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[*1]

Beltre v Carroll Place Assoc. LLC
2020 NY Slip Op 51348(U)
Decided on November 18, 2020
Civil Court Of The City Of New York, Bronx County
Ibrahim, J.
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Decided on November 18, 2020

Civil Court of the City of New York, Bronx County

<p>Dilcia Beltre, et. al., Petitioners,</p> <p>against</p> <p>Carroll Place Associates LLC, et. al., Respondents, and DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT OF THE CITY OF NEW YORK & NEW YORK CITY DEPARTMENT OF BUILDINGS Co-Respondent(s).</p>

1669/2020

Take Root Justice

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Shorab Ibrahim, J.

The petition in this "HP proceeding" alleges that Petitioners — twelve (12) individuals — are the tenants and/or occupants of the subject premises (1064 Carroll Place, Bronx, NY 10456), that Respondent CARROLL PLACE ASSOCIATES LLC is the owner of that property and that YECHIEL WEINBERGER is the Head Officer and managing agent of the subject premises.

Petitioners in this proceeding sought (i) a complete "roof to cellar" inspection of the subject premises by the Department of Housing Preservation and Development ("DHPD") and the Department of Buildings ("DOB"), including the elevator system; (ii) an order directing respondents to correct all conditions listed in the amended petition, as well as all violations of the Housing Maintenance Code ("HMC"), Building Code and Multiple Dwelling Law ("MDL") that existed in the subject premises, whether in public areas or in petitioners' units; (iii) an order directing respondents to correct any conditions that arise during the pendency of this proceeding; (iv) an order directing respondents to correct any new violations that arise during the pendency of this proceeding; and (v) civil penalties and other damages.

[\[EN1\]](#)

Violation status reports available on the DOB website, and admissible pursuant to CPLR §4518 and MDL §328(3), show that there are three (3) open Environmental Control Board ("ECB") violations placed by DOB in the subject premises, all for the elevators. Violation No. 39031109Z issued on October 27, 2020 and is classified by DOB as a Class-1 violation, an immediately hazardous violation that must be corrected immediately. Violation No. 38166082J issued on April 4, 2007 and Violation No. 38090548Y issued on October 4, 1999. Both of these violations are classified by DOB as non-hazardous violations. Copies of the

violation details reports for the elevator violations, printed on November 13, 2020, are annexed hereto [\[FN2\]](#)

PROCEDURAL HISTORY

This case first appeared in court on February 5, 2020. On that date, the case was adjourned by stipulation to March 18, 2020 for argument on DOB's pending motion to dismiss the proceeding as to DOB. In this stipulation, respondents agreed to correct open DHPD and DOB violations in each petitioner's apartment and in the common areas and agreed to inspect and repair non-violation conditions alleged in the amended petition. Respondents also agreed they would enter into an order to correct for violations that remained open on the return date of this proceeding. [\[FN3\]](#)

After a delay due to the Covid-19 pandemic, this court heard the case on August 5, 2020. Oral argument was heard on DOB's motion to dismiss on August 5, 2020 and August 25, 2020.

The court issued a Decision and Order, dated September 1, 2020 denying DOB's motion [\[*2\]](#) to dismiss and set the case down for a conference on October 2, 2020. [\[FN4\]](#)

During that time, the parties entered into a Consent Order to correct the DHPD violations in the subject premises, as represented in an attached Schedule A. [\[FN5\]](#)

As such, the sole remaining issues at the October 2, 2020 conference were the DOB violations for the elevator. The parties were to provide by October 16, 2020 additional submissions as to whether the court could enforce the DOB violations for elevator services, which violations are outside of the HMC, or place its own violations for elevator services. No supplemental submissions were made by any party to this proceeding.

DISCUSSION

Respondents have appeared remotely by counsel and have interposed an answer. It is not disputed that petitioners are tenants of the subject apartments or that respondents are proper parties. Nor is there any dispute as to the existence of the conditions evidenced by the DOB violation status reports.

At the outset, the court will address the threshold issue of whether this court has jurisdiction to enforce building code violations placed by DOB and ECB.

It is important to note that "§ 110 of the New York City Civil Court Act addresses the Housing Part of the Civil Court. § 110(a) provides '(a) part of the court shall be devoted to actions and proceedings involving the enforcement of state and local laws for the establishment and maintenance of housing standards, including but not limited to, the building code'. § 110(a)(4) provides for '(p)roceedings for the issuance of injunctions and restraining orders or other orders for the enforcement of housing standards under such laws.' § 110 (c) provides 'regardless of the relief originally sought by a party the court may recommend or employ any remedy, program, procedure or sanction authorized by law for the enforcement of housing standards, if it believes they will be more effective to accomplish compliance or to protect and promote the public interest....'. § 110(e) provides that Housing Court judges are '... empowered to hear, determine and grant any relief within the powers of the housing part in any action or proceeding except those to be tried by jury'." ([Truglio v VNO 11 E. 68th St. LLC, 35 Misc 3d 1227\(A\)](#), *30-31, 953 NYS2d 554 [Civ Ct, New York County 2012]).

Indeed, it is well-settled that the Housing Part has the power and jurisdiction to enforce building code violations issued by DOB and ECB. "The statutory framework which created the Housing Part of the Civil Court explicitly gave this court jurisdiction to grant injunctive relief to enforce 'state and local laws for the establishment and maintenance of housing standards, including, but not limited to, the building code'." (*Various Tenants of 515 East 12th Street v 515 East 12th Street, Inc.*, 128 Misc 2d 235, 236, 489 NYS2d 830 [Civ Ct, New York County 1985] [internal citations omitted]; [see also Robertson v Jones, 66 Misc 3d 1219\(A\)](#), *3, 120 NYS3d 724 [Civ Ct, New York County 2020] ["The Civil Court Act ("CCA") explicitly gives HP jurisdiction to grant injunctive relief to enforce 'state and local laws for the establishment and maintenance of housing standards, including, but not limited to the Building Code' HP has jurisdiction to enforce Building Code "] [internal citations omitted]; [Rivellini v Rolf, 43 Misc 3d 1202\(A\)](#), *4, 992 NYS2d 160 [Civ Ct, New York County 2014] ["Housing Court has [*3] jurisdiction in an HP proceeding over violations issued by DOB, ECB "]; [Schanzer v Vendome, 7 Misc 3d 1018\(A\)](#), *5-6, 801 NYS2d 242 [Civ Ct, New York County 2005] ["The Civil Court Act further gives this court the jurisdiction to issue 'an injunction, restraining orders or other orders' to enforce Building

Code violations the court must exercise its authority so that it can fulfill its mission: to protect and preserve housing stock." [internal citations omitted]).

Given that this court has the jurisdiction to enforce building code violations issued by DOB and ECB, and indeed a mandate to enforce such violations, the court now considers whether an order to correct the ECB elevator violations is proper.

The answer, in this court's view, does not raise any defense to an Order to Correct *as a matter of law* (*see D'Agostino v Forty-Three E. Equities Corp.*, [12 Misc 3d 486](#), 489-490 [Civ Ct, New York County 2006] *aff'd on other grounds*, [16 Misc 3d 59](#) [App Term, 1st Dept 2007]; *Vargas v 112 Suffolk St. Apt. Corp.*, [66 Misc 3d 1214](#)[A] at *3 [Civ Ct, New York County 2020] ["[t]he few defenses to an order to correct include lack of standing or jurisdiction, completed repairs, that conditions are not code violations, that a notice of violation is facially insufficient, that the respondent is no longer the owner, and economic infeasibility"] [internal citations omitted]; *Allen v 219 24th St. LLC*, [67 Misc 3d 1212](#)(A), *17, [126 NYS3d 854](#) [Civ Ct, New York County 2020]; *Morales v Balsam*, [69 Misc 3d 1204](#)(A), *1-2, 2020 NY Slip Op 51176(U) [Civ Ct, Bronx County 2020]).

The court notes that, pursuant to CPLR 409(b), it is required to "make a summary determination upon the pleadings, papers and admissions to the extent that no triable issues of fact are raised." (*Brusco v Braun*, [199 AD2d 27](#), 31-32, [605 NYS2d 13](#) [1st Dept 1993]; *FR Holdings, FLP v Homapour*, [154 AD3d 936](#), 938, [63 NYS3d 89](#) [2nd Dept 2017]; [1646 Union LLC v Simpson](#), [62 Misc 3d 142](#)[A], 2019 NY Slip Op 50089[U] [App Term, 2nd Dept 2019]; *New 110 Cipriani Units LLC v Board of Managers of 110 E 42nd Street Condominium*, [166 AD3d 550](#), 551, 2018 NY Slip Op 08096 [1st Dept 2018]; *1091 River Avenue LLC v Platinum Capital Partners, Inc.*, [82 AD3d 404](#), 2011 NY Slip Op 01518 [1st Dept 2011]).

In view of the foregoing, pursuant to CPLR 409(b), it is hereby ORDERED that respondents shall correct the open ECB elevator violations, specifically Violation No. 39031109Z and Violation No. 38166082J. The non-hazardous violation must be corrected within thirty (30) days of service of this Order upon respondents' counsel via email. The class-1 hazardous violation must be corrected within fourteen (14) days of service of this Order upon respondents' counsel via email. [\[FN6\]](#)

All parties are directed to comply with all appropriate safety protocols in light of the COVID-19 pandemic, including but not limited to: wearing gloves and face masks,

complying with all rules, regulations, and orders related to social distancing, and following the recommendations of the Centers for Disease Control ("CDC"), the NYS and NYC Departments of Health and other health officials, and to take into consideration the health and safety vulnerabilities of the petitioner and members of her household to the extent the landlord and/or [*4]its agents have knowledge.

Failure to comply with this order shall subject respondents to the contempt powers of the court and civil penalties, as appropriate under NYC Admin Code § 27-2115 and § 28-202.1.

This constitutes the Order of the court. Copies will be emailed to respective counsel.

Dated: November 18, 2020

Bronx, NY

SO ORDERED,

/S/

SHORAB IBRAHIM, JHC

Footnotes

Footnote 1: See verified amended petition.

Footnote 2: Although the 2020 and 2007 violations are still open violations, it appears that the violation from 1999, although not complied with, has been written off by DOB. As such, the court shall only consider the 2020 and 2007 violations and any reference to open violations shall be only to the 2020 and 2007 violations.

Footnote 3: See February 5, 2020 stipulation.

Footnote 4: See September 1, 2020 Decision and Order.

Footnote 5: See September 11, 2020 Consent Order.

Footnote 6: As Violation No. 39031109Z is classified as a Class-1 immediately hazardous violation that must be corrected immediately, the time to correct shall only be fourteen (14) days. Violation No. 38090548, on the other hand, is classified as non-hazardous, but still a major violation pursuant to NYC Admin Code § 28-201.2.2(2). As this violations is a non-hazardous major violation, respondents shall have thirty (30) days to cure.

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