

**328-36 W 53rd St. Redevelopment Co v Luna**

2023 NY Slip Op 30563(U)

February 7, 2023

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

Docket Number: Index No. LT 062878-19

Judge: Daniele China

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

CIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF NY: HOUSING PART G

----- X  
328-36 W 53<sup>RD</sup> STREET REDEVELOPMENT CO  
Petitioner,

Index No. LT 062878-19

- against -  
LISAMAR LUNA,  
Respondent.

Decision/Order

----- X  
Present: Hon. Daniele Chinae  
Judge, Housing Court

Recitation, as required by CPLR 2219(A), of the papers considered in the review of this Motion to dismiss pursuant to CPLR §3211(e):

PAPERS	NYSCEF
Respondent's Notice of Motion, Affirmation, Affidavit, & Exhibits	5-20
Petitioner's Affidavit, Affirmation & Exhibits in Opposition	21-26
Respondent's Affirmation in Reply	27
Respondent's Memo of Law – Supplemental	28
Petitioner's Supplemental Affirmation	29

The Court decision on the Motion to dismiss pursuant to CPLR 3212 is as follows: DENIED.

The Court previously found the issue of timely re-certification is an issue of fact (Motion Exhibit I – D/O J. Capell, 2/20/20). This motion, made after that finding, seeks again to have this Court determine as a matter of law that Respondent's share of the rent should be adjusted retroactively to August 2017 (when Recertification was ultimately due from Maria Luna – Respondent's mother, and former Head of Household). To the extent that the Respondent is again seeking this Court find recertification process improper on papers, the Court declines to do so. Respondent's motion is denied.

At argument on the Motion, the Court raised, *sua sponte*, whether it is proper to claim Respondent was the tenant for the entire period of rent sought, August 2017 through April 2019, when Respondent was first recognized as head of household on February 2019, with a recertification retroactive to January 1, 2019 (Motion Exhibit F). The Parties were asked to brief the issue.

After reviewing the supplemental papers, the Court finds only those amounts sought for January 2019 and after can be subject to a possessory judgment. Petitioner's claim that Respondent's attempts to be recognized as head of household and recertify formalized her as the tenant is not persuasive. All recertification notices were addressed only to Maria Luna in 2017, and Petitioner failed to accept and/or process Respondent's recertification until February 2019, retroactive to January 2019. Petitioner cannot refuse to retroactively recognize Respondent as head of household while also holding her responsible retroactively for rent arrears. Moreover, pursuant to HUD rules and regulations, once the tenant recertifies, any market rent owed cannot be the subject of a possessory judgment. Thus, whether or not Respondent should have been or was recognized as the tenant retroactive to 2017 – any market rent owed is not properly subject of any possessory judgement.

All amounts sought for the period prior to January 2019 are severed from this proceeding and not subject to a possessory claim. This is without prejudice to Petitioner's claims for same as against Respondent and Maria Luna, which are reserved for a plenary proceeding, subject to defenses.

Case is restored for all purposes on March 15, 2023 at 11:30, in part G, Room 581. A copy of this order will be uploaded to NYSCEF.

DATED: February 7, 2023

SO ORDERED

HON. DANIELE CHINEA  
JUDGE, HOUSING COURT

---

Hon. Daniele China, JHC