

Cardenas v 74-78 Post Ave. Hgts. Assoc. LLC

2022 NY Slip Op 32939(U)

June 14, 2022

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

Docket Number: Index No. 307493/21

Judge: Jean T. Schneider

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CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK

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Index No. 307493/21

AGUEDA CARDENAS,

Petitioner,

-against-

DECISION/ORDER

74-78 POST AVENUE HEIGHTS
ASSOCIATES LLC, et al.,

Respondents.

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SCHNEIDER, J.

Motion by respondents to strike the amended petition and to dismiss claims for civil penalties and for relocation expenses is denied in all respects.

CPLR §3025(a), relied upon by the movant, permits amendment as of right until 20 days after the filing of a responsive pleading. In this case, the amended petition was filed before respondent's answer, and was therefore timely. Respondent's claim with respect to civil penalties is, in essence, that penalties are not appropriate because respondent did not cause the conditions complained of. This is not, however, the test set by the Housing Maintenance Code. Rather, the code provides that civil penalties are not appropriate where the condition was caused by someone else. See §27-2116(b). There has been no such finding here. Here, in any case, the issue of fault is very much disputed and is more properly resolved after trial

The court is persuaded by the reasoning of *Sanjurjo v. Milio*, 2021 NY Slip Op. 50208(U)(Civil Court, Bronx County), that the Housing Maintenance Code provides a coherent statutory scheme for provision of relocation services by New York City, with the landlord responsible to reimburse the City under certain circumstances, and that the court should, in most circumstances, avoid interfering in this

scheme. The court notes, however, that the *Sanjurjo* court does not rule out an award of relocation expenses against the landlord on equitable grounds, based upon a finding of fault. Since, once again, fault is an issue here, this court will not rule out such an award based upon appropriate factual findings.

Dated: 6/14/22



J. H. C.

**JEAN T. SCHNEIDER
JUDGE, HOUSING PART**