

**DMC Corp., Petitioner v. Teresita Bugdady a/k/a Teresa Bugdady,
Respondents (tenants) George Bugdady a/k/a George Bugatti Mary
Shriver Bugatti, "John Doe" & "Jane Doe" Respondents-Undertenants,
84236/13
84236/13**

**Civil Court, Kings County, Housing Part G
NYLJ Publication Date: Mar 19, 2015**

Cite as: DMC Corp. v. Bugdady, 84236/13, NYLJ 1202721017418, at *1 (Civ.,
KI, Decided March 11, 2015)

84236/13

Justice Maria Ressos

Decided: March 11, 2015

ATTORNEYS

Petitioner's Attorney: Lauren De Lotto, Esq., De Lotto & Fajardo, LLP, New York,
NY.

Respondent's Attorney: Karen May Bacdayan Esq., Legal Service NYC-BB,
Brooklyn, NY.

Recitation, as required by CPLR §2219(a), of the papers considered in the review
of this motion:

Papers Numbered

Notice of Motion and Affidavits Annexed 1-2 & exhibits A-B

Notice of Cross-Motion and Affidavits annexed 3-4

Replying Affidavits 5

Exhibits

DECISION/ORDER

*1

Petitioner moves herein for an order directing respondent Teresita Bugady to immediately stop using and to remove the clothes washing machine she recently installed in the subject premises. Respondent in opposition cross-moves for an order denying Petitioner's motion and imposing costs and sanctions upon Petitioner pursuant to 22 N.Y.C.R.R Part 130 and granting Respondent attorneys fees.

Respondent is a rent controlled tenant who has lived in subject apartment for approximately 55 years. Petitioner commenced this hold over proceeding to recover possession on the basis that Respondent is not occupying the premises as

her primary residence. The case has been adjourned for discovery. In the interim, Petitioner interposed the instant motion.

Petitioner brings this motion seeking injunctive relief on the basis that Respondent recently acquired a washing machine and Petitioner believes that it will damage the pipes in the building and cause flooding to other apartments as the building is old and the washing machine was not properly installed. In support of the motion, Petitioner submits an affidavit from the President of the corporation that owns the building, Kenneth Kinzer. Mr. Kinzer states that when the Petitioner purchased the building on May 31, 2002, he inspected the entire building and that there were no washing machines in any of the apartments and he has never seen one in Respondent's apartment. Since Petitioner acquired the building it has never permitted any tenant to have a clothes washing machine and there are explicit provisions in the leases for the other two apartments in the building prohibiting the installation of washing machines and dryers. Mr. Kinzer alleges that he first saw the washing machine in Respondent's apartment in mid-December and asked her to remove it. He later saw that the upstairs hall camera lens had been blocked so that no one could observe the Respondent bringing in the washing machine.

In its Reply papers Petitioner additionally submitted an affidavit from its plumber, Karol Jankowski, addressing the "damages that the subject clothes washing machine can cause to the Building, its plumbing and the other tenants and their apartments." He avers that it is his "understanding" that the subject washing machine was not properly installed and in order to properly install a clothes washing machine, a licensed plumber with permits from the Department of Buildings Department would be required. Significant work would be required behind the walls of the building in order to bring any clothes washing machine installed in the apartment in compliance with the building code.

*2

Respondent in opposition moves for an order denying Petitioner's motion as improper and imposing costs and sanctions pursuant to 22 N.Y.C.R.R Part 130 and granting Respondent attorneys fees. Respondent also alleges that Petitioner repeatedly harasses Respondent in violation of §27-2004 subdivision (a) of Article 1 of the Housing Maintenance Code by conducting unnecessary and invasive inspections, turning up the heat in the summer and lowering it in the winter, installing security cameras outside her apartment door and offering to buy her out for \$20,000.00. Respondent argues that this motion is yet another example of Petitioner harassing her.

Petitioner is asking the court to enjoin Respondent from using her washing machine and direct her to remove it. Respondent, is a rent control tenant, does not have a lease. The other tenants in the building have leases that prohibit the use of a clothes washing machine. If there is no lease or the "lease is silent with respect to the right to have an appliance, then the installation of a washing machine or other appliance is protected by the tenant's general common law right to "use and enjoyment of the premises, as long as the use of the appliance does not cause damage, waste, or nuisance." Scherer, Residential Landlord and Tenant in New York §8.68. Petitioner merely alleges that the potential for damage to the building and the other tenants by Respondent's improper installation of a clothes washing machine in her apartment is great and of concern to it. However, Petitioner cannot point to one incident where Respondent's use of the clothes washing machine has caused damage to the building or any other tenants. Therefore, waste or nuisance has not been established.

At this point, the relief Petitioner requests herein is equitable and injunctive in nature and is not within the limited equitable and injunctive powers of the Civil Court. In *Broome Realty Associates v. Eng*, in the course of a non-primary residence holdover proceeding, the tenant made a motion for an order directing the landlord to remove a surveillance camera outside the hallway to his apartment door. The Hon. Douglas Hoffman granted the motion and the landlord appealed. In reversing the lower court's decision, the Appellate Term held: "Except for proceedings for the enforcement of housing standards and applications for certain provisional remedies, the New York City Civil Court may not grant injunctive relief." (Citations omitted) *Broome Realty Associates v. Eng*, 703 N.Y.S.2d 360 (App. Term, 1st Dept. 1999). Similarly, in *Topaz Realty Corp. v. Morales* 801 N.Y.S.2d 479 (App. Term, 2nd & 11th Jud. Dist. 2005) The Appellate Term reversed the Housing Court Judge's order which directed a landlord to release the funds held in escrow to the occupant who had vacated pursuant to a Stipulation.

This Court does not have the jurisdiction to grant Petitioner the relief requested. The Court does not find the motion to be frivolous and therefore, the Respondent's motion for sanctions and attorneys fees is likewise denied.

This constitutes the Decision and Order of the Court.

Dated: March 11, 2015

Brooklyn, New York