

Meleck Shalom LLC v. Valentine, 55327/2017

May 17, 2017

- Civil Court, Kings County, Housing Part E
- 55327/2017
- Judge Bruce E. Scheckowitz
- For Plaintiff: Petitioner's counsel: Ed Hall from Balsamo & Rosenblatt, LLP.
- For Defendant: Respondent's counsel: Catherine Barreda from Brooklyn Legal Services.

Cite as: Meleck Shalom LLC v. Valentine, 55327/2017, NYLJ
1202786328634, at *1 (Civ., KI, Decided May 3, 2017)

[Read Summary of Decision](#)

Decided: May 3, 2017

Recitation, as required by CPLR 2219(a), of the papers considered in the review of respondents' motion to dismiss the proceeding.

Papers Numbered

Notice of Motion & Affidavits Annexed 1

Notice of Cross-Motion and Affidavits Annexed

Answering Affidavits 2

Replying Affidavits 3

Exhibits

Memorandum of law

DECISION/ORDER

*1

Upon the foregoing cited papers, the decision and order on respondents' motion is as follows:

In this holdover proceeding, Meleck Shalom LLC ("Petitioner") seeks to recover possession of apartment 3F located at 2081 Fulton Street, Brooklyn, New York ("Premises") on the grounds that Shatese Athena Valentine ("Respondent") is an unregulated month to month tenant whose tenancy

terminated upon the expiration of Thirty Day Notices of Termination. All sides are represented by counsel. *2

Respondent currently moves this court to dismiss the proceeding on the grounds that the Premises are rent stabilized and the petition fails to properly plead the regulatory status of the Premises. Respondent also seeks an injunction against future harassment and civil penalties against Petitioner, in addition to legal fees.

The standard for summary judgment is clearly articulated in CPLR §3212. The function of summary judgment is issue finding, not issue determination. *Sillman v. Twentieth Century Fox Film Corp.*, 3 N.Y.2d 395, 404 (1957). In other words, the Court cannot resolve factual issues on a motion for summary judgment. *Schwartz, Karlan & Gutstein v. 271 Venture*, 172 A.D.2d 226, 228 (1st Dept. 1991). Summary judgment is a drastic remedy and should not be granted where there is any doubt as to the existence of a triable issue of fact. *Rotuba Extruders v. Ceppos*, 46 N.Y.2d 223 (1978). Summary judgment should be denied when the Court finds that there exists, or determines that it is arguable that there is a genuine issue of fact. See *S.J. Capelin Associates v. Globe Manufacturing Corp.*, 34 N.Y.2d 338 (1974).

Here, Respondents argue that the Premises is subject to rent stabilization by virtue of the fact that the building was constructed in 1889 and contains six or more residential units. In support, Respondent attaches multiple ECB violations for the illegal construction of separate units which contain their own locks. The motion contains seven separate violation for the illegal construction rooms or illegal occupancies; one such violation provides that fifteen separate units were illegally created at the subject building. Petitioner argues that the violations have since been dismissed and accordingly, summary judgment should be denied. However, Petitioner does not dispute that such units were ever created.

*3

Appellate authority provides that a building constructed prior to January 1, 1974, which contains six or more residential units, is subject to rent stabilization coverage. See *Joe Lebnan, LLC v. Olivia*, 39 Misc.3d 31 (App. Term 2d 11th and 13th Jud. Dists 2013); *Rashid v. Cancel*, 9 Misc.3d 130(A) (App. Term 2d and 11th Jud. Dists 2005); *Rosenberg v. Gettes*, 187 Misc.2d 790 (App. Term 1st Dept. 2000); and *Matter of Graecor Realty Co.*

v. Hargrove, 90 N.Y.2d 350, 355 (1997). In *Rashid v. Cancel*, 9 Misc.3d 130(A), the court found that the use of an illegal basement for residential purposes brought an entire building under the rubric of rent stabilization because the basement's residential use constituted the sixth residential unit in the building. The court also held that, "[t]he alleged subsequent reduction in the number of housing accommodations to fewer than six, even if done, as landlord claims, after the placement by the Department of Housing Preservation and Development of a violation, did not exempt the remaining units from rent stabilization." *Id.*

The facts of *Rashid v. Cancel* clearly apply here where ECB issued multiple violation for illegal units at the subject building, that total beyond the necessary six units. Accordingly, the Petitioner's argument that removal of this violation prevents the building from stabilization coverage is unavailing, as it was in *Rashid*. Similarly in *Joe Lebnan, LLC v. Olivia*, 39 Misc.3d 31, the Appellate Term did not examine the legality of the apartments but only considered whether six or more units in the building were utilized as residential at one time. See also *Matter of Graecor Realty Co. v. Hargrove*, 90 N.Y.2d 350, 355 (1997) (primary issue in the determination of whether a building is considered rent stabilized is the function of the units in the building, which "is not limited by any physical or structural requirements.") 90 N.Y.2d at 355. In *4 *Rosenberg v. Gettes*, 187 Misc.2d 790 (App. Term 1st Dept. 2000) the court found that an illegal cellar apartment constituted a sixth residential apartment for the purposes of creating a rent stabilized apartments at the building.

The court emphasized:

[w]e additionally note that the Division of Housing and Community Renewal (DHCR) has counted basement level apartments for purposes of determining whether a building has the requisite six housing accommodations for stabilization jurisdiction, notwithstanding that those apartments did not appear on the certificate of occupancy or were otherwise "illegal." *Id.* at 791.

Similarly, in *Matter of Gottlieb v. Mirabal*, 123 A.D.2d 574 (1st Dept. 1987), the court held that the use of class "B" units as residential could be counted towards the total number of residential units in a building to determine whether the building was a horizontal multiple dwelling and subject to rent stabilization protection. See also *While Knight Ltd. v. Shea*, 10 A.D.3d 567 (1st Dept. 2004) (although units lacked windows they did not

exempt building from rent stabilization status); *Loventhal Management v. DHCR*, 183 A.D.2d 415 (2nd Dept. 1992); *Commercial Hotel Inc. v. White*, 194 Misc.2d 26 (App. Term 2nd Dept. 2002).

Accordingly, the Premises are subject to rent stabilization coverage. Respondent's motion granted to the extent of dismissing the proceeding with prejudice. Respondent preserves the claim for legal fees and may renew its harassment claim in the HP Part.

This constitutes the decision and order of the court.

Dated: Brooklyn, New York

May 3, 2017