

490 Morgan, LLC v Pekar

2025 NY Slip Op 30923(U)

February 24, 2025

Civil Court of the City of New York, Kings County

Docket Number: Index No. LT-316938-23/KI

Judge: Jason Vendzules

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Civil Court of the City of New York
County of Kings

Index # **LT-316938-23/KI**



490 MORGAN, LLC; BELVEDERE MANAGEMENT LLC
Petitioner(s)

Decision / Order

-against-
Ian Pekar; Christian Roach; John Doe; Jane Doe
Respondent(s)

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

Papers	Numbered
Order to show Cause/ Notice of Motion and Affidavits /Affirmations annexed	NYSCEF 29-47 (Mot. Seq. 2)
Answering Affidavits/ Affirmations	NYSCEF 48, 50-71 (Mot. Seq. 3)
Reply Affidavits/ Affirmations	NYSCEF 73
Memoranda of Law	NYSCEF 74-75
Other	NYSCEF 77-80
	NYSCEF 49

Petitioner 490 Morgan, LLC and Belvedere Management LLC brought this holdover proceeding seeking possession of Apartment 1B at 490 Morgan Avenue in Brooklyn. The petition alleges that the premises are not subject to Rent Stabilization Law and that respondent is therefore subject to eviction after service of a 60-day notice as required by RPL §§ 232-a and 226-c. Respondent answered in the petition on August 26, 2024, asserting, amongst other counterclaims and affirmative defenses, that the premises is rent stabilized. Petitioner filed a reply asserting that the premises is not rent stabilized because of individual apartment improvements (“IAIs”) made to the subject apartment.

This matter was ready to be sent to the trial part on September 9, 2024, when, while filling out the transfer order, both sides agreed that they were not calling any witnesses because there was no issue of fact in dispute. Because the parties represented that the only issue was a legal one, the Court declined to send the matter out to trial and instead the parties agreed to stipulate as to the agreed facts (now annexed as NYSCEF 49) and submit the motions now before the court.

Petitioner moves for summary judgment pursuant to CPLR § 3212 seeking to strike affirmative defenses and for a judgement of possession. Respondent cross-moves for summary judgement pursuant to CPLR § 3212 on its second affirmative defense: that the Petitioner failed to properly plead the rent regulatory status of the premises as rent stabilized, requiring dismissal.¹ For the following reasons Petitioner's motion is denied, Respondent's motion is granted, and the petition is dismissed.

Factual Background

The parties do not dispute the facts giving rise to the motions. The subject premises is Apartment 1B at 490 Morgan Avenue in Brooklyn. 490 Morgan Avenue was constructed in or about 1937 and, at the time it was built, contained seven apartments and one commercial space. The ground floor, where Apartment 1B is currently situated, originally contained one residential unit and one commercial space. By 1952, the residential space on the first floor was expanded to take over the ground floor residential unit, and 490 Morgan Avenue was then composed of six residential units and one ground floor commercial space. In 2008, the prior owner² of 490 Morgan Avenue once again converted the first floor of the building. Prior owner removed the commercial space and installed two residential units on the first floor. 490 Morgan Avenue has since been a building constructed in 1937 composed of eight residential units. The subject premises is on the first floor where the commercial space once existed. The question before the court is whether this unit is rent-stabilized.

Legal Analysis

¹ After initially conferencing the matter, the Court requested the parties submit supplemental legal memoranda.

² Respondent asserts that the prior owner, Krzysztof Rostek, purchased the subject building in 2006 and sold it to a corporate entity under his own control in 2015. Affirm. in Support ¶ 13, NYSCEF Doc. 13.

The Rent Stabilization Code is clear: an apartment in a building with six or more units built before 1974 is rent stabilized unless that apartment falls under several enumerated exceptions. 9 NYCRR 2520.11. The subject premises is undisputedly in a building that contains more than six units that was built before 1974. As such, Respondent has established a *prima facie* entitlement to summary judgment unless Petitioner can establish that the apartment falls under one of the enumerated exceptions.

Oddly, because no attempt was made to amplify the pleadings, the grounds upon which Petitioner relies to exempt the premises from rent stabilization has been a moving target. The petition is silent as to the exemption Petitioner relies on. Earlier in the litigation, Petitioner claimed exemption due to substantial rehabilitation. It appears that Petitioner has retreated from that position. In the cross-motion Petitioner asserts exemption from the Rent Stabilization Code because the funds used to convert the space from commercial to residential in 2008 constitute IAIs.

This argument demonstrates a misunderstanding of the role IAIs play in deregulation. Before the law changed with the passage of the HSTPA in 2019, IAIs could provide grounds to deregulate an apartment, but only if the rent increase when added to the legal regulated exceeded the high-rent vacancy threshold. *See, e.g., People's Home Improvement, LLC v. Kindig*, 77 Misc.3d 136 136[A] [AT 2nd Dep't 2022]. Because the apartment was part of a commercial space prior to the renovations at issue, there was no regulated rent to add to the IAI increase argued by petitioners. The question arose as to how the initial rent for the newly created unit should be calculated. Neither party discussed how the initial rent should be calculated in their submissions, so the court asked for supplemental memoranda to brief the issue.

Petitioner argues in its supplemental memorandum (and the Court agrees) that, pursuant to the Rent Stabilization Code effect at the time of the conversion, the New York City Administrative Code, and appellate case law, the initial rent for the subject apartment should be the rent agreed to by the owner and the first tenant who took occupancy of the premises after the temporary exemption. 9 NYCRR § 2526.1[a][3][iii]; NYC Administrative Code § 26-512[b][2]; *Matter of Cipolla v New York State Div. of Hous. & Community Renewal*, 153 A.D.3d 920, 922 [2nd Dep't 2017]. Petitioner concedes that the initial rent charged for the subject premises after the conversion occurred was \$1600 in 2011. (Rostek Affid. at ¶15, NYSCEF Doc. 74.) As such, the legal regulated rent in 2011 was \$1,600 and, because this is lower than the high-rent deregulation amount in 2011, the apartment was still subject to rent regulation at that time.³ Whether Petitioner included any permitted IAIs in that rental amount or not, the base rent never went above the high-rent deregulation amount, so the apartment was never exempted from rent stabilization on the basis of a high rent.⁴

Perhaps reading the tea leaves, Petitioner introduces a new argument in the reply brief that subsequent renovations done in 2016 constitute IAIs that should deregulate the apartment as of that date. This argument is not properly before the Court as it was raised for the first time in the reply brief, and therefore the Court will not consider this argument. *Federal National Mortgage Assn. v. NB 1168 Realty, LLC*, --- N.Y.S.3d ---, 2025 N.Y.Slip Op. 00431 [2nd Dep't 2025]; *Erdey v. City of New York*, 129 A.D.3d 546, 546-47 [1st Dep't 2015]. The court will note, however, that this argument suffers from the same defects as the argument for the 2006 IAIs.

³ Its unclear from the affidavit when this lease was entered into, but the high-rent deregulation amount was \$2000 until June 23, 2011, when it was raised to \$2500. See <https://hcr.ny.gov/system/files/documents/2024/11/fact-sheet-36-08-2024.pdf>, last accessed February 23, 2025.

⁴ Moreover, Petitioner is foreclosed from later collecting the amount spent on the 2006 IAIs in any subsequent lease.

Petitioner fails to show that these IAIs were actually applied to the subsequent lease after the IAIs were done, or that the next tenant was given notice of the rent increase or deregulation by way of the IAIs.

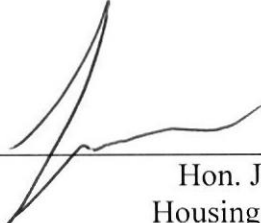
As such it is:

ORDERED that Respondent's motion for summary judgment is GRANTED, and the petition is DISMISSED for failure to accurately describe the regulatory status of the premises, and it is

ORDERED that Petitioner's cross-motion is denied.

This is the Decision and Order of the Court, which will be delivered to the parties via filing on NYSCEF.

Date: 2/24/25



Hon. Jason Vendzules
Housing Court Judge