

Fordham Law School

## FLASH: The Fordham Law Archive of Scholarship and History

---

[All Decisions](#)

[Housing Court Decisions Project](#)

---

2020-11-10

### Coolidge Riverside v. Notbom

Follow this and additional works at: [https://ir.lawnet.fordham.edu/housing\\_court\\_all](https://ir.lawnet.fordham.edu/housing_court_all)

---

#### Recommended Citation

"Coolidge Riverside v. Notbom" (2020). *All Decisions*. 34.  
[https://ir.lawnet.fordham.edu/housing\\_court\\_all/34](https://ir.lawnet.fordham.edu/housing_court_all/34)

This Housing Court Decision is brought to you for free and open access by the Housing Court Decisions Project at FLASH: The Fordham Law Archive of Scholarship and History. It has been accepted for inclusion in All Decisions by an authorized administrator of FLASH: The Fordham Law Archive of Scholarship and History. For more information, please contact [tmelnick@law.fordham.edu](mailto:tmelnick@law.fordham.edu).

**CIVIL COURT OF THE CITY OF NEW YORK**

**COUNTY OF NEW YORK: TRIAL PART R**

**Index No: L&T 61411/16**

---

**DECISION/ORDER**

**COOLIDGE RIVERSIDE LLC.,**

**Petitioner-Landlord,**

**-against-**

**KARIN NOTBOM and WILLIAM HEALEY,**

**Respondents-Tenants,**

**“JOHN DOE” and “JANE DOE”**

**Respondents-Undertenants.**

---

**HON. ANNE KATZ**

Respondents, by their attorneys, move for a stay of an “in person hearing” pursuant to *CPLR* §2201. Respondents request the stay of an “in person hearing” until the end of the public health emergency created by Covid-19. The Affidavit in Support by respondent Notbom (“Notbom”) alleges she is 81 years old and suffers from “high essential hypertension, cholesterol, hyperthyroidism, pulmonary emphysema, paroxysmal atrial fibrillation and major depressive disorder”. Notbom has resided at 320 West 76<sup>th</sup> Street, Apartment 1A, New York, New York 10023 (“premises”) since 1967. The Affidavit in Support by respondent Healey (“Healy”) states he is 73 years old and suffers from “hypertension, chronic lymphocytic leukemia, hypertension, cardiac arrhythmia, cardiac mitral valve replacement and anxiety disorder”. Healy moved into the premises with Notbom in 1983. The premises are subject to the Rent Stabilization Law as amended.

Respondents also request a stay of a “virtual hearing”, until the end of the coronavirus pandemic pursuant *CPLR* §2201. Notbom alleges that both she and Healy are not technologically savvy and only received a computer four months ago as a gift. According to Notbom,, she and Healy only know how to use the “basic functions” of the computer. Notbom states she is not comfortable navigating or downloading new programs and/or using a web camera. According to Notbom the idea of having a trial which can result in her eviction from her rent stabilized home of 53 years is terrifying and has caused her stress and anxiety.

Petitioner, by its attorney, opposes a stay of this proceeding.

**History of the Case**

Petitioner commenced this proceeding by Notice of Petition and Petition dated April 2, 2016. The petition alleged that the respondents were committing or permitting a nuisance in the premises by

engaging in a persistent and continuing course of conduct which evidenced an unwarrantable, unreasonable or unlawful use of the property to the annoyance, inconvenience, discomfort or damage to others pursuant to the *RPAPL* and the *Rent Stabilization Law Section 2524.3(b)*. The Notice stated more specifically that: excessive amounts of cigarette smoke emanate from the premises into the public areas of the building including but not limited to the lobby; smoke which emanates from the premises into the apartments of other tenants is a health hazard to the other tenants of the building, staff, visitors, workmen, guests, etc.; secondhand cigarette smoke is a known health hazard and puts the health of other people in the building at risk; smoke in the premises which emanates into other spaces is a violation of the New York Clean Indoor Air Act; and the New York City Smoke-Free Air Act of 1992 prohibits smoking in common areas in a residential building with ten units or more.

The case initially appeared in Part C on May 3, 2016. Respondent, by counsel, interposed a Verified Answer and Demand for a Verified Bill of Particulars dated October 13, 2016. The Answer stated that the alleged incidents do not threaten the health, safety, and comfort of other occupants in the building and, as such, do not constitute a nuisance. The Answer contained a counterclaim for legal fees.

On June 8, 2017, the proceeding was settled by a two attorney “So Ordered” stipulation in which respondents agreed to take steps to prevent smoke from emanating from the premises. Respondents allegedly breached the stipulation and petitioner moved to restore the proceeding. The proceeding was settled pursuant to a second two attorney “So Ordered” stipulation dated January 22, 2019. In the stipulation, respondents consented to a final judgment of possession with issuance of a warrant forthwith and execution stayed on condition that after March 22, 2019, respondents cease smoking in the premises for the duration of their tenancy. On December 27, 2019, petitioner moved this Court to execute on the warrant based upon respondent’s alleged default.

Petitioner’s motion was granted and the proceeding was set down for a hearing on April 22, 2020. On March 16, 2020, the court ceased “in person operations” due to the coronavirus pandemic. The court reopened on June 10, 2020 for limited “in person operations”. From April, 2020 through September, 2020 this proceeding was conferenced numerous times with the court however, a settlement was not reached. An “in person hearing” was scheduled for October 26, 2020 and October 27, 2020. Respondent brought this motion to stay the scheduled “in person hearing” and requested a reasonable accommodation.

Respondents argue that an “in person hearing” is not acceptable due to their age and serious underlying medical conditions combined with inadequate safeguards at the courthouse. Respondents allege that their age and conditions place them in a “high risk” category for complications due to the coronavirus and they are not be able to participate in a “virtual hearing” due to their lack of technological skills which would deprive them of the opportunity to participate in a meaningful way.

It appears to this Court that petitioner does not object to a stay of an “in person hearing” rather objects to a stay of a “virtual hearing” based upon both Administrative Order 231/20 and Judiciary Law §2-b(3) which grants the court power to hear the proceeding virtually.

## Stay of the Proceeding

*CPLR §2201* gives this Court the ability to grant a stay of a proceeding “upon such terms as may be just”. See *CPLR §2201*. The Appellate Division, First Department has held that New York Civil Courts have the jurisdiction and discretion to impose such stays of eviction proceedings upon good cause shown. *Harvey 1390 LLC v. Bodenheim*, 96 AD3d 664, 665, 948 NYS2d 32, 34 (App. Div. 1<sup>st</sup> Dept. 2012). The judicial determination of whether the good cause standard is met is a fact-specific inquiry which is undertaken by the court in each instance. *Archstone Camargue I LLC v. Korte*, 40 Misc3d 103, 104, 971 NYS2d 642, 643 (App. Term 1<sup>st</sup> Dept 2013)(affirming lower court’s decision to impose a stay and citing factors such as tenant’s senior citizen status, long-term residency and history of the proceeding). This Court believes that respondents have met the good cause standard for a stay of this proceeding.

Notbom has resided in the rent stabilized premises for 53 years and Healy has co-resided with Notbom for thirty seven years. The alleged breach of the stipulation is a single instance of smoke which only affected one neighbor, Ms. Lynch in or about November, 2019. Ms. Lynch is currently residing in South Carolina and has been for many months. Although Ms. Lynch alleges she was driven out of her apartment by respondents’ smoke, it has been represented to this Court that Ms. Lynch has been in South Carolina caring for her ill husband. It has also been represented that Ms. Lynch has remained in South Carolina due to the pandemic and it appears Ms. Lynch is not planning on a return to New York based upon her preference to testify remotely. Although AO 231/20 allows for a virtual hearing, whenever possible, this Court does not believe such virtual testimony is appropriate or possible under these circumstances. Notbom and Healy are elderly and do not have the technology to testify virtually in a meaningful way to protect their valuable rent stabilized apartment they have resided in for decades. Given their severe health issues it is also clear that they should not be required to travel to an attorney’s office to testify especially because the only complaining witness is currently in South Carolina. While respondents admittedly use Facebook and Twitter, such platforms are user friendly and, if not used correctly, such misuse will not jeopardize their rent stabilized tenancy.

*Judiciary Law §2-b(3)* does confers power on this Court to devise and make new forms of proceeding necessary to carry into effect the powers and jurisdiction possessed by the court. The Court of Appeals and Appellate Division, First Department have also held that the court may use innovative procedures, including video testimony to execute its powers and, in exceptional times. *The People of the State of New York v. Wrotten*, 14 NY3d 33, 923 NE2d 1099, 896 NYS2d 711 (Ct. App. 2009). However, as stated above, no exigent circumstances exist to require this Court to exercise its discretionary powers under *Judiciary Law §2-b(3)*. The judicial system prefers an “in person” trial or hearing over remote trials or hearings, especially when the stakes are high. While the recent cases of *Madonna Ciccone v. One West 64<sup>th</sup> Street, Inc.*, 2020 NY Slip Op 20220 (Sept 4, 2020) and *A.S. v. N.S.*, 2020 NY Slip. Op. 20161 (Supreme Court, First Dept.) have found virtual trials appropriate under some circumstances, as stated above, this Court does not believe those circumstances exist. Notbom has resided in the rent stabilized premises for 53 years and Healy has co-resided at the premises for thirty seven years. Petitioner has alleged one single instance of smoke which allegedly affected one neighbor, Ms. Lynch, who has been in South Carolina for months with apparently no immediate plans to return to New York. Respondents are elderly with severe underlying medical conditions and should not be made to jeopardize a valuable commodity,

their rent stabilized residence, pandemic n e co g witness is ot  
at the buildin

A c d. t c n n r u n New ork, this  
Court m t  
t O r t i

ated: New York, New  
vember 10, 2020

-----

Anne Katz