2020-12-21

950 Rutland Road Co. LLC v. Lord

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF KINGS: HOUSING PART S

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950 RUTLAND ROAD CO LLC, CO-OWNER, L&T 86944/19

Petitioner,

-against- DECISION AND ORDER

CURLISHA LORD,

Respondent.

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Recitation, as required by CPLR 2219(a):

Notice of Motion and Affidavits Annexed	1,2,3
Order to Show Cause and Affidavits Annexed	0
Answering Affidavits	4,5
Replying Affidavits	6
Exhibits	7
Stipulations	8
Other	0

POLEY, J.

In this summary non-payment proceeding, Petitioner seeks to recover possession of Apartment 707 located at 950 Rutland Road, Brooklyn, New York ("premises"). Petitioner alleges that Respondent Curlisha Lord ("Respondent") failed to pay the balance of September 2019 rent of $100.00, and October and November 2019 rent at $2,200.00 per month, for a total balance owed of $4,500.00 through November 2019.

Procedural History:

On December 30, 2019, Andrew Johnson ("Occupant") interposed a *pro se* answer containing a general denial and the matter was scheduled for a first court appearance on January 8, 2020. On January 8, 2020, Mr. Johnson appeared in Court and the proceeding was adjourned to February 24, 2020 for the tenant of record Curlisha Lord to appear. On February 24, 2020,

Mr. Johnson appeared by counsel, Ms. Lord failed to appear, and the proceeding was adjourned to March 26, 2020 for motion practice. Occupant filed his motion on March 11, 2020, which was returnable on March 26, 2020. In the interim, the COVID-19 pandemic struck. On March 20, 2020, Governor Cuomo issued an executive order suspending the operations of all non-essential workers to combat the COVID-19 pandemic. Thereafter, Court appearances in all but emergency cases were administratively adjourned. Subsequently, in May or June of 2020, Occupant withdrew his motion without prejudice as it was not served on Respondent. On July 17, 2020, Respondent Curlisha Lord appeared by counsel and filed her Answer. By Stipulation dated September 16, 2020, the parties stipulated to motion practice and on November 10, 2020, this Court heard oral arguments and reserved decision on the fully briefed motions.

Motions:

Before the court are three motions. Mr. Johnson, now by counsel, seeks leave to file an Amended Answer which contains nine affirmative defenses and one counterclaim. Respondent Curlisha Lord moves for partial summary judgment or in the alternative for leave to obtain discovery in documentary form. Petitioner moves to strike a number of Respondent's affirmative defenses and counterclaims and opposes Respondent's motion for summary judgment and discovery. Petitioner also opposes Occupant's motion to file an Amended Answer.

Occupant Andrew Johnson's motion to Interpose an Amended Answer:

Mr. Johnson, as occupant of the subject premises, seeks leave to amend his general denial *pro se* Answer. His Amended Answer now alleges improper service, breach of warranty of habitability, illusory tenancy, succession defenses as well as a defense and counterclaim of rent

overcharge. Petitioner's opposition seeks to strike Occupant's Answer in its entirety or in the alternative to strike various defenses and counterclaims raised in the Amended Answer. [1] Petitioner's opposition is twofold. First, Petitioner seeks to strike Occupant's Answer alleging that Occupant was not impleaded into the action and therefore lacks standing to interpose his Answer. Second, that most of the Occupant's affirmative defenses raised in the Amended Answer are only available to the tenant of record.

Petitioner's assertion that Occupant has not moved to be impleaded in the action and therefore has no standing to file or amend his Answer is legally insufficient. RPAPL§743 states "the respondent, or any person in possession or claiming possession of the premises, may answer, orally or in writing." Therefore, since Mr. Johnson is claiming possession of the premises, he has standing to interpose an Answer and to seek leave to file an Amended Answer as of right.

As to Occupant's request for leave to amend his Answer, Petitioner agrees that it is well established that permission to amend pleadings should be "freely given." *(Edenwald Contracting Co., Inc. v. City of New York*, 60 N.Y.2d 957, 959 [1983], *quoting* CPLR 3025(b)). In particular, CPLR Rule 3025(b) provides that, "A party may amend his or her pleading, or supplement it by setting forth additional or subsequent transactions or occurrences, at any time by leave of court or by stipulation of all parties. Leave shall be freely given upon such terms as may be just including the granting of costs and continuances." The Court of Appeals has consistently held that leave to amend pleadings "shall be freely given" absent prejudice or

[1] Petitioner opposes Occupant's motion, however, a cross-motion to strike affirmative defenses and/or counterclaims is not before the Court at this juncture. This decision is without prejudice to Petitioner seeking such relief and Occupant opposing same.

surprise resulting directly from the delay. (*McCaskey, Davies & Assoc. v. New York City Health & Hosps. Corp.*, 59 N.Y.2d 755, 757 [1983], *quoting* CPLR 3025(b); *see also, Fahey v. County of Ontario*, 44 N.Y.2d 934 (1978)*; see also, Lanpont v. Savvas Cab Corp., Inc*. 244 A.D.2d 208 [1st Dept. 1997] [In the absence of surprise or prejudice, it is abuse of discretion, as a matter of law, for trial court to deny leave to amend answer during or even after trial]). Therefore, the overwhelming body of case law provides that trial courts have broad discretion to grant leave to amend. *(Murray v. City of New York*, 43 N.Y.2d 400 [1977]).

Petitioner cannot argue prejudice or surprise. Occupant appeared with counsel on the second Court appearance and the proceeding was adjourned with a motion schedule. The proceeding is in the early stages of litigation despite the lapse in time and administrative adjournments due to the COVID-19 pandemic.

As to Petitioner's request for the Court to strike the defenses raised in Occupant's proposed Amended Answer, this Department adheres to the liberal policy that an evidentiary showing of merit is not required under CPLR 3025(b). The Court should only determine whether the proposed amendment is "palpably insufficient" to state a cause of action or defense, or is patently devoid of merit, and that if the opposing party wishes to test the merits of the proposed added cause of action or defense, that party may later move for summary judgment upon a proper showing. (*Lucido v. Mancuso*, 49 AD3d 220, 229 [2nd Dep't 2008]). In this vein, despite Petitioner's failure to file a cross-motion to strike various defenses, the Court must review the proposed defenses and determine whether they are palpably insufficient or patently devoid of merit on their face. (*Confidential Lending, LLC v. Nurse*, 120 AD3d 739, 741 [2nd Dep't 2014]).

Applying this liberal policy, Occupant is granted leave to interpose his third through fifth and seventh through ninth defenses and a counterclaim raised in his Amended Answer, none of which on their face are palpably insufficient or devoid of merit, and Petitioner may move to strike such affirmative defenses and counterclaims raised in the Amended Answer if Petitioner so chooses. The Court strikes the first, second and sixth affirmative defenses as palpably insufficient and patently devoid of merit on their face. The first and second affirmative defenses allege improper service of the predicate demand and the petition. These defenses are without merit as Occupant was not named or served in this action. The petition only names one Respondent, the tenant of record, and therefore, service was not attempted on anyone other than the tenant of record. The sixth affirmative defense sounding in failure of Petitioner to provide a five day notice pursuant to RPL§ 235-e is also stricken. Occupant is not entitled to said notice and therefore the defense is not available to him.

Petitioner's Cross motion to strike defenses:

Petitioner seeks to strike Respondent Curtisha Lord's second and third defenses and the second and third counterclaims raised in her Answer.

Under CPLR ' 3211(b), Aa party may move for judgment dismissing one or more defenses, on the ground that a defense is not stated or has no merit.@ Petitioner has the burden of demonstrating that the affirmative defense is Awithout merit as a matter of law.@ (*Bank of New York v. Penalver*, 125 A.D.3d 796, 797 [2nd Dep=t 2015], *lv to appl dism.* 26 N.Y.3d 1030 [2015]; *quoting, Vita v. New York Waste Servs., LLC*, 34 A.D.3d 559, 559 [2006]). In this context, Athe Court must liberally construe the pleadings in favor of the party asserting the

defense and give that party the benefit of every possible inference.@ (*Fireman=s Fund Ins. Co. V. Farrell*, 57 A.D.3d 721, 723 [2008]).

Petitioner seeks to strike Respondent's second affirmative defense and counterclaim sounding in rent overcharge. Petitioner moves to strike on three grounds. First, that the claim is barred by the statute of limitations. Second, that Respondent sought relief from DHCR and is precluded from seeking the same relief herein on the theory of res judicata and collateral estoppel. Third, that the defense and counterclaim lack merit and fail to state a cause of action.

Petitioner's allegation that Respondent's defense is time bared is denied.[2] Petitioner argues that based on a recent Court of Appeals decision in *Matter of Regina Metro. Co., LLC v. New York State Div. of Hous. & Community Renewal*, 35 N.Y.3d 332 [2020], Respondent had four years rather than six years to file her overcharge claim. Respondent moved into the premises on May 1, 2016 and therefore her time to file her overcharge claim expired on May 1, 2020. Respondent opposes and argues that based on the relation back provision of CPLR 203(d) her defense is timely. Respondent argues her defense is also timely if the Court employs the fraud analysis promulgated in *Matter of Grimm v. State of New York Div. of Hous. & Community Renewal Off. of Rent Admin.*, 15 NY3d 358 [2010].

CPLR § 203(d) provides "a defense or counterclaim is interposed when a pleading containing it is served. A defense or counterclaim is not barred if it was not barred at the time

[2] On June 14, 2019 New York State enacted the Housing Stability and Tenant Protection Act of 2019 (L 2019 Ch. 36 ("HSTPA") which made many changes to rent laws throughout the state of New York. CPLR 213-a was amended to allow overcharge claims to be filed at any time and extended the statute of limitations from four to six years. (*See*, CPLR 213-a). On April 2, 2020, the Court of Appeals in *Matter of Regina Metro. Co., LLC v. New York State Div. of Hous. & Community Renewal*, 35 N.Y.3d 332 [2020] ruled that the overcharge must be decided on the laws that were in effect at the time that the overcharge occurred.

the claims asserted in the complaint were interposed…" Here, since this non-payment proceeding was commenced in November 2019, three and a half years after Respondent moved into the premises, Respondent's answer dated July 17, 2020 containing the overcharge defense to the non-payment of rent is timely based upon the relation back principle.

Additionally, on March 20, 2020, Governor Cuomo issued an executive order suspending operations of the non-essential workforce due to the COVID-19 Pandemic. The executive order included tolling the statute of limitations for all legal actions which included filing of Answers. With time, as restrictions on the return of the non-essential workforce eased, Governor Cuomo periodically renewed executive orders which again included tolling the statute of limitations, which only recently expired as of November 4, 2020. (*See*, Executive Orders 202.8, 202.14,202.28, 202.38, 202.48, 20255, 202.60 and 202.67). For these two reasons, the overcharge defense as plead is timely and the Court does not reach the fraud analysis exception to the statute of limitations. (*Matter of Grimm v. State of New York Div. of Hous. & Community Renewal Off. of Rent Admin.*, 15 NY3d 358 [2010]).

The second prong of Petitioner's argument, which alleges that the overcharge defense is barred by the doctrine of res judicata and collateral estoppel, is also denied. That argument is based on the allegation that Respondent commenced an overcharge claim at the DHCR under Docket Number GX 210006R which seeks the same relief that Respondent seeks to interpose here.

"The doctrine of res judicata operates to preclude the renewal of issues actually litigated and resolved in a prior proceeding as well as claims for different relief which arise out of the same factual grouping or transaction and which should have or could have been resolved in the

prior proceeding." (*Bayer v. City of New York*, 115 A.D.3d 897, 898 [2nd Dep't 2014]). The doctrine of collateral estoppel bars a Aparty from relitigating in a subsequent action or proceeding an issue clearly raised in a prior action or proceeding and decided against that party or those in privity, whether or not the tribunals or cause of action are the same.@ (*Chiara v. Town of New Castle*, 61 A.D.3d 915,916 [2nd Dep=t 2009]; *quoting, Ryan v. New York Tel Co.*, 62 N.Y.2d 494, 500 [1984]). To invoke collateral estoppel, the moving party has the burden of identifying an issue that was necessarily decided in a prior action and which is decisive in the present action, and that the party against whom collateral estoppel is evoked had a full and fair opportunity to contest the issue previously decided that is now claimed to be controlling. *(Comprehensive Med. Care of N.Y. P.C. v. Hausknecht*, 55 A.D.3d 777 [2nd Dep=t 2008]; *citing, Buechel v. Bain* 97 N.Y.2d 295 [2001]). AThe doctrine applies if the issue in the second action is identical to an issue which was raised, necessarily decided and material in the first action, and the plaintiff had a full and fair opportunity to litigate the issue in the earlier action.@ (*Parker v. Blauvelt Volunteer Fire Co.*, 93 N.Y.2d 343, 349 [1999]; *citing, Ryan v. New York Tel Co.*, 62 N.Y2d at 500-501). Collateral estoppel will only operate to bar relitigating of issues that were actually litigated and necessarily decided in the prior proceeding. (*Matter of Robert v. O=Meara*, 28 A.D.3d 567 [2nd Dep=t 2006]; *see also*, *McGee v. J. Dunn Constr. Corp.*, 54 A.D.3d 1009 [2nd Dep=t 2008]). In this instance, it is undisputed that the DHCR proceeding was not litigated to conclusion, that it was subsequently withdrawn, and that a resolution on the merits was not reached. In this vein, the prong of Petitioner's motion alleging res judicata and collateral estoppel is denied.

Finally, Petitioner's allegation that the overcharge defense fails to state a cause of action is also denied. Respondent alleges that pursuant to Rent Stabilization Laws Petitioner's vacancy and longevity increase calculations are improper leading to overcharge from the inception of her tenancy. Giving Respondent every reasonable inference as this Court must, Respondent's defense is preserved for trial.

The branch of Petitioner=s motion to strike Respondent=s second counterclaim [rent overcharge] is denied. The Court has the discretion to entertain a counterclaim that is Ainextricably intertwined@ with Petitioner=s case. (*See*, *Ring v. Arts Intern., Inc.*, 7 Misc.3d 869, 880 [Civ. Ct., N.Y. County 2004]; *see also*, *Haskell v. Surita*, 109 Misc.2d 409, 414 [Civ. Ct., N.Y. County 1981]).

The branch of Petitioner=s motion to strike Respondent=s third affirmative defense [that Petitioner failed to serve rent delinquency notices under RPL 235-e] is granted. The defense as plead is vague, devoid of any facts supporting her claim, and Respondent did not support it with an affidavit elaborating her claim.

The branch of the motion seeking to strike Respondent's third counterclaim [legal fees] is granted. On June 14, 2019, New York State enacted the Housing Stability and Tenant Protection Act of 2019 (L 2019, ch 36) ("HSTPA") which made many changes to rent laws throughout the State of New York, including the ability of parties to seek attorneys' fees in summary proceedings in Housing Court. The HSTPA amended RPAPL § 702 to provide that "No fees, charges or penalties other than rent may be sought in a summary proceeding pursuant to this article, notwithstanding any language to the contrary in any lease or rental agreement." (HSTPA, § 1, part M, § 11). The legislation directed that the statutory amendments contained

in this subsection of part M "shall take effect immediately and shall apply to actions and proceedings commenced on or after such effective date …". (HSTPA, § 1, part M, § 29). This holdover proceeding was commenced in December 2019. Therefore, the changes concerning attorneys' fees applies to this proceeding as it was commenced after June 14, 2019. (*See*, *Palmer House Owners Corp. v. Duchesneau*, 64 Misc.3d 146(A) [App Term, 2nd Dep't 2019]; *see also*, *Chery v. Richards*, 64 Misc.3d 148(A) [App Term, 2nd Dep't 2019]). Therefore, if the parties lease agreement permits, the prevailing party in this action may seek fees associated with prosecuting this action in a plenary proceeding.

Respondent's motion for summary judgment and/or disclosure:

Respondent is seeking partial summary judgment on her overcharge defense, or in the alternative, an order permitting disclosure in documentary form pursuant to CPLR § 408.

Respondent became the tenant of record on May 1, 2016 pursuant to a one-year lease agreement at the monthly preferential rent of $2,100.00 with a legal registered rent of $2,250.00 per month. Prior to Respondent taking occupancy, the DHCR registration shows that the last registered rent for a prior tenant of 14-years was $1,034.07. Respondent contends that using a statutory vacancy increase of 18 percent and longevity increase of 8.4 percent (.6% times 14 years)[3], the resulting first legal rent for Respondent would be $1,307.06 per month. Thus, in order to justify the increase to $2,250.00 per month, Petitioner would have had to make Individual Apartment Improvements (IAI) in the amount of $56,576.90 or at a minimum $47,576.13 to justify the preferential rent at $2,100.00. (9 NYCRR 2522.4(a)(4) (RSC).

[3] RBG order #47; RSC 2522.8(a)92)

Respondent avers that when she moved in the only improvements to her apartment were a new stove, refrigerator, kitchen cabinets, kitchen sink and kitchen countertops, and that there are no Department of Building applications or permits for work issued during the requisite time. Based on Respondent's recollections of the conditions of the apartment at the time she took occupancy, and the absence of Department of building work permits, she argues that Petitioner did not comply with Rent Stabilization Guidelines and unlawfully raised her rent above the permitted limit and that she is entitled to summary judgment and an award of overcharge. Petitioner opposes by an Affidavit of Yossi Goldberg, Petitioner's agent, who alleges that in addition to the apartment improvements that Ms. Lord concedes, the renovations also included new sheet rock and insulation, new flooring, new tiles, new ceilings, new overhead lights, new plumbing in the bathroom, a new toilet, and conversion to gas. Petitioner contends that the legal rent reflected in the 2016 vacancy lease and DHCR registrations was legally and properly calculated in accordance with Rent Stabilization Guidelines and that the renovation costs were lawfully factored into the vacancy rent increase. (Pet. Cross-motion Aff. of Yossi Goldberg)

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.*, 239 N.E.2d 725 [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).

In this instance, there are conflicting affidavits as to the condition of the apartment at the time Respondent took occupancy. Petitioner alleges that there were extensive renovations performed at the premises and that they complied with all legal regulations at the time. Giving the benefit to the non-moving party, as this Court must, Respondent did not eliminate all issues of fact concerning the legal regulated rent calculations, and therefore, the branch of the motion seeking summary judgment is denied.

The Court now turns to the branch of Respondent's motion seeking leave pursuant to CPLR § 408 to conduct discovery from Petitioner in the form of documentary evidence in relation to her overcharge defense. Generally, discovery is permissible by leave of Court in a summary proceeding to narrow the issues to be presented at trial. It requires the moving party to demonstrate ample need. (*Hughes v. Lenox Hill Hospital,* 226 AD2d 4 (1st Dep't 1996), *lv to appl den'd* 90 NY2d 829 [1997]; *New York University v. Farkas*, 121 Misc 2d 643 [Civ Ct, New York County 1983]). This requirement is meant to prevent unnecessary delays to a summary proceeding which, by its summary nature is meant to be litigated in an expeditious manner. (*Plaza Operating Partners Ltd v. IRM (U.S.A.) Inc*., 143 Misc.2d 22 [Civ Ct, New York County 1989]). However, "summary proceedings, despite its name is nonetheless a judicial proceeding, and the ends of justice ought not to be sacrificed to speed." (*Smilow v. Ulrich*, 11 Misc.3d 179 (Civ Ct, New York County 2005); *quoting, 42 W. 15th St. Corp. V. Friedman*, 208 Misc. 123,

125 [App Term, 1st Dep't 1995]). Therefore, where a party has demonstrated "ample need" for discovery it should be granted. (*Georgetown Unsold Shares, LLC v. Ledet,* 130 AD3d [2nd Dep't 2015]; *Lonray, Inc v. Newhouse,* 229 AD2d 440 [2nd Dep't 1996]; *New York University v. Farkas,* 121 Misc.2d 643 [Civ Ct, New York County 1983]; *673 Antillean Holding Co. v. Lindley,* 76 Misc. 2d 1044 [Civ Ct, New York County 1973]).

In *New York Univ. v. Farkas*, the Court provided a list of factors on whether "ample need" has been met, which include (1) whether the party seeking discovery has asserted facts sufficient to establish a cause of action or defense; (2) whether movant has demonstrated a need to determine information directly related to that cause of action or defense; (3) whether the information requested is carefully tailored and is likely to clarify the disputed facts; (4) whether granting disclosure would lead to prejudice; (5) whether the court can alleviate such prejudice; and (6) whether the court can structure discovery so that *pro se* tenants will not be adversely affected by the discovery request. (*New York Univ. v. Farkas*, 121 Misc. 2d at 647; *see also, Georgetown Unsold Shares, LLC v. Ledet*, 130 A.D.3d [2nd Dep't 2015]).

In this case, Respondent asserts that she moved into the subject premises in May of 2016 with the legal regulated rent at $ 2,250 and a preferential rent of $2,100 per month. Since her initial one-year lease, Respondent has signed two more one-year renewal leases with requisite rental increases and a preferential rent of $2,100 and $2,130 respectively. Respondent alleges that she has potentially been overcharged since the commencement of her tenancy. As explained above, to support her claim, Respondent points to the DHCR registration history for her apartment which listed a prior tenant's last registered rent of $1,034.07. Respondent calculates that unless Petitioner spent $56,576.90 in renovating the unit, the first registered rent when she

took occupancy in 2016 exceeds the allowed vacancy and longevity increases resulting in overcharge. Respondent claims she was not able to locate any Building Permits or applications showing that Petitioner applied to have apartment renovated beyond the visible replacement of appliances and kitchen cabinets. In this vein, Respondent argues that she has shown ample need for the Court to grant discovery as all of information concerning the alleged renovation is within Petitioner's control and Respondent seeks discovery going back to April 1, 2015. Respondent seeks leave to review all records concerning the alleged renovation, including contractor bills, statements, cancelled checks, ledger entries, purchase agreements and credit card statements for purchases pertaining to work performed at the premises, including any applications and permits filed.

Petitioner opposes the requested disclosure in its entirely. Petitioner argues that the demand is burdensome, that it seeks documents beyond the statute of limitations, and that many documents requested are public records.

Applying the legal framework to the facts of this proceeding, Respondent shows ample need for discovery. Other than an affidavit alleging substantial rehabilitation of the apartment, Petitioner does not offer any explanation on how the legal rent was calculated or provide any documentation concerning the renovation expenses. Respondent moved in on May 1, 2016, interposed her overcharge claim three and a half years later, and is seeking documents going back to April 1, 2015, which is only arguably half a year beyond the four-year statute of limitations. (*See, Matter of Regina Metro. Co., LLC v. New York State Div. of Hous. & Community Renewal*, 35 N.Y.3d 332 [2020]).

Although it is uncertain whether there was any overcharge, the failure of Petitioner in its opposition to Respondent's discovery request to specify when the prior tenant moved out and to explain on how an over 110% increase in rental charge was derived, make a colorable showing of fraud warranting discovery. (*Matter of Grimm v. State of N.Y. Div. Of Hous. & Community Renewal Off. Of Rent Admin.,* 15 NY3d 358 [2010]; *Bogatin v. Windermere Owners LLC,* 98 AD3d 896 [1st Dep't 2012); *560-568 Audubon Realty Inc v. Rodriguez*, 54 Misc.3d 1226[A] [Civ Ct, New York County 2017]).

Having found that discovery is warranted in this proceeding, the Court finds that Respondent's document request is narrowly tailored. As Petitioner is in sole control and preparation of all documents in connection with renovation of the subject premises and the subsequent rent increase, Petitioner is required to produce the documents to the extent they exist. Therefore, the notice to produce is narrowly tailored and all documents requested are exclusively in the possession of Petitioner. (*656 West Realty LLC v. Blanco*, 32 Misc.3d 128(a) [App Term, 1st Dep't 2011); *85th Estates Co. v. Kalsched, N.Y.L.J.*, May 18,1992 at 27, col 4 [App Term, 1st Dep't 1992]). Accordingly, Petitioner is required to provide Respondent with the demanded documents to the extent they exist by January 29, 2021.

This constitutes the Decision/Order of the Court, copies of which the Court will email to the parties. This proceeding will appear on the Part S virtual calendar on February 11, 2021 at 10:00 a.m. for all purposes including transfer to Part X for trial.

Dated: December 21, 2020
Kings, New York

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Hon. Julie Poley, JHC