No bird or animal shall be kept or harbored in the Building unless the same in each instance be expressly permitted in writing by the Lessor; such permission shall be revocable by the Lessor." [sic] (NYSCEF Doc. No. 66). Although Kornblum's 1999 Lease's Pet Consent Provision required tenants to seek permission from the cooperative corporation before harboring a pet, defendants argue the most recent version of the House Rules is the 2010 version, which omits the Pet Consent Provision. Therefore, Stein was not required to seek permission before harboring her eight dogs. Defendants rely on three exhibits: NYSCEF Doc. No. 64 titled "House Rules & Policies 9/23/05"; NYSCEF Doc. No. 65 titled "Amended House Rules & Policies 10/18/10"; and NYSCEF Doc. No. 66 titled "Proprietary Lease 4/15/03".[14]

[14] Although the record omits the original 1999 lease, the Court assumes "Proprietary Lease 4/15/03" is the same as the 1999 lease.

In opposition, plaintiff maintains that the Pet Consent Provision from Kornblum's 1999 lease is still in effect and there is no evidence showing that it has ever been changed, repealed or eliminated. Moreover, there is evidence that the Pet Consent Provision is still being abided by.

When interpreting a cooperative's controlling documents and proprietary lease, the usual rules of contract interpretation govern (*see Consol. Resources, LLC v 210-220-230 Owner's Corp.*, 59 AD3d 579, 581 [2d Dept 2009]; *see also Gurney's Inn Resort & Spa Ltd. v Benjamin*, 878 F Supp 2d 411, 422 [EDNY 2012] [when interpreting "all operative corporate documents, including the [...] by-laws and proprietary lease, [they] are 'inseparably joined 'and cannot be read 'in isolation from one another'"], *citing Kralik v. 239 East 79th St. Owners Corp.*, 5 NY3d 54 [2005]). Contracts are to be interpreted in accordance with the parties' intent (*see Greenfield v Philles Records, Inc.*, 98 NY2d 562, 569 [2002] ; *see also Slamow v. Del Col*, 79 NY2d 1016, 1018, [1992] ["The best evidence of what parties to a written agreement intend is what they say in their writing"]).

In the 2010 covenant proffered by the defendants, paragraph 33 states: "The foregoing is only a summary of the policies and House Rules most often encountered, and may not include every matter regulating residence [...] Please refer to the By-Laws, Proprietary Lease and House Rules for complete information [...]" [sic] (NYSCEF. Doc. No. 65, rule 33, ¶ 1-2). In addition, defendants proffer the 2005 covenant's cover letter stating *inter alia*:

> "Board of Directors adopted new Amended and Restated House Rules and Policies and Procedures ('House Rules') [...].
>
> Enclosed is a copy of the new House Rules which supersedes and replaces the existing rules. Though it is intended to codify all rules and procedures in one place, it must be read and applied in conjunction with the provisions of your Proprietary Lease. Most of the information is excerpted from the Proprietary Lease and previous House Rules. It is not intended to change any legal rights and responsibilities of the co-op or its shareholders [...]"

(*see* NYSCEF Doc. No. 64 & 97).

Here, defendants have not met their prima facie burden for summary judgement. Paragraph 33 states not every matter regulating residence is found in the covenant and that tenants are referred to the By-Laws, Proprietary Lease and House Rules. The Cover Letter states that it supersedes and replaces existing rules yet also states that it does not change any legal rights and responsibilities of the co-op or the shareholders, which is contradictory. The cited case law *supra* is clear that all documents relating to tenancy are to be read in conjunction and are inseparably joined, unlike defendants' averment that covenants have been repealed or omitted. Even if defendants met their initial burden, plaintiff's evidence and arguments raised in opposition demonstrates the Pet Consent Provision has still been adhered to, and that there are significant issues of fact remaining.

CONCLUSION

Accordingly, it is hereby ORDERED that defendants' motion for summary judgment dismissing the complaint is denied. This constitutes the decision and order of the Court.

11/24/2020
DATE

ALEXANDER M. TISCH, J.S.C.

CHECK ONE:	[ ]	CASE DISPOSED		[X]	NON-FINAL DISPOSITION		
	[ ]	GRANTED	[X] DENIED	[ ]	GRANTED IN PART	[ ]	OTHER
APPLICATION:	[ ]	SETTLE ORDER		[ ]	SUBMIT ORDER		
CHECK IF APPROPRIATE:	[ ]	INCLUDES TRANSFER/REASSIGN		[ ]	FIDUCIARY APPOINTMENT	[ ]	REFERENCE