

573 W Studios Corp v Pichardo

2024 NY Slip Op 32446(U)

May 20, 2024

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

Docket Number: Index No. 300624-23

Judge: Eleanora Ofshtein

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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 G**

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573 W Studios Corp,

Index No. 300624-23

Petitioner,

DECISION/ORDER

-against-

Motion Seq. 01

Fermin Pichardo, John Doe, Jane Doe,

**573 West 183 Street Apt 2B,
New York, NY 10033,**

Respondents.

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HON. ELEANORA OFSHTEIN, JHC

Recitation, as required by CPLR §2219(a), of the papers considered in review of the motion:

<u>Papers</u>	<u>NYSCEF #</u>
Respondent's motion.....	9-18
Petitioner's opposition.....	19-23
Respondent's reply.....	24-31

Upon the foregoing cited papers, the Decision/ Order on the motion is as follows:

In this summary nonpayment proceeding, Respondent seeks dismissal of the petition for failure to state a cause of action, arguing that Petitioner has failed to make a proper rent demand pursuant to CPLR §3211(a)(2) and (7), and, in the alternative, seeks leave to amend the answer pursuant to CPLR §3025(b). Additionally, upon such amendment of the Answer, Respondent seeks dismissal, with prejudice, pursuant to the theories of res judicata and collateral estoppel (CPLR §3212). Both sides are represented by counsel.

In 2020, a prior nonpayment proceeding between these parties appeared before the court (LT-073076-19/NY). The Honorable Judge Tao found that Petitioner was barred from bringing a proceeding to collect rent due to its failure to obtain a certificate of occupancy (see Decision/Order dated November 25, 2020, annexed to Respondent's Exhibit C, NYSCEF #14).

In its decision, the Court stated as follows:

Respondent's motion seeking to dismiss the instant proceeding on the basis that Petitioner has failed to obtain a certificate of occupancy and is therefore barred, pursuant to Multiple Dwelling Law Section 301, from bringing a proceeding to collect rent for the premises, or in the alternative, allowing Respondent to serve an amended answer, is granted. As Respondent rightly states, pursuant to the NYC Department of Buildings and the NYC Department of Housing Preservation and Development's records, there is no certificate of occupancy filed to legalize the conversion of the 3 "B" rooms, known as 2B, 3A and 3B, that were converted into Class A apartments. (see NYC DOB OATH/ECB violation Number 35071552Y, HPD violation Number 11443766, 5542376). The documentation that Petitioner did provide to rebut this claim is insufficient as it shows that a similar violation was resolved but only with Apt. 2A in the building.

Here, almost four years after Judge Tao's decision, the same violation remains at issue and Petitioner relies on the same argument.

"[T]he lack of a certificate of occupancy precludes landlord's collection of rent in the entire building." 208 Himrod St., LLC v Irizarry, 42 Misc3d 145(A) (App Term, 2d Dept 2014).

Although Petitioner's argument, that a similar violation for a different apartment (2A) was dismissed, and that no certificate of occupancy was required, such is insufficient to overcome this motion.

This is especially the case considering the prior Court's decision, the additional violations which do not indicate an outcome, and the very fact that this case is not about apartment 2A, but about apartment 2B. This is not a slight distinction and the Court notes that Petitioner has not provided the same dismissal information for the subject unit (2B) for which it seeks rent.

As noted in Respondent's Reply (NYSCEF #24, paragraphs 19-23), the focus by Petitioner on the dismissal of the OATH violation as to apartment 2A is insufficient to overcome this motion to dismiss.

For the foregoing reasons, the matter is dismissed, and the court does not reach the remaining relief sought.

This constitutes the decision and order of this Court.

Dated: New York, New York
May 20, 2024



Eleanora Ofshtein
JHC