

Fordham Law School

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

---

All Decisions

Housing Court Decisions Project

---

2021-04-06

### 397 E. 49th St. LLC v. Iglesias

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

---

#### Recommended Citation

"397 E. 49th St. LLC v. Iglesias" (2021). *All Decisions*. 274.  
[https://ir.lawnet.fordham.edu/housing\\_court\\_all/274](https://ir.lawnet.fordham.edu/housing_court_all/274)

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 KINGS: HOUSING PART H

---

397 E. 49<sup>th</sup> STREET LLC

Petitioner- Landlord,

L&T Index No.: 084003/19

-against-

DECISION/ORDER

MICHAEL IGLESIAS AND NATASHA BUSGITH

Respondents-Tenants,

Address: 397 EAST 49<sup>TH</sup> STREET  
APT. 3A  
BROOKLYN, NEW YORK 11203

---

Recitation, as required by CPLR § 2219(a), of the papers considered in the review of Respondent's Cross-Motion<sup>1</sup>.

---

PAPERS	NUMBERED
Respondent's Notice of Cross-Motion, Attorney's Affirmation in Support & Exhibits ("A" - "C")	1, 2
Petitioner's Attorney's Affirmation in Opposition	3,
Respondent's Attorney's Reply Affirmation in Further Support of the Cross-Motion	4

---

Upon the foregoing cited papers, the Decision and Order is as follows:

This is a nonpayment proceeding commenced in 2019 and first appearing on the Court calendar on December 10, 2019. Respondent Michael Iglesias ("respondent") appeared through counsel while respondent Natasha Busgith has never appeared. Nevertheless, the parties agree that respondents have vacated the premises and that petitioner is back in possession of the subject premises. In support of her cross-motion to dismiss the proceeding base upon repossession by petitioner, respondent's counsel asserts uncontested that her client respondent Michael Iglesias first attempted to surrender in October 2020 prior to substitution of the new Owner on October 27, 2020 (see footnote #1 below), but was advised to wait for a new super to return the keys. Ultimately, he surrendered at the end of November 2020.

---

<sup>1</sup> The motion in chief was to substitute 397 East 49<sup>th</sup> Street LL as petitioner in this proceeding based upon a transfer of ownership just prior to the Covid epidemic and subsequent to commencement of this proceeding (see the March 10, 2020 two attorney stipulation where respondent's counsel is so advised). The motion was consented to on October 27, 2020 during the Covid Epidemic (see Order dated October 27, 2020).

In support of the cross-motion respondent claims that to the extent the new owner is entitled to rental arrears it should be relegated to a “plenary” action. Petitioner opposes the cross-motion and argues it is entitled to proceed to seek those arrears in the form of a money judgment within the context of this summary proceeding, notwithstanding that possession of the premises has already been obtained. The Court does not address this issue from the standpoint of whether a monetary claim fails to state a cause of action under CPLR §3211.

The issue actually before the Court is whether the Court maintains jurisdiction to possibly issue a money judgment for arrears in light of repossession of the premises by petitioner during this proceeding<sup>2</sup>. At the outset the Court notes that the new Owner has never established its right to seek a money judgment for the arrears which comprised the underlying petition, either in support of its earlier motion in chief to be substituted as petitioner or in opposition to this cross-motion. In support of its prior motion the petitioner attached an “ASSIGNMENT OF RENTS” and an “ASSIGNMENT OF LANDLORD/TENANT PROCEEDINGS”. Each of these documents in pertinent part, respectively state as follows:

“(the “Assignor”) ... hereby assigns unto the Assignee all of the Assignor’s right, title and interest as landlord in those certain leases and extensions thereof, if any...and the rents arising therefrom, between Assignor (or Assignor’s predecessor) *and the tenants set forth on Schedule “A” annexed hereto....*”

“(the “Assignor”) ... hereby assigns unto the Assignee all of the Assignor’s right, title and interest as Petitioner *in those certain proceedings identified in Schedule “A” annexed hereto and made a part hereof*, currently pending in the Civil Court of the City of New York County of Kings (the Actions”), between Assignor (or Assignor’s predecessor) *and the tenants/respondents set forth on Schedule “A” ...*”

Both documents are devoid of any “Schedule “A” attachment”. Based upon this deficiency alone the cross-motion should be granted. The Court, however, addresses the legal issue as well concerning the Court’s ongoing jurisdiction, or lack thereof.

Recently the Appellate Term Second Department in two separate cases ruled that once a Judgment of possession issued leading to eviction of a tenant, the Court no longer maintained jurisdiction to amend the judgment to include a monetary judgment, see *Lee v Green World Cleaners I, LLC*, 61 Misc 3d 155(A) (2018); *Goldburd v Langer*, 62 Misc 3d 140(A) (2019). Petitioner’s Counsel attempts to draw a distinction between proceedings where a Judgment of Possession has already been obtained and the repossession has occurred (either through surrender or eviction) and proceedings where the tenant voluntarily vacates a premises during the proceeding without a post-trial judgment or stipulated judgment of possession being reached.

---

<sup>2</sup> A full trial would be necessitated a respondent raised issues of Laches, Rent Overcharge and Breach of the Warranty of Habitability.

The Court rejects this distinction and notes that those cases where “amendments” of Judgments were disavowed by the Appellate Courts due to a lack of ongoing jurisdiction, also sought a monetary judgment similar to what petitioner now seeks. As stated by the Appellate Term Second Department in *Lee v Green World Cleaners I, LLC*, 61 Misc3d 155(A), 112 NYS3d 415 (2018):

“The summary proceeding had terminated and was no longer pending following the entry of the final judgment of possession in favor of landlord and tenant’s subsequent removal from the premises (cites omitted). Once the proceeding terminated, the Civil Court lacked jurisdiction to entertain landlord’s motion to, in effect, amend the final judgment to include a monetary award....notwithstanding the attempt in the stipulation to reserve landlord’s right to so move.”<sup>3</sup>

Similarly, in *Goldburd v Langer*, 62 Misc3d 140(A); 112 NYS3d 859 (App. Term, 2<sup>nd</sup> dept. 2019) the Court again noted:

“Under the circumstances presented, the summary proceeding had terminated following the entry of the final judgment and tenant’s subsequent removal from the premises (cites omitted)...”

“because the proceeding had terminated and was no longer pending, the Civil Court lacked jurisdiction to entertain landlord’s motion, in effect, to amend the final judgment to include a monetary award pursuant to the stipulation”<sup>4</sup>.

To best understand why the “termination” of a summary proceeding should occur whether a tenant is forcibly removed from possession or voluntarily surrenders during the proceeding requires a focus on the history of the summary proceeding as well as the purpose of a nonpayment proceeding. In *Patchogue Assoc. v Sears, Roebuck & Co.*, 37 Misc3d 1, 951 NYS2d 314 (App. Term, 2<sup>nd</sup> Dept., 2012), cited by petitioner, the Court did just that. As noted therein:

“The legislature created summary proceedings in 1820 in order to give landlords a ‘simple, expeditious and inexpensive means of regaining possession of [a] premises in cases where the tenant refused upon demand to pay rent, or where he wrongfully held over without permission after the expiration of his term’ (cites omitted)”.

“While, initially, it could be determined that rent was due and unpaid in a summary proceeding, no money judgment for rent could be awarded. It was not until 1924 that an amendment to the Civil Practice Act allowed the recovery of rent in a summary proceeding, so long as certain conditions were met.”

---

<sup>3</sup> To distinguish a voluntary surrender from this appellate posture would have a chilling effect on voluntary vacatures as the tenant would have no impetus to surrender if the current litigation simply continued. Furthermore it would have a chilling effect on settlements further clogging the courts especially during and after the Covid epidemic.

<sup>4</sup> While petitioner relies heavily on *Harbor Tech LLC v Correa*, 134 NYS3d 652 (civ Ct., Kings Co. 2019), it is not binding on this Court.

“Even now, generally ‘a monetary award in favor of landlord can only be made concomitant with an award of possession’ in a summary proceeding”


Furthermore, the Court in *Patchogue* acknowledged the primary reason for a nonpayment proceeding (or any other summary proceeding):

“Regardless of a landlord’s intent, the purpose of a nonpayment summary proceeding is to recover possession of the subject premises, and the ‘power to fix the rent due is an incidental matter’ ( *Matter of Byrne v Padden*, 248 NY 243,248, 162 NE 20 [1928]; cf. *Jones v Gianferente*, 305 NY 135,139; 111 NE2d 419 [1953] [“This summary proceeding .....is of purely possessory character...”].

For all of the foregoing reasons the cross-motion of respondent is granted, and the proceeding is dismissed without prejudice to petitioner seeking its monetary claims in a plenary action and subject to respondents’ defenses. This constitutes the decision and order of the Court.

DATED  
April 6, 2021

SO- ORDERED

  
KENNETH T. BARANY  
J.H.C