

**Jerome Enters. LLC v Javed**

2025 NY Slip Op 32656(U)

June 9, 2025

Civil Court of the City of New York, Bronx County

Docket Number: Index No. L&T 307205/23

Judge: Omer Shahid

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This opinion is uncorrected and not selected for official publication.

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

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JEROME ENTERPRISES LLC,

L&T Index No. 307205/23

Petitioner,

-against-

**DECISION/ORDER**

SAKENDER JAVED,

Respondent.

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Present: Hon. OMER SHAHID  
Judge, Housing Court

Recitation, as required by C.P.L.R. § 2219(a), of the papers considered in the review of Respondent’s Motion to Interpose an Amended Answer, Dismiss, and Contempt (Motion #2 on N.Y.S.C.E.F.):

<b>Papers</b>	<b>Numbered</b>
Notice of Motion (Motion #2 on N.Y.S.C.E.F.).....	1

Petitioner commenced this nonpayment proceeding alleging that Respondent is indebted to Petitioner in the amount of \$6,741.24, representing all rent due and owing through January 31, 2023, for the letting of 2928 Jerome Avenue, Apt. 3E, Bronx, N.Y. 10468 (the “subject premises”). This amount comprises monthly rent of \$1,123.54 from August 2022 through January 2023. The subject premises is subject to the Rent Stabilization Law. The Notice of Petition and Petition were filed with the court on February 7, 2023. On February 24, 2023, Respondent filed a pro se answer. Respondent thereafter obtained counsel on April 21, 2023 and an amended answer was filed on April 25, 2023.

On April 26, 2023, parties executed a two-attorneys stipulation adjourning the matter to May 1, 2023 for Petitioner to complete Section 8 paperwork by April 28, 2023. On May 1, 2023, the matter was again adjourned by a two-attorney stipulation to May 11, 2023 upon Petitioner’s request to continue to participate in the voucher lease up process. Petitioner did not appear on the May 11, 2023 appearance but the matter was adjourned to June 13, 2023 for an update on N.Y.C.H.A. inspection which was scheduled for May 11, 2023. On June 13, 2023, the parties agreed to adjourn the matter to August 15, 2023 for Petitioner to inspect and repair the intercom and safety bars on the window. Dates were to be provided to Respondent by Petitioner via counsel through email no later than 5 P.M. on June 20, 2023. This two-attorney stipulation was so-ordered by the court. In the interim, on July 27, 2023, Respondent filed an Order to Show Cause for contempt due to Petitioner’s alleged breach of the so-ordered June 13, 2023 stipulation. The court signed the Order to Show Cause and made it returnable on August 15, 2023. On the August 15, 2023 appearance, the court adjourned the matter and Order to Show

Cause to September 7, 2023 with interim access dates for Petitioner to address the conditions in the June 13, 2023 stipulation and for Petitioner to oppose Respondent's Order to Show Cause. On September 7, 2023, the proceeding was adjourned to October 3, 2023 by two-attorneys' stipulation for Petitioner to correct three D.O.B. violations and one H.P.D. violation. Work was to be completed within 45 days of September 21, 2023. The stipulation was so-ordered by the court. The matter was then adjourned from October 3, 2023 to October 16, 2023. On October 16, 2023, the parties adjourned the matter to November 20, 2023 pursuant to a two attorneys' stipulation for continued repairs from the September 7, 2023 stipulation. On November 20, 2023, the court adjourned the matter to January 11, 2024 for motion practice and the court set a briefing schedule on N.Y.S.C.E.F. See November 20, 2023 N.Y.S.C.E.F. Comment. Respondent complied with the briefing schedule set by the court by filing the instant motion on December 11, 2023. However, Petitioner failed to comply. On January 11, 2024, the matter was adjourned by two-attorneys' stipulation to January 16, 2024 for Petitioner to review the settlement offer proposed by Respondent. On January 16, 2024, the court adjourned the matter to January 19, 2024 upon Petitioner's application to file opposition papers to the instant motion. The court granted the application but noted that if Petitioner failed to file the opposition papers by January 19, 2024, the motion will be marked submitted for determination. See January 16, 2024 N.Y.S.C.E.F. Comment. Petitioner failed to file opposition papers and the court marked the motion submitted for determination.

Respondent moves for the following relief: (1) granting leave for Respondent to interpose an amended answer to include defenses related to an invalid Certificate of Occupancy as well as counterclaims for harassment and source of income discrimination pursuant to C.P.L.R. § 3025(b); (2) dismissing Petitioner's claims in this nonpayment proceeding due to an invalid Certificate of Occupancy; and, (3) granting civil contempt of court pursuant to Jud. Law § 753(A)(3) for Petitioner's failure to comply with the so-ordered September 7, 2023 two-attorneys' stipulation.

#### BRANCH OF MOTION WHICH SEEKS LEAVE TO AMEND ANSWER

The branch of Respondent's motion which seeks leave to interpose the proposed amended answer is granted.

"A party may amend his or her pleading, or supplement it by setting forth additional or subsequent transactions or occurrences, at any time by leave of court or by stipulation of all parties. Leave shall be freely given upon such terms as may be just". C.P.L.R. § 3025(b). Leave to amend should be freely granted unless the party opposing the amendment establishes prejudice in the granting of such a relief. See Kimso Apts., L.L.C. v. Gandhi, 24 N.Y.3d 403 (2014). "Prejudice, of course, is not found in the mere exposure of the [party] to greater liability. Instead, there must be some indication that the [party] has been hindered in the preparation of [their] case or has been prevented from taking some measure in support of [their] position." Loomis v. Civetta Corinno Constr. Corp., 54 N.Y.2d 18, 23 (1981) (internal citation omitted).

Since Petitioner has failed to oppose the motion, Petitioner has not demonstrated any prejudice that may result if this branch of the motion was to be granted.

Accordingly, this branch of Respondent's motion is granted to the extent that the proposed amended answer annexed to Respondent's motion as N.Y.S.C.E.F. Entry #33 is hereby deemed to be served and filed nunc pro tunc.

BRANCH OF MOTION WHICH SEEKS DISMISSAL

Respondent seeks a dismissal of this proceeding pursuant to M.D.L. § 302(1)(b) due to a lack of a valid Certificate of Occupancy.

The motion establishes that there are three outstanding O.A.T.H./E.C.B. violations issued by D.O.B. on the subject building including a violation, dated May 20, 2022, for “occupancy contrary to that allowed by the certificate of occupancy or Buildings Department records” due to the presence of an S.R.O. in the cellar. See Exhibit “A” (N.Y.S.C.E.F. Entry 29).

M.D.L. § 302(1)(b) bars the recovery of rent during the period in which a subject building lacks a valid certificate of occupancy under M.D.L. § 301(1). See Chazon, L.L.C. v. Maugenest, 19 N.Y.3d 410 (2012). A landlord is barred from recovery of rent and maintaining a nonpayment proceeding where the certificate of occupancy is invalid based upon the presence of E.C.B. violations establishing that the building’s occupancy is in contradiction to the certificate of occupancy. See Matter of GVS Props. L.L.C. v. Vargas, 172 A.D.3d 466 (1st Dep’t 2019).

Here, there is no dispute that there is an E.C.B. violation dated May 20, 2022 which states that the building is occupied in violation of the D.O.B.’s records. Since the arrears sought herein fall within the period of the violation date on May 20, 2022 and the time of the instant motion which was filed on December 11, 2023, and was not corrected by that time, Petitioner may not maintain this nonpayment proceeding.

Accordingly, the branch of this motion is hereby granted and the matter is hereby dismissed.

BRANCH OF THE MOTION WHICH SEEKS CIVIL CONTEMPT

The branch of Respondent’s motion which seeks an order granting civil contempt based upon Petitioner’s noncompliance with the so-ordered two-attorneys’ stipulation dated September 7, 2023. The stipulation provides that Petitioner shall correct the three D.O.B. violations and one H.P.D. violation within 45 days from September 21, 2023 (i.e., November 5, 2023).

“A court of record has power to punish, by fine and imprisonment, or either, a neglect or violation of duty, or other misconduct, by which a right or remedy of a party to a civil action or special proceeding, pending in the court may be defeated, impaired, impeded, or prejudiced...for any...disobedience to a lawful mandate of the court.” Jud. Law § 753(A)(3).

“To sustain a civil contempt, a lawful judicial order expressing an unequivocal mandate must have been in effect and disobeyed. Moreover, the party to be held in contempt must have had knowledge of the order, although it is not necessary that the order actually have been served upon the party. In addition, prejudice to the rights of a party to the litigation must be demonstrated.” McCain v. Dinkins, 84 N.Y.2d 216 (1994).

Here, Respondent has established an entitlement to sustain civil contempt against Petitioner. There was a lawful judicial order in effect in the form of a so-ordered two-attorneys’ stipulation dated September 7, 2023. See Various Tenants of 446-448 W. 167th St. v. New York City Dept. of Hous. Preserv. & Dev., 153 Misc. 2d 221 (App. Term, 1st Dep’t 1992) (finding that civil contempt was appropriate where a party failed to commence work pursuant to a so-ordered stipulation). Respondent contends that Petitioner failed to comply with the stipulation as the violations still exist at the time of the filing of this motion. Petitioner did have knowledge of this stipulation through its counsel as the stipulation was uploaded to N.Y.S.C.E.F. and was executed by Petitioner’s attorney. Lastly, Respondent’s substantial rights were prejudiced

because, due to the Petitioner's failure to correct the violations, there was a rejection of the lease up process for Respondent's Section 8 voucher which may seriously compromise the voucher and affect Respondent's ability to pay the arrears.

Hence, the court finds that Petitioner is in civil contempt due to its noncompliance of the September 7, 2023 so-ordered two-attorneys' stipulation.

### CONCLUSION

Based upon the foregoing, the branch of Respondent's motion which seeks leave to interpose an amended answer is granted to the extent that the amended answer attached to the motion as N.Y.S.C.E.F Entry #33 is hereby deemed served and filed nunc pro tunc. Since the branch of the motion which seeks to interpose the amended answer was granted pursuant to this decision, Petitioner shall file a reply to the counterclaims. See C.P.L.R. § 3011.

The branch of Respondent's motion which seeks to dismiss this nonpayment proceeding is granted based upon a lack of a valid Certificate of Occupancy. Petitioner's nonpayment claim herein is, accordingly, dismissed.

Lastly, the branch of Respondent's motion which seeks to hold Petitioner in civil contempt is granted and Petitioner is hereby held in civil contempt based upon its noncompliance with the September 7, 2023 so-ordered two-attorneys stipulation.

The proceeding is hereby restored to the court's calendar and shall appear for an in-person, pre-trial conference on July 7, 2025 at 9:30 A.M. in Part G (Room 560) concerning Respondent's counterclaims and as well as damages pursuant to Jud. Law § 773 based upon the finding of civil contempt. Petitioner shall serve and file a reply to the counterclaims raised in the amended answer by June 24, 2025. If the parties are unable to settle on Respondent's counterclaims and damages due to civil contempt, the matter shall be transferred to Part X for trial assignment concerning Respondent's counterclaims and damages.

Respondent's Order to Show Cause (Motion #1) is denied as moot as it seeks the same relief herein.

The foregoing constitutes the decision and order of the court.

Dated: June 9, 2025  
Bronx, N.Y.

APPROVED  
OSHAHID , 6/9/2025, 8:35:01 PM

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Omer Shahid, J.H.C.