

Tzifil Realty Corp. v Mazrekaj

2021 NY Slip Op 34233(U)

November 22, 2021

Civil Court of the City of New York, Kings County

Docket Number: L&T Index No. 89035/19

Judge: Heela D. Capell

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CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF KINGS: HOUSING PART O

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TZIFIL REALTY CORP.,

L&T Index No. 89035/19

Petitioner,

Mot. Seq. #7 & 8

-against-

DECISION/ORDER

HASSAN "ANDY" MAZREKAJ,

Respondent.

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Present: Hon. Heela D. Capell
Judge, Housing Court

Recitation, as required by CPLR § 2219(a), of the electronically filed papers considered in the review of the petitioner’s order to show cause to reject and vacate the stay resulting from Respondent’s filing of a COVID-19 Hardship Declaration, schedule an immediate trial, determining the recusal of this judge from the case, determining the use and occupancy owed per month by the respondent, and respondent’s cross-motion to sever petitioner’s claim for use and occupancy, numbered as they appear on NYSCEF.

Papers	Numbered
Order to Show Cause & Affirmation Annexed.....	233 & 231
Exhibits.....	213-230
Notice of Cross-Motion & Answering Affidavits.....	234 & 235
Exhibits.....	236-244
Reply Affidavits.....	245, 248 & 249
Exhibit.....	246 & 247

The order to show cause and cross motion are consolidated and decided jointly for disposition purposes as follows:


In this holdover proceeding, it is undisputed that respondent, the former superintendent, has now vacated the premises. Accordingly, Respondent’s cross-motion is granted pursuant to CPLR 407 and the Petitioner’s claim for use and occupancy is severed for a plenary action (*Community League of W. 159th St. v Cesar*, NYLJ, Apr. 21, 1989, at 21, col 6 [App Term, 1st

Dept]). In a summary proceeding, a monetary award in favor of the landlord can only be made concomitant with an award of possession (*615 Nostrand Ave. Corp. v. Roach*, 15 Misc 3d 1, 4 [App. Term 2nd Dept. 2006]; *397 E. 49th St. Llc v Iglesias*, 71 Misc 3d 1216[A] [Civ Ct, Kings County 2021], *citing Lee v Green World Cleaners 1, LLC*, 61 Misc 3d 155[A] [App Term, 2nd Dept 2018]; *Goldburd v Langer*, 62 Misc 3d 140[A] [App Term, 2nd Dept 2019]). There is no basis for judgment sounding in use and occupancy where the petition in a summary proceeding is dismissed. (*Jacob Marion, LLC v. "Doe"*, 58 Misc 3d 155[A] [App. Term 2nd Dept. 2018]; *Esposito v. Larig*, 52 Misc 3d 67, 70 [App. Term 2nd Dept. 2016]; *see Halberstam v. Kramer*, 27 Misc 3d 1206[A] [Civ Ct. Kings Co 2010] *affirmed* 39 Misc 3d 126[A] [App Term, 2d Dept, 11th & 13th Jud Dists 2006]; *1106 Coll. Ave., HDFC v. Farmer*, 30 Misc 3d 1204[A] [Civ. Ct. Bronx Co. 2010]; *78 Havemeyer LLC v. Abuzaid*, 50 Misc 3d 1223[A] [Civ. Ct. Kings Co. 2016]; *Tankoos-Yarmon Hotels, Inc. v. Smith*, 58 Misc 2d 1072 [App Term, 1st Dept 1968]).

Petitioner's counsel requests that this court recuse itself from the case and lists the fact that the court failed to reverse itself after it "misapprehended the law and the facts" in its prior decision in this case, and because it scheduled a conference on a Jewish Holiday. While petitioner's counsel does not cite a specific provision of the NY Judiciary Law requiring this court to recuse itself from the case, a judge retains the right to recuse "based on whether the judge believes he/she can remain fair and impartial," which determination is left to the sound discretion of the judge (NY Jud. Adv. Ops. 07-35; 00-119; *People v. Moreno*, 70 NY2d 403 [1987]). Here, the court does not feel these allegations require a recusal and this court believes it can remain impartial in the case. Accordingly, this branch of petitioner's motion is denied.

Therefore, Petitioner's motion is denied and Respondent's cross-motion is granted to the extent dismissing this proceeding without prejudice to Petitioner's claim for use and occupancy in a plenary action. This constitutes the decision and order of the court.

Dated: Brooklyn, New York
November 22, 2021



HON. HEELA D. CAPELL
J.H.C.