

137 W. 141 St. Tenants' Assn. v 137 W. 141 LLC

2021 NY Slip Op 32043(U)

May 3, 2021

Civil Court of the City of New York, New York County

Docket Number: L&T 305578/20

Judge: Frances A. Ortiz

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This opinion is uncorrected and not selected for official publication.

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK, HOUSING PART B

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137 WEST 141 STREET TENANTS' ASSOCIATION,
SHONDREA THORTON, JOHNNIE MAE ESTELL,
LISA MACCAULEY, LENORA SEALEY, DEBORAH
METTS, ARRI WEEKS, CHICO KNIGHT,
HARRY BLAIN, ALIYA QUENTIN

Petitioners, Tenants,

-against-

**Index No. L&T 305578/20
DECISION AND ORDER**

137 WEST 141 LLC, SHLOME REIFER; ELEANOR
PATRICK

Respondent(s)-Owner(s)

DEPARTMENT OF HOUSING PRESERVATION
AND DEVELOPMENT,

NEW YORK CITY DEPARTMENT OF BUILDINGS
("DOB")

Co-Respondent.

-----X

FRANCES A. ORTIZ, JUDGE

Recitation as required by CPLR 2219(a), of the papers considered in the review of the
petitioners' motion for an Order to Correct.

Papers	Numbered
Notice of Motion, Affirmation, Affidavit & Exhibits	1/NYSCEF 16- 25
Affirmation & Affidavit in Opposition & Memorandum of Law.....	2/ NYSCEF 26- 29
Reply Affirmation & Affidavit.....	3/NYSCEF 30-31

Upon the foregoing cited papers, the Decision/Order of this Court on petitioners' motion
to restore the matter for an Order to Correct is as follows:

This is an HP Action brought by petitioners/tenants seeking correction of conditions at
the subject premises, 137 West 141 Street, Apts. 24, 33, 36, 37, 44, 52, and 55, New York, NY

10030. Department of Buildings (“DOB”) is a co-respondent on the instant petition. According to paragraph twenty-five (25) of the petition, DOB has issued violations for the subject building and the owner is required to correct said violations. This Court on January 22, 2021 issued an Interim Order to Correct all open Department of Housing and Preservation (“HPD”) violations at the subject premises. However, the interim order did not address the DOB or Environmental Control Board (“ECB”) violations.

Now, petitioners move for an additional Order to Correct all DOB and ECB violations for the subject building. According to petitioners’ counsel, at the time of Interim Order the owner claimed to have corrected the DOB violations relating to the building elevator. However, this was not the case and no request was made for an order to correct the DOB violation. Petitioners claim that the elevator conditions continue to deteriorate. (*Shah Affirm.* ¶ 3, *NYCEF 17*). As such, they ask that all outstanding DOB and ECB violations be ordered corrected.

Specifically, petitioners attach DOB papers showing DOB/ECB violation number 39016172X dated January 23, 2020 for failure to maintain elevator or conveying system at the subject building. (*Exhibit A- NYSCEF 20*). The papers show that there was a hearing at the Office of Administrative Trials and Hearing (“OATH”) regarding this violation, that respondent/owner was found in violation and that a penalty was imposed per decision dated October 26, 2020. (*Exhibit B- NYSCEF 21*). According to petitioners, the violation remains open on the DOB website as of the date of the motion. (*Exhibit C- NYSCEF 22*).

Additionally, petitioners Chico Knight and Deborah Metts submit affidavits in support of the motion detailing how they both got stuck in the subject building’s elevator on February 18, 2021. (*NYSCEF 18 & 19*). Thereafter, a DOB violation # 39036705H was issued on February 24, 2021 for elevator not working. (*Exhibit F, NYSCEF 25*).

Respondent/owner, Shlome Reifer, submits an affidavit in opposition to the motion. According to Mr. Reifer, the subject building had a new elevator system installed in 2020 with upgraded, modernized and computerized system. (*Reifer* ¶ 3, *NYSCEF* 26). On February 17, 2021 the building elevator was not working properly due to a defective Con Ed meter bank which caused insufficient amount of electrical power. (*Id* ¶ 4). In order to rectify the problem, Mr. Reifer states that he had to file electrical permits. (*Exhibit A- NYSCEF* 27). Thereafter, they placed the elevators out of service for the safety of the tenants. He notified the tenants. (*Exhibit B- NYSCEF* 28). (*Id* ¶ 5 & 6). However, the defective meter bank was replaced on February 24, 2021. (*Id* ¶ 7). He states that a DOB inspector came to inspect the elevators also on February 24, 2021 while the electrician was working on the issue. He told the inspector that the elevator had been restored but the inspector told him that he still had to write the violation. However, he could send a letter to DOB stating the elevator was operational. (*Id* ¶ 8).

Lastly, respondent opposes the motion arguing that the petitioner can not restore this case because the violations ordered to be corrected were resolved and this Court’s January 22, 2021 Interim Order to Correct did not include a DOB violation for the elevator. Respondent argues that petitioners’ remedy would be to start a new HP Action. Nevertheless, respondent argues that the elevator condition has been corrected and petitioners should be asked to confirm that.

Petitioners’ counsel in reply argues that this Court has continuing jurisdiction to issue an Order to Correct until all violations are remedied, that there has never been a final disposition on the case due to the interim order status and that DOB violations have not been remedied, despite respondent’s contention. Specifically, counsel for petitioners contends that on March 18, 2021, and on other days the elevator has been shut down. Also, the door fails to open or close requiring tenants to manually push the door or press the “door open” button numerous times,

before opening which is well after the February 24, 2021 correction date. (*Shah Reply Affirm ¶ 14*).

DISCUSSION

The statutory purpose of *New York City Civil Court Act §110* explicitly provides subject matter jurisdiction to the Housing Part of the Civil Court to grant injunctive relief to enforce “state and local laws for the establishment and maintenance of housing standards, including, but not limited to, the multiple dwelling law and the housing maintenance code, building code and health code...” (*CCA 110 [a]*). This language makes it clear that the housing court may enforce “housing standards” under either the building code, the Housing Maintenance Code or health code.

Indeed, here, the conditions of the elevator involve “housing standards.” The term “housing standards” as used in the *CCA* should be given as broad a meaning as possible. The term is not, limited to HPD violations of record. The term “housing standard” includes any legislative standard which directly impacts the health and safety of the occupants of buildings. The legislative purpose in enacting the HMC and the Housing Court was to provide for safe housing. The purpose of this HP proceeding is to hear the petitioners’ claim of existing conditions and enforce the correction including any DOB elevator violations, especially since DOB is a municipal co-respondent to the petition and paragraph twenty-five (25) of the petition seeks an Order to Correct DOB violation # 39016172X.

Therefore, this Court has subject matter jurisdiction to hear the matter and provide injunctive relief ordering the owner to correct the DOB violations. *Various Tenants of 515 E. 12th St. v. 515 E. 12th St. Inc.*, 128 Misc. 2d 235, 236–37 (*NY Cty Civ. Ct. 1985*).

Similarly, *New York City Civil Court Act §110 (c)* empowers the Housing Court with broad authority to recommend or employ any remedy for the enforcement of housing standards if it believes the remedies will be more effective to accomplish compliance or to protect the public interest.

However, upon a review of the current DOB website as of the date of this decision which this Court takes judicial notice, the DOB violations 39016172X and # 39036705H are both marked “VIOLATION RESOLVED.”¹ Specifically, DOB violation # 39016172X under violation summary certification status indicates “CERTIFICATE ACCEPTED.” According to the DOB website this means that a Certificate of Correction was accepted and found in compliance and any owner who owes a penalty can pay it to DOB via a website link. Additionally, the DOB violation # 39036705H under violation summary certification status indicates “N/A – DISMISSED.” According to the DOB website, this means a Certificate of Correction is not required. Lastly, the hearing status for this violation indicates “dismissed.” As such, this Court does not need to issue an Order to Correct against the respondent/owner for DOB/ECB violations 39016172X and # 39036705H, although it does have the jurisdiction to do so, if the violations had not been resolved. Accordingly, petitioners’ motion is denied as moot.


The matter is marked off calendar.

ORDERED: Petitioners’ motion for an Order to Correct DOB/ECB violations is denied as moot.

¹ The Court will attach to this decision and order a current copy of those DOB website summary dispositions for those specific violation numbers.

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

Date: May 3, 2021



Frances A. Ortiz
Judge, Housing Court

Judge, Frances A. Ortiz

Sontag and Hyman
Marc Hyman, Esq.
165 Roslyn Road
Roslyn Heights, NY 11577
(516) 621 - 0600
mhyman@sontag-hyman.com
Counsel for respondents/owners

Manhattan Legal Services
Ami Shah, Esq.
1 West 125 Street, 2nd floor
New York, NY 10027
(646) 442 - 3154
ashah@lsnyc.org
Counsel for petitioners/tenants

Department of Housing Preservation and Development
Martine Bass, Esq.
100 Gold Street
New York, NY 10038
(212) 863 - 5532
bassm@hpd.nyc.gov
Counsel for co-respondent/HPD

CIVIL COURT OF THE
CITY OF NEW YORK

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