

Rich v 256 E. 10th St. NY LLC
2021 NY Slip Op 32024(U)
August 5, 2021
Civil Court of the City of New York, New York County
Docket Number: L&T 930/20
Judge: Frances A. Ortiz
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CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK, HOUSING PART B

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GARVEY RICH

Petitioner, Tenant,

-against-

Index No. L&T 930/20

DECISION AND ORDER

256 EAST 10th Street NY LLC

Respondent(s)-Owner(s)

DEPARTMENT OF HOUSING PRESERVATION
AND DEVELOPMENT,

Co-Respondent, and

-----X

FRANCES A. ORTIZ, JUDGE

Recitation as required by CPLR 2219(a), of the papers considered in the review of the petitioner’s order to show cause for discovery and motion for an extension of time to serve the instant order to show cause.

Papers	Numbered
Order to Show Cause, Affirmation & Exhibits.....	NYSCEF 30-37
Notice of Motion, Affirmation & Exhibits.....	NYSCEF 38-44
DHPD Affirmation in Opposition & Exhibits.....	NYSCEF 45-47
Owner’s Affirmation in Opposition & Exhibits.....	NYSCEF 48 – 50
Owner’s Affirmation in Opposition to OSC.....	NYSCEF 53
Petitioner’s Reply Affirmation.....	NYSCEF 51-52

Upon the foregoing cited papers, the Decision/Order of this Court on petitioner’s order to show cause for discovery and motion for extension of time to serve the instant order to show cause is consolidated and decided as follows:

This is an HP Action brought by petitioner seeking correction of conditions at the subject premises, 256 East 10th Street, apt. 6C New York, NY 10009 and a finding of harassment against the respondent/owner.

This Court on February 2, 2021 issued an Interim Order to Correct, Department of Housing Preservation and Development (“HPD”) violations for the subject premises dated January 19, 2021, October 19, 2020, September 17, 2020, and August 13, 2020. Then, on May 19, 2021 petitioner moved for civil contempt and civil penalties against the respondent/owner for contempt of the February 2, 2021 Order for failure to correct class “B” and “C” violations referred to in the Order. The Court reserved decision on the contempt motion.

However, while this Court reserved decision on the motion petitioner moved by Order to Show asking the Court to hold in abeyance the contempt motion and sought discovery. The Order to Show Cause was signed and made returnable on August 5, 2021. It required service of the Order to Show Cause on respondents’ counsel by electronic mail and certified mail with return receipt on or by July 9, 2021. According to petitioner’s counsel David Kupfer, he did not immediately serve the Order to Show Cause on respondent’s counsel by July 9, 2021 since the parties had consented to e-filing and the signed Order to Show Cause was uploaded to NYSCEF on June 23, 2021. (*Kupfer Affirm* ¶7). According to Mr. Kupfer, the parties had consented to e-file/NYSCEF and all parties consented to such participation of interlocutory papers being served on NYSCEF pursuant to the Uniform Rules of the Trial Courts of New York. Nevertheless, Mr. Kupfer on July 20, 2021 emailed and mailed by certified mail, return receipt the instant Order to Show Cause to respondents. (*Id* ¶ 9/NYSCEF 42 & 52).

Upon review of the papers, this Court will grant petitioner’s motion for an extension of time to serve the June 22, 2021 dated Order to Show Cause by July 20, 2021 with email and

certified mail return receipt service on the named respondents. Respondents have not shown that they have been prejudiced by this July 20, 2021 completion of service. First, all parties consented to service by NYSCEF. Second, the instant Order to Show Cause was uploaded to NYSCEF on June 23, 2021 and all attorneys on the matter received a NYSCEF notification of the filing on that date. (*NYSCEF 41*). This notification was at least 43 days from the August 5, 2021 return date. As such, respondents had notice of the Order to Show Cause and were not surprised by the filing. Third, if one were to consider serve complete on July 20, 2021, respondents had 15 days advance notice of the order to show cause. Either way, respondents had ample time to oppose the Order to Show Cause and have not been prejudiced by the “late” service of these interlocutory papers. Accordingly, this Court deems the service of the instant Order to Show Cause for discovery signed on June 22, 2021 completed on July 20, 2021 as timely and *nunc pro tunc*.

Now, turning to petitioner’s motion for discovery, petitioner seeks limited discovery pertaining to two requests. Specifically, petitioner seeks “Respondent’s certification to HPD regarding its purported repairs of housing code violations at 256 East 10th Street, New York, New York 10009, Unit 6C, which were issued by HPD on or around January 19, 2021 (the ‘January 2021 Violations’)” and “Any notice given by HPD to Mr. Rich concerning Respondent’s certifications through the agency’s CIV-14 process or otherwise.” Petitioner had a third discovery request but his counsel withdrew it on the record at oral argument of the motion.

According to petitioner, the above requested documents are necessary to proceed with his contempt motion. Specifically, petitioner claims that the documents sought herein are important as to whether or not he had notice from HPD regarding the January 19, 2021 violations at his

apartment so that he could have been in a position to challenge them as uncorrected. Since he was not presented with an opportunity to challenge them, he was unable to participate and refute the claim that the violations were corrected which resulted in the removal of the January 19, 2021 HPD violations. (*Kupfer Affirm* ¶ 13).

In summary proceedings including HP Actions, leave to conduct discovery may be granted where the movant demonstrates a meritorious claim, ample need, that the discovery sought is tailored to the facts of the case, and no prejudice to the opposing party. *New York University v. Farkas*, 121 Misc.2d 643 (Civ. Ct. NY Cty 1983).

Here, petitioner has shown a meritorious claim, ample need, that the discovery sought is tailored to the facts of his contempt motion and potential hearing, and no prejudice to the opposing party. *New York University v. Farkas*, *supra*. Petitioner has merit to his claim for discovery in order to rebut the owner’s contention that the January 19, 2021 HPD violations were corrected especially since those same violations resurfaced in May 2021. Ample need is shown in these documents sought because they are narrowly tailored to petitioner’s contempt motion. Lastly, respondent/owners and co-respondent/HPD are not prejudiced by obtaining these documents, and these documents should be readily available and in their control.

Accordingly, petitioner’s motion for discovery is granted to the extent that within 45 days of the date of this decision, respondent/owner, 256 East 10th Street NY LLC is to provide to petitioner’s counsel the certification documents it provided to HPD regarding the HPD violations dated January 19, 2021 indicating that it corrected those violations for apartment 6C at 256 East 10th Street, New York, New York 10009.

Additionally, co-respondent/HPD is to provide to petitioner's counsel any notice given by HPD to Garvey Rich or the tenant or the occupant of apartment 6C at 256 East 10th Street, New York, New York 10009 concerning respondent/owner's certifications through the agency's CIV-14 process and any notice mailed to Garvey Rich or the tenant or the occupant of apartment 6C at 256 East 10th Street, New York, New York 10009 that notified such tenant or occupant of the owner's certification of correction for HPD violations and the occupant's remedies to challenge such May 19, 2021 certification regarding the reported January 19, 2021 HPD violations at the subject premises.


The matter is marked off calendar pending completion of discovery. Thereafter, petitioner's contempt motion heard on May 19, 2021 will be re-calendared upon request of the petitioner to the Court.

ORDERED: Petitioner's order to show cause for discovery is granted.

ORDERED: Petitioner's motion for an extension of time to serve the instant order to show cause is granted.

This is the decision and order of the Court, copies of which are being emailed to those indicated below.

Date: August 5, 2021



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Frances A. Ortiz
Judge, Housing Court

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