

True Group LLC v Espada
2024 NY Slip Op 35524(U)
April 29, 2024
Civil Court of the City of New York, New York County
Docket Number: Index No.: LT-302603-22/ NY
Judge: Tracy E. Ferdinand
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NYSCEF DOC NO. 49
Civil Court of the City of New York
County of New York
Part: Part H, Room: 830
Date: May 23, 2023

RECEIVED NYSCEF: 05/01/2024
Index #: LT-302603-22/NY
Motion Seq #: 1

Decision/Order

True Group LLC
Petitioner(s)
-against-
Jennifer Espada
Respondent(s)

Present: Tracy E. Ferdinand
Judge

Recitation, as required by CPLR 2219(A), of the papers considered in the review of this Motion for:
Dismiss

PAPERS	NUMBERED
Notice of Motion and Affidavits/Affirmations Annexed	<u>1</u>
Order to Show Cause and Affidavits/Affirmations Annexed	
Answering Affidavits/Affirmations	<u>2</u>
Replying Affidavits/Affirmations	<u>3</u>
Exhibits	
Stipulations	
Other	

Upon the foregoing cited papers, the Decision/Order in this Motion is as follows:

_____ This summary non-payment proceeding was commenced seeking rent arrears totaling \$13,799.50 through February 2022, and possession of the premises known as 255 West 139th Street (“Building”) apartment 2R (“Apartment”). The Petition alleges that the Respondent, Jennifer Espada, entered into a lease for the Apartment at a monthly rent of \$2000.00 per month. (*NYSCEF Doc. No. 1*).

A default judgment of possession and money was initially entered against the Respondent upon her failure to answer the Petition. (*NYSCEF Doc. Nos. 6-9*). Respondent then retained counsel, and the parties stipulated and agreed, *inter alia*, to vacate the Respondent’s default, to amend the Petition to date, and for Respondent to file an Answer. (*NYSCEF Doc. Nos. 10-13*).

Respondent now moves pursuant to CPLR 3212 for summary judgment dismissing the Petition on her first and fourth and fifth defenses, specifically that the Petition fails to properly allege the rent regulatory status of the Building and further that the proceeding is barred by Multiple Dwelling Law (“MDL”) 301 and 302, as there is no current, valid Certificate of Occupancy (“C of O”) for the Building. (*NYSCEF Doc. Nos. 13, 16-36*). Petitioner opposes. (*NYSCEF Docs. 40-46*).

In support of her motion Respondent argues that the Building was constructed in 1891 and the earliest record of its occupancy is reflected in a 1939 I-Card filed with the Department of Housing Preservation and Development. (“DHPD”) and classifying the occupancy as “Heretofore Converted B, September 18, 1939” and “Class B”. This I-Card also shows that alteration plans were filed for the Building at least four times from 1940 through 1966. (*NYSCEF Doc. No. 23*).

A second, I-Card dated 1964 reflects the Building’s occupancy as one “A” unit and ten “B” units. The Building is currently registered as a multiple dwelling containing one “A” and ten “B” units. (*NYSCEF Doc. No. 25*).

In August 2015 complaint number 1402536 was registered with The Department of Buildings (“DOB”) alleging “ALL UNITS HAVE BEEN REMOVED ILLEGALLY WITHOUT PERMIT.” The Court notes that the complaint appears to be closed and the disposition code indicated “C2 - Inspector Unable to Gain Access – 2nd Final Attempt” (*NYSCEF Doc. No. 30*).

In July 2017 a work permit was applied for and issued for the Building, detailing the scope of work as:

“ALTERATION TYPE 1 - CONVERT EXISTING HERETOFORE CLASS "B" UNITS (HCB) ON 2ND, 3RD AND 4TH FLOORS TO CLASS "A" DWELLING UNITS (HCA) COMPLY WITH MDL ARTICLE 6, OBTAIN NEW C OF O.” (*NYSCEF Doc. No. 34*).

On July 3, 2019 two complaints, 1515079 and 1515088 were registered with DOB alleging “11 B ROOMS WERE CONVERTED TO 8 CLASS A APARTMENTS” and “THERE ARE B ROOMS THAT WERE CONVERTED INTO A CLASS A APARTMENT” respectively. Complaint 1515079 was closed citing no access on two attempts and complaint 1515088 is coded as an Administrative Closure and resolved. (*NYSCEF Doc. No. 30*).

Also on July 3, 2019, DHPD issued a violation for the Apartment noting:

“§300, 301, 302, m/d law file plans and obtain a certificate of occupancy to legalize the following alteration or restore premises to prior legal condition consisting of b room converted (*sic.*) to class a apartment in the entire apartment located at apt 2r, 2nd story, 1st apartment from north at east...” (*NYSCEF Doc. No. 26*).

Respondent’s counsel affirms that said HPD violation remains open as of November 22, 2022 and further, that the C of O for this address and filed with DOB does not belong to the Building. (*NYSCEF Doc. No. 27*).

Respondent argues that the complaints of illegal conversion, the multiple violations from HPD and DOB, and a review of current DOB records establish that there is no valid C of O for the Building and mandate dismissal of this non-payment proceeding.

Petitioner opposes arguing that in 2014 the Building was an SRO which became vacant prior to any demolition or renovation. In January 2017 the then owner applied for and was granted work permits to convert the class “B” units to class “A” units. The Court notes that the work permit specifically directs compliance with “MDL Article 6, Obtain a New C of O.” (*NYSCEF Doc. No. 42*). Petitioner claims that during the course of the conversion “all applicable laws and regulations” were observed.

Petitioner annexes what it refers to as the “current” C of O. (*NYSCEF Doc. No. 46*). This temporary C of O was issued on June 30, 2023 and expired September 28, 2023. Petitioner states that at the time that this C of O was issued the Building was in “substantially the same condition as it was when the Respondent’s tenancy commenced...” (*NYSCEF Doc. No. 40*).

DISCUSSION

It is axiomatic that summary judgment is a drastic remedy and should not be granted where there is any doubt about the existence of a triable issue. (*Rotuba Extruders Inc. v Ceppos*, 46 N.Y.2d 223 [1979]). It is incumbent upon the movant to establish their cause of action or defense showing an entitlement to judgment as a matter of law, by tender of evidentiary proof in admissible form. (*Zuckerman v City of New York*, 49 N.Y.2d 557 [1980]). Only after movant’s prima facie showing does the burden shift to the opposing party to demonstrate the existence

of a factual dispute sufficient to require a trial of the matter. (*De Lourders Torres v Jones*, 26 N.Y.3d 742 [2016]).

MDL §301 provides in pertinent part:

“1. No multiple dwelling shall be occupied in whole or in part until the issuance of a certificate by the department that said dwelling conforms in all respects to the requirements of this chapter, to the building code and rules and to all other applicable law...” (NYS CLS Mult D § 301 Consol., Lexis Advance through 2024 released Chapters 1-49, 52, 61-117).

MDL §302(1) provides in part:

a. If any dwelling or structure be occupied in whole or in part for human habitation in violation of section three hundred one, during such unlawful occupation any bond or note secured by a mortgage upon said dwelling or structure, or the lot upon which it stands, may be declared due at the option of the mortgagee.

b. No rent shall be recovered by the owner of such premises for said period, and no action or special proceeding shall be maintained therefor, or for possession of said premises for nonpayment of such rent. (NYS CLS Mult D § 302 Consol., Lexis Advance through 2024 released Chapters 1-49, 52, 61-117).

The Appellate Term in *W. 48th Holdings LLC v Eliyahu*, 64 Misc 3d 133[A], 2019 NY Slip Op 51066[U], 1-2 [App Term 2019], held:

“Notwithstanding that the building was constructed prior to the requirement for obtaining a certificate of occupancy, landlord's subdivision of two apartments into four units constituted substantial alterations which require the building to have a certificate of occupancy (*see* Multiple Dwelling Law [MDL] § 301[1]; 208 *Himrod St., LLC v Irizarry*, 42 Misc 3d 145[A], 988 N.Y.S.2d 526, 2014 NY Slip Op 50344[U] [App Term 2d Dept, 2nd, 11th & 13th Jud Dists 2014]). If a dwelling or structure is ‘occupied in whole or in part for human habitation in violation of [MDL § 301] ... [n]o rent shall be recovered by the owner of such premises ... and no action or special proceeding shall be maintained therefor, or for possession of said premises for nonpayment of such rent’ (MDL § 302[1][a][b]; *see Chazon, LLC v Maugenest*, 19 NY3d 410, 415, 971 N.E.2d 852, 948 N.Y.S.2d 571 [2012]; *Matter of GVS Props. LLC v Vargas*, 172 A.D.3d 466, 100 N.Y.S.3d 230, 2019 NY Slip Op 03549 [1st Dept 2019]; *Matter of 49 Bleecker, Inc. v Gatien*, 157 AD3d 619, 69 N.Y.S.3d 863 [2018]). This is such a proceeding and it is barred, even if tenant's apartment was not one of the newly created apartments. ‘If that is an undesirable result, the problem is one to be addressed by the Legislature’ (*Chazon*, 19 NY3d at 416).” (*see also, E. Harlem MEC Parcel C, L.P. v Smalls*, 2024 NY Slip Op 50317[U] [App Term 2024]; *Ormonde Equities LLC v Jacoby*, 81 Misc 3d 137[A], 2023 NY Slip Op 51416[U] [App Term 2023]).

Respondent has sustained her burden in establishing her defense and right to judgment dismissing the Petition. She has shown, nor does Petitioner dispute, the Building, although likely constructed prior to the C of O requirement, had been altered to convert once existing class “B” units to class “A” dwelling units and thereby necessitating issuance of a new C of O. The only C of O on file with the

DOB is apparently a misfiling for another property. The 2019 HPD violation requiring a new C of O to legalize the alteration, remains open.

In response Petitioner has failed to demonstrate the existence of a triable issue of fact. It concedes the alterations and conversion of the Building occurred, apparently sometime in 2017 and failed refute the existing HPD violation or to show that a valid C of O, temporary or otherwise, was either issued or not required for August 2021 through February 2022, the period of rent sought in the Petition. Accordingly, and in light of the above, Respondent's motion for summary judgment is granted and the Petition dismissed. The balance of Respondent's motion is denied.

The Court will mail of copy of this Decision/Order to the parties if they have not consented on NYSCEF.

This constitutes the Decision/Order of this Court.

Date: 4/29/2024

**HON. TRACY FERDINAND
JUDGE, HOUSING COURT**

Judge, Civil/Housing Court