

Wira Assoc. v Tapper
2026 NY Slip Op 32098(U)
June 10, 2026
Civil Court of the City of New York, Kings County
Docket Number: Index No. LT-312458-25/KI
Judge: Julie Poley
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Civil Court of the City of New York
County of Kings

Index # LT-312458-25/KI



WIRA ASSOCIATES

Petitioner(s)

Decision / Order

-against-
DESMOND TAPPER; LINDA TAPPER; "John" "Doe";
"Jane" "Doe"

Respondent(s)

Recitation, as required by CPLR 2219(a) NYSCEF # 8-19

Notice of Motion and Affidavits Annexed.....	1
Order to Show Cause and Affidavits Annexed.....	0
Answering Affidavits.....	0
Replying Affidavits.....	0
Exhibits.....	2
Stipulations.....	0
Other.....	0

POLEY, J.

Petitioner commenced this nonpayment proceeding against Respondent to collect rental arrears for the premises located at 888 East 96th Street Apt 2B Brooklyn, NY 11236 ("premises"). The Petition sought \$ 8,552.10 in rent through April 2025. The premises are Rent Stabilized. Respondent obtained counsel through intake and New York Legal Assistance Group (NYLAG) filed an answer on October 23, 2025, an amended answer on November 3, 2026. On January 28, 2026 Respondent moved for summary judgment on Affirmative Defenses raised therein. Petitioner was granted opportunity to oppose the motion but after multiple adjournments failed to do so. On May 26, 2026, Petitioner made an oral application to discontinue this proceeding without prejudice and Respondent opposed and requested that the

summary judgment motion be submitted for determination without opposition.

Respondent moves for summary judgment on the Third Affirmative Defense in the Amended Answer. Respondent alleges that from 2011 through 2020 the Department of Building (“DOB”) issued at least dozen violations to the subject building for occupancy contrary to the certificate of occupancy that remain open to this day, with no compliance recorded. (Res. Exh A). That the violations concern the unauthorized conversion of a commercial spaces into residential apartments in contravention of the building’s certificate of occupancy. Therefore, Respondent argues that summary judgment is warranted as there is no genuine issue of material fact that Petitioner is barred from collecting rent in this nonpayment proceeding pursuant to MDL § 301 and MDL § 302 as the subject building has open violations for occupancy contrary to the certificate of occupancy for the entire period in which rent arrears are sought. As already noted, Petitioner failed to oppose the motion aside from making an oral application to discontinue without prejudice.

After careful consideration of the record, the court declines to grant Petitioner’s application and makes the following findings of fact and conclusions of law on Respondent’s unopposed motion for summary judgment.

To obtain summary judgment, the moving party has the burden of establishing its cause of action or defense sufficiently to justify judgment in its favor as a matter of law. (*See*, CPLR § 3212(b); *Friends of Animals, Inc. V. Associated Fur Mfrs. Inc.*, 390 N.E.2d 298 [1979]). If there is any doubt as to the existence of a triable issue, summary judgment should not be granted. (*Glick & Dolleck, Inc. V. Tri-Pk Export Corp.*, 22 NY2d 439 [1968]). As summary judgment is a drastic remedy, “the facts must be viewed in the light most favorable to the non-

moving party.” (*Vega v. Restani Construction Corp.*, 18 NY3d 499, 503 [2012]). “To grant summary judgment it must clearly appear that no material and triable issue of fact is presented.” (*Sillman v. Twentieth Century-Fox Film Corp.*, 3 NY2d 395, 404 [1957]; citing, *Di Menna & Sons v. City of New York*, 301 NY 118 [1950]). Once the moving party has met its burden, it is incumbent on the opposing party to present evidence to raise a triable issue of fact. CPLR § 3212(b).

MDL § 302 provides that if any dwelling or structure is occupied in whole or in part without a conforming certificate of occupancy in violation of MDL § 301, the owner cannot recover rent for the period of noncompliance and cannot maintain an action or special proceeding for nonpayment of such rent. The Court of Appeals in *Chazon, LLC* rejected limitations on the applicability of MDL § 302, declaring that “in the absence of compliance the law’s command is quite clear: ‘No 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.’” (*Chazon, LLC v. Maugeneset*, 19 NY3d 410, 415 [2012]). 15). Whereas previously some courts looked to whether a certificate of occupancy violation rendered a particular tenant’s residential occupancy unlawful, or delved into the circumstance surrounding what caused the violation, the court in *Chazon, LLC* determined that such inquiries which may result in imposing limitations on the applicability of MDL § 302 “may make sense from a practical point of view ... but we find nothing in the opinions endorsing such results ... and nothing anywhere else to explain how they can be reconciled with the text of the statute. They simply cannot.” (*Id.*). This strong, unequivocal language from our state’s highest court is controlling. While *Chazon, LLC* concerned interpreting MDL § 301 and MDL § 302 in the

context of a Loft Law case, the precedent has been broadly applied, including to nonpayment and holdover proceedings. (See *208 Himrod St., LLC v. Irizarry*, 42 Misc 3d 145(A) [App. Term. 2nd Dept 2014] [“contrary to landlord’s further contention, the lack of a certificate of occupancy precludes landlord’s collection of rent in the entire building, not just in the illegally altered apartments”] See, *GVS Props. LLC v. Vargas*, 59 Misc.3d 128(A) [App Term, 1st Dep’t 2018]]; *West 48th Holdings LLC v. Eliyahu*, 64 Misc.3d 133(A) [App Term, 1st Dep’t 2019]; *Trafalgar Co. v. Malone*, 73 Misc.3d 137(A) [App Term, 1st Dep’t 2021]; *Lispenard Studio Corp. v. Loeb*, 2016 N.Y. Misc. LEXIS 1933 (Civ Ct, Hous Part, New York County 2016); see also, *United 90 LLC v. Gonzalez*, 81 Misc.3d 1206(A) [Civ Ct, Hous Part, Kings County 2022]).

For the foregoing reasons, Respondent is granted summary judgment on its Third Affirmative Defense pursuant to MDL § 301 and MDL § 302. There are open DOB violations for occupancy contrary to the building’s certificate of occupancy, and those violations are *prima facie* evidence that the certificate of occupancy violations exist. Petitioner does not present any evidence to refute the fact that the subject building has open violations for occupancy contrary to the certificate of occupancy during the entire period for which rent arrears are sought. As such, Petitioner is precluded from prosecuting this nonpayment proceeding. (*Chazon, LLC v. Maugeneset*, 19 NY3d 410 [2012]).

Therefore, Respondent’s motion is granted, and this proceeding is dismissed. The court does not reach the balance of the arguments presented in Respondent’s motion as they are moot.

This constitutes the Decision/Order of the court, which shall be uploaded to NYSCEF.

Dated: June 10, 2026
Brooklyn, New York

Hon. Julie Poley, J.H.C.

Honorable Julie Poley

Disposition Table Form

June 10, 2026

DATE

CHECK ONE:

MOTION SEQ. #:1

CHECK IF APPROPRIATE:

NOTES

☒	CASE DISPOSED		NON-FINAL DISPOSITION	
☒	GRANTED	☐ DENIED	GRANTED IN PART	☐ OTHER
	JUDGMENT	☐ SPS	DECISION RESERVED	☐ SUBMITTED
	WITHDRAWN		DEFAULT	☐ STAY CASE
	ADJOURNED: ALL PURPOSES		ADJOURNED: SUBMISSION	☐ ADJOURNED: TRIAL
	ADJOURNED: HEARING		ADJOURNED: INQUEST	
	TRANSFER/REASSIGN		GAL APPOINTMENT	