

City of New York v ORJ Props. Inc.

2023 NY Slip Op 34178(U)

November 30, 2023

Supreme Court, New York County

Docket Number: Index No. 450163/2023

Judge: Judy H. Kim

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.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. JUDY H. KIM **PART** **05RCP**

Justice

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THE CITY OF NEW YORK,

Plaintiff,

INDEX NO. 450163/2023

MOTION DATE 08/22/2023

MOTION SEQ. NO. 001

- v -

ORJ PROPERTIES INC.,

Defendant.

**DECISION + ORDER ON
MOTION**

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27

were read on this motion for JUDGMENT - SUMMARY.

The following facts are undisputed: On December 20, 2018 and December 21, 2018, the New York City Department of Buildings issued notices of violation to defendant for illegally converting a permanent residential dwelling unit at 356 West 40th Street, New York, New York, into a short-term rental in violation of Administrative Code §§28-210.2 and 28-202.1. These notices of violation directed defendant to appear for hearings on February 21, 2019. These hearings were adjourned until January 23, 2020, at which time defendant appeared before the New York City Office of Administrative Trials and Hearings (“OATH”), by counsel, and contested these violations.

On January 30, 2020, OATH issued a Decision and Order concluding that defendant violated Administrative Code §§28-210.3 and 28-202.1 and imposing a penalty of \$50,000.00 for each violation, for a total of \$100,000.00 (NYSCEF Doc. No. 15). Defendant did not pay these penalties or appeal OATH’s Decision and Order or otherwise challenge that Decision and Order in an Article 78 proceeding.

On January 19, 2023, the City commenced this action, pursuant to New York City Charter §1049-a(d)(3), to convert OATH's Decision and Order to an enforceable judgment. Defendant interposed an Answer, asserting an affirmative defense that “the time for plaintiff to enter judgment on the alleged violations has long since expired and plaintiff is barred from entering a judgment on the alleged finding of violations and the imposition of penalties so many years later” (NYSCEF Doc. No. 6 [Answer]).

The City now moves for summary judgment on its complaint. Defendant opposes the motion¹ and cross-moves to dismiss the complaint on the basis of laches because a judgment “will definitely be a lien on the building affecting a potential sale with buyers” and “would overlap existing City claims for the same commercial-residential conversion” (NYSCEF Doc. No. 19 [Joobeen Aff. in Opp. at ¶¶7-8])

DISCUSSION

The City's motion for summary judgment is granted and defendant's cross-motion is denied. “[D]ecisions rendered by ... OATH constitute quasi-judicial determinations of an administrative agency” (The City of New York v 235 Hotel LLC, 2021 NY Slip Op 31999[U], 4 [Sup Ct, NY County 2021]) and “[i]t is settled law that the principles of res judicata and collateral estoppel are applicable to the determinations of quasi-judicial administrative agencies and that such determinations, when final, become conclusive and binding on the courts” (Huber-Padilla v Crime Victims Bd., 155 AD2d 351, 352 [1st Dept 1989] [internal quotation marks and citations omitted]). Therefore, as defendant's time to challenge OATH's determinations through an Article 78 proceeding has expired (See CPLR §217[1]), the Decision and Order is now final for res judicata purposes (See Cangemi v Beddoe, 2015 NY Slip Op 31841[U] [Sup Ct, Queens County

¹ Although defendant's opposition and cross-motion were filed two days late, the Court excuses this untimely filing as the delay has not prejudiced plaintiff (See CPLR §2004)

2015] [agency action is “final and binding” once party is notified that agency has reached definitive position—which decision may not be prevented or ameliorated by further administrative action or by steps available to the affected party—that inflicts actual concrete injury on party]).

Defendant does not dispute the foregoing but argues instead that this action is barred by laches. However, the defense of laches is unavailable in an action commenced within the period of limitations (Cadlerock, L.L.C. v Renner, 72 AD3d 454, 454 [1st Dept 2010] [internal citations omitted]; see also B.N. Realty Assoc. v Lichtenstein, 21 AD3d 793, 799 [1st Dept 2005]) and there is no dispute that this action was filed within the applicable three-year statute of limitations (See CPLR §214[2]).

Accordingly, it is

ORDERED that plaintiff’s motion for summary judgment is granted; and it is further

ORDERED that defendant’s cross-motion to dismiss this action is denied; and it is further

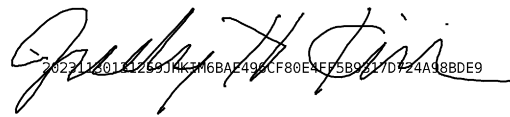
ORDERED that the Clerk of the Court shall enter a money judgment in favor of plaintiff the City of New York and against defendant ORJ Properties Inc., in the amount of \$100,000.00 with costs and disbursements as taxed by the court; and it is further

ORDERED that plaintiff shall serve a copy of this decision order, with notice of entry, upon defendant by first-class mail within ten days of the date of this decision and order; and it is further

ORDERED that within twenty days from the date of this decision and order, plaintiff shall serve a copy of this decision and order, with notice of entry, upon the Clerk of the Court (60 Centre St., Room 141B) and the Clerk of the General Clerk's Office (60 Centre St., Rm. 119), who are directed to enter judgment accordingly; and it is further

ORDERED that such service upon the Clerk of the Court shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the “E-Filing” page on this court's website at the address www.nycourts.gov/supctmanh).

This constitutes the decision and order of the Court.



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11/30/2023

DATE

HON. JUDY H. KIM, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE