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### 1123 Realty, LLC v. Treanor

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[\*1]

<b>1123 Realty, LLC v Treanor</b>
2022 NY Slip Op 50138(U)
Decided on February 4, 2022
Appellate Term, Second Department
Published by <a href="#">New York State Law Reporting Bureau</a> pursuant to Judiciary Law § 431.
This opinion is uncorrected and will not be published in the printed Official Reports.

Decided on February 4, 2022

SUPREME COURT, APPELLATE TERM, SECOND DEPARTMENT, 2d, 11th and 13th  
JUDICIAL DISTRICTS

PRESENT: : THOMAS P. ALIOTTA, P.J., WAVNY TOUSSAINT, DONNA-MARIE E.  
GOLIA, JJ  
2021-199 K C

**1123 Realty, LLC, Appellant,**

**against**

**Robert Treanor, Respondent, and "John Doe" and "Jane Doe," Undertenants.**

Novick, Edelstein, Pomerantz. P.C. (Gregory S. Bougopoulos of counsel), for appellant.  
Brooklyn Legal Services (Joshua Elmore of counsel), for respondent.

Appeal from a decision of the Civil Court of the City of New York, Kings County (Michael L. Weisberg, J.), dated October 16, 2019, deemed from a final judgment of that court entered October 21, 2019 (see CPLR 5512 [a]). The final judgment, entered pursuant to the decision, insofar as appealed from, after a nonjury trial, permanently stayed issuance of the warrant of eviction after awarding landlord possession in a holdover summary proceeding.

ORDERED that the final judgment, insofar as appealed from, is affirmed, without costs.

The petition in this holdover proceeding alleged that the rent-stabilized tenant has caused a nuisance by failing to abate the extreme clutter in the apartment. Following the court's visit to the apartment and a nonjury trial, the Civil Court, in a decision dated October

16, 2019, found that landlord had established a nuisance but because tenant had subsequently cured the condition, tenant was entitled to a permanent stay of the issuance of the warrant of eviction. A final judgment was entered on October 21, 2019 in accordance with the decision. Landlord's appeal from the decision is deemed an appeal from the final judgment (*see* CPLR 5512 [a]).

Tenant testified that he has several disabilities and that, since this proceeding was commenced, he had help abating the clutter in his apartment from Adult Protective Services and several cleaning services that he hired. The Civil Court found that it was due to his disabilities, and not any resistance or obstinacy on his part, that he had previously failed to cure the condition. [\*2] Tenant also testified that he was currently cleaning on a daily basis, and if the maintenance he was doing was not enough, he would keep working on it and do anything necessary to stay in the apartment. Landlord did not present any evidence to the contrary. The Civil Court's determination to permanently stay the issuance of the warrant of eviction was therefore not an improvident exercise of discretion (*see* [642-654 Whippersnapper LLC v Mahoney](#), 63 Misc 3d 46, 49-50 [App Term, 1st Dept 2019]; [311 Lincoln Place Inv. LLC v Woldmarian](#), 56 Misc 3d 139[A], 2017 NY Slip Op 51085[U], \*2 [App Term, 2d Dept, 2d, 11th & 13th Jud Dists 2017]; [Dov Glick, Inc. v Cuevas](#), 17 Misc 3d 137[A], 2007 NY Slip Op 52332[U] [App Term, 2d Dept, 2d & 11th Jud Dists 2007]; [169 Realty LLC v Wolcott](#), 2003 NY Slip Op 51371[U] [App Term, 2d Dept, 2d & 11th Jud Dists 2003]).

We find that landlord's remaining contention, with respect to whether the medical records were germane, was raised for the first time on appeal and not preserved for our review. We note that, even without the medical records, there was a sufficient basis to refute any claim that tenant was being obstinate in his previous failure to cure the condition (*see* [Matter of Strata Realty Corp. v Pena](#), 166 AD3d 401 [2018]).

Accordingly, the final judgment, insofar as appealed from, is affirmed.

ALIOTTA, P.J., TOUSSAINT and GOLIA, JJ., concur.

ENTER:

Paul Kenny  
Chief Clerk

Decision Date: February 4, 2022

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