EVMF Owner, LLC v Hayashi
2026 NY Slip Op 32066(U)
January 21, 2026
Civil Court of the City of New York, New York County
Docket Number: Index No. LT-312491-24/NY
Judge: Tracy E. Ferdinand
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Civil Court of the City of New York
County of New York
Part: F Room: 523
Date: December 2, 2025

Index #: **LT-312491-24/NY**
Motion Seq #: 2, 4

Decision/Order

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EVMF OWNER, LLC,

Petitioner(s)

-against-

ANNE LYNN HAYASHI

Respondent(s)

---------- x

Present: Tracy E. Ferdinand
Judge

EVMF OWNER, LLC,

Petitioner(s)

-against-

MARY KORYCKI,

Respondent(s)

----------x

Recitation, as required by CPLR 2219(A), of the papers considered in the review of this Motion and Cross-Motion:

PAPERS	NUMBERED
Notice of Motion and Affidavits Annexed	NYSCEF 10-16
Order to Show Cause and Affidavits Annexed	
Notice of Cross-Motion, Answering Affidavit/Affirmations	NYSCEF 37-53
Answering Affidavits/Affirmation	NYSCEF 54-57
Replying Affidavit/Affirmation	NYSCEF 58-60
Stipulations	
Other	

Upon the foregoing cited papers, the Decision/Order in this Motion and Cross-Motion are as follows:

RELEVANT FACTS AND PROCEDURAL HISTORY

Petitioner commenced two holdover proceedings in the same building known as 310 East 12th Street, New York, New York, 10003 ("Building") against Respondents Anne Lynn Hayashi in Apartment 4C (LT-312491-24/NY) and Mary Korycki in Apartment 1E (LT-312777-24/NY) by service of a 90-Day predicate notice seeking possession of the fair-market apartments on the same grounds that Petitioner elected not to renew the Respondents' leases after their natural expiration. (*See NYSCEF Doc. 1* at pg. 6). The parties agreed by two attorney stipulation to consolidate the proceedings under Index LT-312491-24/NY because each case had common issues of law and fact. (*NYSCEF Doc. 36*).

The 90-Day expiration of lease predicate notices were served and dated prior to the enactment of the Good Cause Eviction Law ("GCEL") on April 20, 2024. (L 2024, ch 56, §1, part HH). The proceedings, however, were commenced in July 2024, and because GCEL took "effect immediately and . . . appl[ied] to actions and proceedings commenced on or after such effective date" (*Id.* at § 7), if the apartments at issue were subject to GCEL, then Petitioner needed "good cause" grounds as enumerated under Real Property Article 6-A, section 216 to proceed.

In paragraph 12 of the petitions, Petitioner alleges:

> "The Premises [are] subject to RPL §6A. The good cause grounds for the within eviction are termination of the tenancy in good faith based upon the Landlord's intent to demolish the premises." (*NYSCEF Doc. 1* at pg. 2).

Respondents, through counsel, filed answers alleging, *inter alia*, that Petitioner failed to state a cause of action because it is using the term "renovation" synonymously with "demolish," which is an incorrect interpretation of the statute, and that Petitioner lacks requisite good faith. (*NYSCEF Doc. 7*). Respondents also raised the issue that the apartments were improperly deregulated and thus rent-stabilized, which argument was dismissed of by the Department of Housing and Community Renewal ("DHCR") during the pendency of this proceeding and thus will not be addressed here. (*NYSCEF Doc. 67*; LT-312777-24 at *NYSCEF Doc. 23*).

Petitioner then moved to strike the Respondents' answer on their second and third objections in point of law, first and second defenses, as well as their first counterclaim. (*NYSCEF Docs. 10-15*). After DHCR determined both apartments were properly deregulated, the Respondents withdrew their rent-stabilized defenses as stated in their second and third objections in point of law and first counterclaim. (*NYSCEF Doc. 69*).

Thus, the remaining defenses subject to Petitioner's motion to strike are the Respondents' first and second defenses, which state:

"AS AND FOR A FIRST DEFENSE

23. The Petition fails to state a cause of action.

24. As used in RPL §6A, the Good Cause Eviction Law, the term "demolish" is not synonymous with "renovation".

25. The word "demolish" is defined by the Oxford Dictionary as to "pull or knock down (a building)", with synonyms including inter alia, "to tear down", "to destroy" "to flatten", "to raze" and "wipe off the face of the earth".

26. Although a building can be demolished, a single apartment within a building cannot be demolished.

27. The proceeding must be dismissed.

AS AND FOR A SECOND DEFENSE

28. This proceeding was not brought in good faith.

29. Petitioner lacks a "good faith" basis to "demolish" the Premises as required under the RPL §6A." (*NYSCEF Doc. 7*).

Respondents opposed, and further cross-moved pursuant to CPLR §§ 3211(a)(1) and (7) to dismiss the proceeding on the grounds that Petitioner failed to state a cause of action or, in the alternative, have not established that they in good faith plan to "demolish" the apartments within the meaning of RPL § 216(1)(h). (*NYSCEF Docs. 37-57*). Petitioner opposed Respondents' cross-motion. (*NYSCEF Docs. 58-60*).

DISCUSSION

CPLR § 3211(b) Motion to Strike

On a motion to strike affirmative defenses, "the plaintiff bears the heavy burden of showing that the defense is without merit as a matter of law." (*Granite State Ins. Co. v. Transatlantic Reins. Co.*, 132 AD3d 479, 481 [1st Dept 2015] [internal citations omitted]). "The allegations in the answer must be viewed in the light most favorable to the defendant, and the defendant is entitled to the benefit of every reasonable intendment of the pleading, which is to be liberally construed." (*Id.*) The Court must determine whether "the facts as alleged . . . fit within any cognizable legal theory." *Faison v Lewis*, 25 NY3d 220, 223 [2015] [internal citations omitted]. "[T]he court should not dismiss a defense where there remain questions of fact requiring a trial." *Granite State Ins. Co. v Transatlantic Reins Co.*, 132 AD3d 479, 481 [1st Dept 2015].

Petitioner argues that Respondents' first defense that "demolish" cannot apply to a single unit and only applies to a building must be stricken as meritless.

Under GCEL, the landlord has good cause grounds to remove a tenant when:

> "[t]he landlord in good faith seeks to demolish the housing accommodation, provided that no judgment in favor of the landlord may be granted pursuant to this paragraph unless the landlord establishes good faith to demolish the housing accommodation by clear and convincing evidence" (RPL § 216[1][h]).

As defined in the statute, "the term 'housing accommodation' as used in this article shall mean any residential premises, including any residential premises located within a mixed-use residential premises." (RPL § 211[1]).

The long-standing principles of statutory construction in New York jurisprudence as explained by the highest court of appeals in *Colon v Martin*, 35 NY3D 75, 78 (2020) is:

> "That the analysis begins with the language of the statute This is because the primary consideration is to ascertain the legislature's

> intent, of which the text itself is generally the best evidence. A court should construe unambiguous language to give effect to its plain meaning. Further, a statute must be construed as a whole and . . . its various sections must be considered together and with reference to each other . . . .The maxim *expressio unius est exclusio alterius* applies in the construction of the statutes, so that where a law expressly describes a particular act, thing or person to which it shall apply, an irrefutable inference must be drawn that what is omitted or not included was intended to be omitted or excluded." (internal citations and quotation marks omitted).

Thus, in applying these principles and substituting "any residential premises" for "housing accommodation," the plain meaning is that a landlord can seek, in good faith, to demolish "any residential premises", which necessarily includes a single unit rather than applying exclusively to an entire building. Respondents themselves anecdotally cite to an example where the NYC Department of Buildings ("DOB") issued a work permit for demolition of an existing residential unit to accommodate the construction of new fitness rooms. (*NYSCEF Doc. 45*).

However, although the Court agrees with Petitioner that the Respondents reading of "housing accommodation" within Article 6-A is incorrect, the same defense also includes a purported misunderstanding by Petitioner of the term "demolish," which, according to Respondents, Petitioner uses synonymously with "renovation."

In disposing of this issue, Petitioner annexes "Architect Reports" (without an accompanying architect affirmation explaining these reports) and what is labeled a "Good Faith Estimate of Costs to Renovate" (again, without an accompanying expert affirmation explaining its contents). (*NYSCEF Docs. 14-15*).

On the first page of the Architect Reports, the "Scope of Work" for the apartments is labeled as "Alteration Type 2: General Interior Renovation . . . . No Change to Bulk, Occupancy, Use or Egress." (*NYSCEF Doc. 14* at pg. 2). "Bulk" is a term "used to describe the size of buildings or other structures . . . and therefore includes . . . the size (including height and floor area) . . . the shape of buildings or other structures . . . the location of exterior walls of buildings or other structures in relation to lot lines, to other walls of the same building, to legally required windows, or to other buildings or other structures." (*NYC Planning, Zoning Resolution,* Article I, Chptr 2., § 12-10 [Definitions]).

Demolish is defined in Merriam-Webster as to "tear down, raze," "to cause irreparable damage to such as . . . to break to pieces: smash; to do away with; destroy." (*Merriam-Webster*, Dictionary: Demolish, available at: https://www.merriam-webster.com/dictionary/demolish [last accessed January 9, 2026]). Synonyms of demolish include destroy, wipe out, dissolve, eradicate, obliterate, and ruin. (*Merriam-Webster*, Thesaurus: Demolish, available at https://www.merriam-webster.com/thesaurus/demolish [last accessed January 9, 2026]).

Petitioner's evidence, unaccompanied by any expert testimony explaining the reports contents, fails to establish that the "Architecture Reports" are *prima facie* plans to "demolish" the apartments. (*See* People v Santi, 3 NY3d 234, 246 [2004] [holding that expert testimony is proper when "it would help to clarify an issue calling for professional or technical knowledge beyond the ken of the typical" fact finder]).

Moreover, Petitioner fails to establish that the proposed "demolitions" are to be done in good faith. The only proffered evidence is a self-serving affirmation from Petitioner's agent merely referring to the Architectural

Reports and the invoice labeled as an estimate cost "to renovate" as evidence of its "good faith."

Accordingly, Petitioner's motion to strike Respondents' defenses is denied.

CPLR § 3211(a)(1)

Respondents request for relief pursuant to CPLR § 3211(a)(1) after filing a responsive pleading must be denied as untimely. (*See* CPLR § 3211[e]; see also *Goncalves v Soho Vil. Realty, Inc.*, 47 Misc 3d 76 [App Term 2015]).

CPLR § 3211(a)(7)

"In general, on a CPLR 3211 motion to dismiss, the pleading should be construed liberally, and the facts as alleged in the complaint are presumed to be true and are accorded the benefit of every possible favorable inference." (CPLR 3026; *Rovello v Orofino Realty Co.*, 40 NY2d 633, 634). The applicable standard for determining a CPLR § 3211(a)(7) motion is whether, within the four corners of the complaint, any cognizable cause of action has been stated (*Guggenheimer v Ginzburg,* 43 NY2d 268, 275; *Morone v Morone,* 50 NY2d 481)" *Scott v Bell Atl. Corp.*, 282 AD2d 180, 183 [1st Dept 2001].

Here, within the four-corners of the pleadings, Petitioner states a cause of action that it seeks to recover possession of the apartments upon expiration of the leases and that Petitioner has good cause the demolish the housing accommodations, i.e., the apartments 1E and 4C at issue.

When reviewing a motion to dismiss pursuant to section 3211(a)(7), a court is not necessarily limited to the pleadings.

> "A CPLR 3211(a)(7) motion may be used by a defendant to test the facial sufficiency of a pleading in two different ways. On the one hand, the motion may be used to dispose of an action in which the plaintiff has not stated a claim cognizable at law. On the other hand, the motion may be used to dispose of an action in which the plaintiff identified a cognizable cause of action but failed to assert a material allegation necessary to support the cause of action. As to the latter, the Court of Appeals has made clear that a defendant can submit evidence in support of the motion attacking a well-pleaded cognizable claim. When documentary evidence is submitted by a defendant "the standard morphs from whether the plaintiff stated a cause of action to whether it has one" (John R. Higgitt, *CPLR 3211 [A] [7] and [A] [7] Dismissal Motions—Pitfalls and Pointers*, 83 NY St BJ 32, 33 [2011] [emphasis omitted]; John R. Higgitt, *CPLR 3211 [A] [7]: Demurrer or Merits-Testing Device?*, 73 Albany L Rev 99, 110 [2009]). As alleged here, if the defendant's evidence establishes that the plaintiff has no cause of action (i.e., that a well-pleaded cognizable claim is flatly rejected by the documentary evidence), dismissal would be appropriate." *Basis Yield Alpha Fund (Master) v Goldman Sachs Group, Inc.*, 115 AD3d 128, 134-135 [1st Dept 2014] [internal citations omitted].

Here, the crux of the Respondents argument is two-fold: 1) that the term "housing accommodation" in the context of the statute refers to a building rather than a single unit, and 2) that Petitioner's cannot establish a good faith intention to demolish the apartments pursuant to the statute.

As previously discussed *supra*, the Court has determined that the statute unambiguously defines a "housing accommodation" to include an individual residential unit.

To the extent Respondents rely on Petitioner's Architectural Reports in support of the argument that Petitioner

intends to renovate but not demolish the apartments– the Court agrees that the proposed plans labelling the scope of the work as "Alteration Type 2" without any change to the "bulk" call into question whether this is a proposed alteration or demolition of apartments 4C and 1E. However, without the Respondents providing expert testimony explaining the content of these complex and technical architectural plans, they have failed to establish that the Architectural Report is in fact a proposed alteration warranting dismissal.

Nothing else offered here conclusively establishes that Petitioner's plan is neither in good faith nor a demolition of the housing accommodation within the meaning of the RPL §6A

Accordingly, Respondents' motion to dismiss on this ground is denied.

Accordingly, it is

ORDERED that the Petitioner's motion to strike is denied; and it is further

ORDERED that the Respondents' motion to dismiss pursuant to CPLR § 3211(a)(1) and (a)(7) is denied; and it is further

ORDERED proceeding is hereby calendared for **February 19, 2026, at 9:30AM, Part F, RM 523** for all purposes.

This constitutes the Decision and Order of this Court.

Date: January 21, 2026

HON. [illegible] JUDGE, [illegible] COURT

Judge, Civil/Housing Court