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Mei Ling Property LLC v. Gonzalez

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

MEI LING PROPERTY LLC.,

Petitioner-Landlord,

-against-

Index No. L&T 57926/19

**DECISION/ORDER
AFTER TRIAL**

REINALDO GONZALEZ, RAQUEL GONZALEZ

JOHN DOE & JANE DOE,

Respondents-Tenants,

Hon. Jeannine Baer Kuzniewski

After a digitally-recorded trial held on November 6 and 8, 2019, August 8, 2021, September 23, October 12, October 13, October 27, and November 3, 2021, and after due deliberation and consideration of the credible documentary and testimonial evidence adduced at the trial, the Court makes the findings of fact and conclusions of law set forth below.

Petitioner commenced this summary holdover proceeding seeking possession of the premises known as 697 Evergreen Avenue, Brooklyn (the “Building”) apartment 3R (the “Apartment”). The Petition and predicate notice allege that the respondents were month to month tenants and that the Building contained “less than six units” and was therefore exempt from rent regulation.

Respondent Reinaldo Gonzalez appeared, represented by counsel, and interposed an answer asserting, *inter alia*, that the Apartment is subject to rent stabilization by reason of being contained in a building built prior to 1974 and having contained at least six separate residential units during his tenancy. Specifically, respondent alleged that there are two residential units on each of the three floors of the Building.

Settlement negotiations failed and after several adjournments the trial commenced on November 6, 2019.

Petitioner called Mei Ling Chow to testify. She stated that that she was the Building’s owner and purchased the property on 12/12/2018 “from bankruptcy”. They stated that they had not received anything in writing regarding the character of the building at closing and that there were 5 residential units in the Building at the time they took ownership.

The witness testified that the first floor was occupied by a business and that after the tenant moved out, she entered the unit. Ms. Chow testified that there was one entrance to this unit and that she did not observe any cooking facilities but did see a refrigerator. The witness stated that she did notice a toilet and sink.

When questioned as to whether there was another unit on the first floor the witness testified that they were able to access the other unit in or about September 2019. In that unit there were three bedrooms a kitchen and a bathroom.

The witness continued that there were two apartments on the second floor and two apartments on the third floor.

On November 8, 2019, the second day of testimony, petitioner indicated that it had concluded its prima facie case but stopped short of resting. Petitioner moved to discontinue the proceeding and said application was denied by the Court per Order dated April 14, 2020.

The trial resumed. The parties stipulated to Petitioner's prima facie case and petitioner rested. The testimony continued with respondent's cross examination of the petitioner's witness Mei Ling Chow. The witness stated that she also went by the name Cindy Chow. The Court took judicial notice of the multiple dwelling registration ("MDR") which listed Cindy Chow as the Head Officer of petitioner corporation and managing agent. She recalled the prior owner's first name was William but was not sure of his last name. She indicated that when she refers to the two spaces on the first floor, she refers to one as a store and one as an apartment. She refers to the "apartment" on the first floor as 1L.

Respondent asked the Court to take judicial notice of Kings County LT-Index No.: 55243/19, (Respondent's "Exhibit G") *Mei Ling v Abrams*. The witness testified that she commenced this case against William Abrams which resulted in a stipulation of settlement. This was a holdover proceeding seeking possession of apartment 1L on the first floor of the Building and is described in the Petition as such.

The Court then took judicial notice of Kings County LT-Index No. 58756/19 (Respondent's "Exhibit H"). The witness once again conceded commencing this case and settling the matter per stipulation filed. Ms. Chow testified that it was her signature on the Notice of Termination. This was a holdover commenced seeking possession of apartment 1-R in the Building and is described in the Petition as such. The respondent in that proceeding was Esther Casimiro.

The Court then took judicial notice of Kings County LT-Index No.69167/19. This was a holdover proceeding also commenced seeking possession of apartment 1-R in the Premises. The Petition was also mailed to NYCHA Section 8 in addition to being served upon the respondent Esther Casimiro.

It is noted that the above holdover proceedings were commenced as residential proceedings, not commercial.

The witness stated that she has a limited understanding of English and claimed to be unaware of the implications of commencing these cases, and that she just followed the advice of her attorneys and signed whatever papers they gave her.

Ms. Chow testified that while the petitioner LLC did not own any other properties, that she owned several other properties in her own name. She stated that these other properties numbered less than 10 and were scattered throughout Brooklyn, Queens, and the Bronx. The witness further stated that she is the Executive Officer of the Golden Key Management Corp. which entity also owns properties.

Next to testify was Matthews Geevarghose, Housing Assistant with the Court Unit for NYCHA Section 8. The witness was shown Respondent's Exhibit H and explained that these were the NYCHA Section 8 records for Esther Casimira at 697 Evergreen Ave., Brooklyn, Apt. 1-R.

Respondent then called Robert Tassinari, also a Housing Assistant with NYCHA Section 8. He testified that he had appeared in response to a subpoena requesting Section 8 documents and testimony regarding apartment 1-R at the Building from 2014-2019. He stated that his records revealed that the tenant of apartment 1-R was Esther Casimir.

The witness testified as to his experience with NYCHA Section 8 and his familiarity with the program. The witness went on to state that the NYCHA Section 8 program was for residential as opposed to commercial units and that part of the qualification process after the tenant applies is an apartment inspection. He stated that in his experience he had never seen a Section 8 voucher issued for a commercial space. Mr. Tassinari continued on direct that a Housing Quality Standards ("HQS") inspection involves a visit to the property in question and that there had been an HQS inspection at this Apartment.

On cross-examination Mr. Tassinari stated that prior to his testifying he reviewed certain documents regarding the Apartment such as recertifications, failed inspections, subsidy payments, transfer documents, failed HQS inspections and invoices. He conceded that he was not involved with recertifications, had never been to the Building nor had he spoken to Ms. Casimiro.

Next to testify was Tracy Covington. The witness testified that she had lived in apartment 2-R in the Building from the time she was born and is now a resident of North Carolina. She stated that she moved from the Building to Maryland in 1994 and moved back to 2-R in 1998.

Ms. Covington continued that she moved again from 2-R to 2-L in 2003, then to Chauncey Street until 2011 and back to apartment 2-R in the Building until September 2014 when she moved away. She testified that her uncle Mr. Abrams had owned the Building and that other members of her family lived there as well.

Ms. Covington stated that her mother and two of her children presently live in the Building. She testified that next door to the Building was an empty lot that was the result of a fire in 2003 that destroyed the auto shop that was there. The witness went on to describe the physical layout of the first floor of the Building. She testified that upon walking into the foyer apartment 1-R is on your right and 1-L is on the far left.

The witness recalled the names of the people who had lived on the first floor of the

Building during the time that she lived there. She further recounted times that she had been inside both first floor apartments and described the interior layout of 1-R.

On cross-examination Ms. Covington testified that her uncle, William Abrams, lived in apartment 1-L until 2019 and that he had passed away in 2020. She stated that he lived in 2-R prior to him purchasing the Building. The witness testified that in the 1980's her family and extended family occupied apartment 2-R.

Next to testify was the respondent Reinaldo Gonzalez. He testified that he has lived in the Apartment since April 2016. He testified as to the identity of his neighbors and where they lived in the Building. The witness further testified as to the physical layout of the Building including the mailboxes. Mr. Gonzalez recalled entering apartment 1-R and described the layout of that apartment.

On cross-examination the witness testimony revealed that his recollections regarding details were quite possibly imperfect.

The Rent Stabilization Code ("RSC" or the "Code") section 2520.6(a) provides in pertinent part:

"Housing accommodation. That part of any building or structure, occupied or intended to be occupied by one or more individuals as a residence, home, dwelling unit or apartment, and all services, privileges, furnishings, furniture and facilities supplied in connection with the occupation thereof. The term **housing accommodation** will also apply to any plot or parcel of land which had been regulated pursuant to the City of Rent Law prior to July 1, 1971, and which became subject to the RSL after June 30, 1974."

"Once a building contains six or more units, all the units in the building are brought under rent stabilization (*Matter of Gandler v Halperin*, 232 AD2d 637, 648 N.Y.S.2d 998 [1996]; *Commercial Hotel, Inc. v White*, 194 Misc 2d 26, 752 N.Y.S.2d 779 [App Term, 2d Dept, 2d & 11th Jud Dists 2002]). The rent-stabilization status continues even if the number of units is subsequently reduced to less than six (*Rashid v Cancel*, 9 Misc 3d 130[A], 808 N.Y.S.2d 920, 2005 NY Slip Op 51585[U] [App Term, 2d Dept, 2d & 11th Jud Dists 2005]). Furthermore, the units need not be legal or in conformity with building-code or other requirements (*see Joe Lebnan LLC*, 39 Misc 3d at 33). Since the rear two rooms of the right-side store were occupied as a housing accommodation, the building had six residential units and all were subject to rent stabilization." *124 Meserole, LLC v Recko*, 55 Misc 3d 146[A] [App Term 2 Dept. 2017]

It is undisputed that the Building contains two residential units on the third floor and two additional residential units on the second floor. Petitioner asserts that there is only one apartment on the first floor and another space that was utilized by a business. Petitioner suggests that this "space" does not presently contain cooking facilities, only a refrigerator.

It is respondent's position that there are two individual apartments on the first floor, 1-L acknowledged by petitioner and 1-R, bringing the total number of units in the Building to six,

and thereby conferring rent stabilized status. Petitioner maintains 1-R is commercial.

The weight of the credible testimony leads this Court to the conclusion that there were at one time or are now, six residential units in the Building.

The Court credits the witness testimony. More specifically, the testimony of Mr. Tassinari that there had been a NYCHA Section 8 voucher issued to Esther Casimir for apartment 1-R in the Building.

The Court further finds credible the testimony of Tracy Covington. Ms. Covington has lived in the Building since she was born as evidenced by her birth certificate which includes the Building address. Her recollection of the configuration of the first floor of the Building along with the names of the occupants of both 1-L and 1-R spanned decades and was clear and persuasive. She recounted playing in 1-R in the 1970's with her childhood best friend whose grandmother lived there. Any inconsistencies in her testimony were minor and can be attributed to the passage of time.

The most revealing documentary evidence regarding the existence of two residential apartments on the first floor are the Court's own files. They show that petitioner brought two summary holdover proceedings (69167/19 and 58756/19) seeking possession of apartment 1-R and another proceeding (55243/19) seeking possession of apartment 1-L.

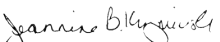
As the Building is subject to Rent Stabilization, the tenants are protected and can only be removed upon one of the grounds set forth in RSC 2524.3 which is not alleged here. *111 Kingsland Ave. v Volchanin et al.* 71 Misc. 3d 135(A) [*App. Term 2nd Dept. 2021*] and inasmuch as the petition alleges that the premises are not subject to rent stabilization by reason of being contained in a building with less than six units, it is defective.

For the foregoing reasons the petition is dismissed, and respondents are awarded a judgment accordingly.

Respondents' first counterclaim is dismissed without prejudice to renew in a proper forum. Respondents' second through fourth counterclaims are dismissed without prejudice. There was no testimony regarding an alleged breach of warranty of habitability nor was a lease offered into evidence to support a claim for attorney's fees.

This constitutes the Decision and Order of this Court.

Dated: Brooklyn, New York
December 17, 2021


Hon. Jeannine Baer Kuzniewski, J.H.C.
So Ordered

HON. JEANNINE BAER KUZNIEWSKI