

509 Throop Partners, LLC v Ment

2025 NY Slip Op 34709(U)

December 4, 2025

Supreme Court, Kings County

Docket Number: Index No. 512060/2024

Judge: Anne J. Swern

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At an IAS Trial Term, Part 75 of the Supreme Court of the State of New York, Kings County, at the Courthouse located at 360 Adams Street, Brooklyn, New York on the 4th day of December 2025.

P R E S E N T: HON. ANNE J. SWERN, J.S.C.

509 Throop Partners, LLC,

Plaintiff(s),

-against-

Ben Ment, Samantha Ment, Daniel Warrilow, "JOHN DOE 1", "JOHN DOE 2", "JOHN DOE 3", "JOHN DOE 4", "JANE DOE 1", "JANE DOE 2", "JANE DOE 3", "JANE DOE 4",

Defendant(s).

DECISION & ORDER

Index No.: 512060/2024

Calendar No.: 3 & 42

Motion Seq.: 001 & 002

Recitation of the following papers as required by CPLR 2219(a):

	Papers Numbered
Order to Show Cause and Supporting Documents (NYSCEF 14-32)	1, 2
Affirmation and Exhibits in Opposition (NYSCEF 33-37)	3
Notice of Cross-Motion and Supporting Documents (NYSCEF 33-37)	4, 5
Affirmation and Supporting Documents (NYSCEF 39-47)	6
Reply Affirmation and Supporting Documents (NYSCEF 48-50)	7

Upon the foregoing papers, the decision and order of the Court is as follows:

Introduction

Plaintiff commenced this common law action for ejectment on 4/29/2024 based on defendants’ failure to vacate Apartment #1 at 509 Throop Avenue, Brooklyn, New York 11221 after plaintiff served a Notice of Termination on 3/31/2024. The complaint, which sets forth two common law causes of action, seeks the following relief: (1) an order of possession and warrant directing the Kings County Sheriff to remove defendants and all occupants from the apartment, and (2) pursuant to the lease that expired on 6/30/2023, damages equal to “two times the highest monthly rent set in the lease.” (NYSCEF 1). Plaintiff alleges that defendants failed to pay the

rent starting in February 2024 (*see* Siedel Affirmation, NYSCEF 15, ¶11). Therefore, it is plaintiff's position that pursuant to the lease, they are entitled to \$7,400 (\$3,700 x 2) per month in damages. Plaintiff also alleges that "from the moment defendants learned that plaintiff was planning to convert the building from a rental building into a condominium building, they have purposely created obstacles to prevent plaintiff from accomplishing its plans (NYSCEF 40, ¶6). However, defendants allege that starting in March 2024, plaintiff stopped accepting their rent payments (*see* Ment Affidavit, NYSCEF 34, ¶10).

Facts

Plaintiff is the owner of 509 Throop Avenue, Brooklyn, New York. Defendants first took occupancy of 509 Throop Avenue, Apartment #1 starting in 2017. The most recent lease between the parties was dated 6/29/2022 for Apartment #1 -- the first-floor apartment that includes use of the rear yard and basement. This lease expired on 6/30/2023. (NYSCEF 3). From July 2023 through February 2024, defendants continued to reside in Apartment #1 as month-to-month tenants and paid the monthly rent of \$3,700.00 as stated in the 6/29/2022 lease. Plaintiff terminated the month-to-month tenancy effective 3/31/2024 by serving a 90-Day notice dated 12/18/2023 (NYSCEF 4).

Plaintiff's Order to Show Cause

On 4/29/2024, plaintiff commenced this action. On 5/21/2025, a consent to change attorney was filed by plaintiff's current attorneys. On 5/23/2025, plaintiff's current attorneys filed an "Emergency Order to Show Cause with a Temporary Restraining Order" seeking a *pendente lite* order directing defendants to (1) pay use and occupancy of \$3,700.00 per month pending a hearing and determination of the application and (2) to post an undertaking [bond] of \$55,500.00 to secure recovery of the arrears due and owing since February 2024. In support of

the request, plaintiff submitted two appellate division decisions and two trial court decisions wherein tenants were ordered to pay *pendente lite* use and occupancy during the pendency of a litigation. This Court signed the Order to Show Cause but denied the *pendente lite* relief because all those decisions involved commercial tenants/defendants. Here, defendants are residential tenants. Additionally, plaintiff allowed the arrears to accumulate from the commencement of this action until 13 months later when the Order to Show Cause was filed. Mr. Seidel does not account for this 13-month gap while arrears were accumulating to justify *pendent lite* relief.

Defendants' Cross-Motion for Summary Judgment and Opposition to Plaintiff's Order to Show Cause

In opposition to the Order to Show Cause, defendants filed a motion for an order pursuant to CPLR 3212 to grant summary judgment dismissing this action on multiple grounds.

First, they contend that a 90-day notice only applies to summary proceedings commenced under Article 7 of the Real Property Actions and Proceedings Law (RPAPL) and the notice must state that upon the tenants' failure to vacate the premises, the landlord will commence summary proceedings (Real Property Law § 232-a). However, RPL § 232-a and the related sections, 232-c and 226 do not apply to common law ejectment actions. For common law ejectment actions, landlords must serve a six-month notice to vacate the premises, which plaintiff undeniably failed to do.

Second, plaintiff failed to comply with the Good Cause Eviction Law under Article 6-A of the Real Property Law which took effect on 4/20/2024, nine days before the commencement of this action. In support of this second argument, defendants cite this Court's decision in *509 Throop Partners, LLC v. Vages, et al.*, 511565/2024. Therefore, once the ejectment cause of the action is dismissed, the cause of action for use and occupancy must also be dismissed because it is incidental to a final judgment of possession and cannot stand alone as an independent cause of

action. In the alternative, defendants assert that they are entitled to an offset of the damages based on plaintiff's breach of the warranty of habitability as pled in their answer.

In opposition to the cross-motion, plaintiff argues that defendant misinterpreted this Court's decision in *509 Throop Partners, LLC v Vages*. Plaintiff argued that the Court did not hold that a plaintiff/landlord must serve a Good Cause Eviction Law notice on a tenant-defendant in order to maintain a cause of action for ejectment. Any such interpretation would be contrary to the language in the very statute that creates the obligation to serve such a notice. (NYSCEF 47, p.9). Further, the Good Cause Eviction Law only applies to an initial lease, renewal lease, a 90-day notice (RPL § 226-c), or a petition pursuant to RPAPL § 741. Therefore, it does not apply to a plenary action of ejectment (*id.*).

Law & Analysis

Summary judgment may be granted only when no triable issue of fact exists (*Alvarez v Prospect Hospital*, 68 NY2d 320, [1986]). "A party moving for summary judgment must make a *prima facie* showing of entitlement to judgment as a matter of law, producing sufficient evidence to demonstrate the absence of any material issue of fact. However, a failure to demonstrate a *prima facie* entitlement to summary judgment motion, requires a denial of the motion regardless of the adequacy of the opposing papers" (*Ayotte v Gervasio*, 81 NY2d 1062, 1063 [1993], citing *Alvarez v Prospect Hospital*, 68 NY2d 324). "Once this showing has been made, the burden shifts to the nonmoving party to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact that require a trial for resolution" (*Giuffrida v Citibank*, 100 NY2d 72, 81 [2003] and *Alvarez v. Prospect Hospital*, 68 NY2d 324).

The Court's only role upon a motion for summary judgment is to identify the existence of triable issues, and not to determine the merits of any such issues (*Vega v Restani Construction*

Corp., 18 NY3d 499, 505 [2012]) or the credibility of the movant’s version of events (see *Xiang Fu He v Troon Management, Inc.*, 34 NY3d 167, 175 [2019] [internal citations omitted]). The Court must view the evidence in the light most favorable to the nonmoving party, affording them the benefit of all reasonable inferences that can be drawn from the evidence (see *Negri v Shop & Stop, Inc.*, 65 NY2d 625, 626 [1985]). The motion should be denied where the facts are in dispute, where different inferences may be drawn from the evidence, or where the credibility of the witnesses is in question (see *Cameron v City of Long Beach*, 297 AD2d 773, 774 [2d Dept. 2002]).

The requirement that initial or renewal leases must contain notices pursuant to Article 6A of the Real Property Law did not take effect until 8/18/2024 (Article 7 of the Real Property Law, § 231-c). However, Article 6-A, the Good Cause Eviction Law, took effect on 4/20/24 in New York City and applies to all actions commenced on or after that date (RPL §§ 210 and 212; Senate Bill 2024 N.Y SB 8306, §7). Article 6-A applies to units within a housing accommodation owned as condominium or cooperative (RPL § 214 [7]).

Article 6-A defines a landlord as “any fee owner, lessor... or any other person or entity receiving or entitled to receive rent for the occupancy of any housing accommodation” in any residential or mixed-use residential premises (RPL § 211 [1] and [2]). Section 211 [4] states that a tenant is broadly defined as “a tenant, sub-tenant, lessee, sublessee, or any other person entitled to the lawful possession, use or occupancy of any housing accommodation.” Rent is defined as “any consideration... demanded or received for or in connection with the possession, use or occupancy of housing accommodations or the execution or transfer of a lease for such housing accommodations” (RPL §211 [5]). Section 216 enumerates multiple grounds constituting “Good

Cause” to remove tenants, including but not limited to when, “The landlord seeks in good faith to withdraw a housing accommodation from the housing rental market” (RPL § 216 [i]).

Defendants’ motion for summary judgment dismissing the complaint for failure to comply with the Good Cause Eviction Law is granted. As stated in *509 Throop Partners LLC v Vages* that,

Article 6 of the Good Cause Eviction Law applies to this action commenced after 4/20/2024. Otherwise, landlords would be free to improperly convert leases to month-to-month tenancies and then commence an ejectment proceeding instead of a holdover proceeding when a tenant does not timely vacate the premises to avoid a landlord-tenant proceeding and compliance with Article 6A of the Real Property Law. The Good Cause Eviction Law on its face applies to ejectment actions to remedy this very situation, *i.e.*, where a landlord seeks to *evict or remove from a premises any person “entitled to the lawful possession, use or occupancy of any housing accommodation”* (RPL § 211 [4]) [emphasis added].

The Court implicitly held that a Good Cause Eviction notice was required to commence an ejectment action based on the plain wording of the statute, *i.e.*, *evict or remove from a premises any person entitled to the lawful possession, use or occupancy of any housing accommodation.*” The notice requirements of RPL § 211 apply because its language modifies the common law to extend its protections to persons entitled to possession by reason of “use or occupancy.” Plaintiff’s reliance on *Alleyne v Townsley*, 110 AD2d 674, 675 [2d Dept 1985] is misplaced because it was decided prior to the enactment of the Good Cause Eviction Law requiring notices to tenants. Further, in *Alleyne*, the Court decided that the service of 30-day notice per RPL § 232-a as a condition precedent to maintaining a summary eviction proceeding, served to convert defendant’s [month-to-month] tenancy into one for a fixed and definite term. Here, plaintiff was required to comply with the Good Cause Eviction Law for both types of tenancies. Therefore, the RPL § 232-a notice served by plaintiff is not a determinative factor concerning the applicability of the Good Cause Eviction Law.

Procedurally, plaintiff's reliance on *509 Throop Partners LLC v Vages*, is misplaced because *Vages* defendants did not move for summary judgment dismissing the complaint. The only request for relief before the Court in *Vages* was summary judgment in favor of plaintiff, which was denied.

This action is brought in equity. Therefore, the cause of action for use and occupancy is dismissed because the demand for money damages is merely incidental to a final judgment of possession (*Olympic Galleria, Co., Inc. v Sitt*, 241 AD3d 1092 [1st Dept 2025]; *Katzman v City of New York*, 183 Misc2d 501, 502 [App Term, 1st Dept 1999], citing *Fontana v Town of Hempstead*, 18 AD2d 1084, 1084 [2d Dept 1963]; see also *Johnson v City of Peekskill*, 91 AD3d 825, 826 [2d Dept 2012]).

Based on this determination, plaintiff's order to show cause is rendered academic. The Court has considered the parties' remaining arguments and finds them to be either academic or without merit.

Accordingly, it is hereby

ORDERED that plaintiff's Order to Show Cause for Temporary Restraining Order and Pendente Lite relief is DENIED, and it is further

ORDERED that defendants' cross-motion for motion for an order pursuant to CPLR 3212 granting summary judgment and dismissing this action in its entirety is GRANTED, and it is further

ORDERED that the Clerk of the Court shall enter judgment dismissing this action.

This constitutes the decision and order of the Court.

ENTER:



For Clerks use only:

MG _____

MD _____

Motion seq. # _____

Hon. Anne J. Swern, J.S.C.

Dated: 12/4/2025