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Baer v 400 S. 2nd St. Realities, LP
2021 NY Slip Op 21100 [71 Misc 3d 1125]
April 8, 2021
Weisberg, J.
Civil Court of the City of New York, Kings County
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[*1]

<p style="text-align: center;">Adam Baer et al., Petitioners, v 400 South 2nd Street Realities, LP, et al., Respondents.</p>
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Civil Court of the City of New York, Kings County, April 8, 2021

APPEARANCES OF COUNSEL

Kucker Marino Winiarsky & Bittens, LLP (Jason M. Frosch of counsel) for 400 South 2nd Street Realities, LP, respondent.

Goldfarb & Sandercock, LLP (Margaret B. Sandercock of counsel) for petitioners.

{**71 Misc 3d at 1126} OPINION OF THE COURT

Michael L. Weisberg, J.

The decision and order on this motion are as follows:

This is an "HP proceeding" commenced by multiple occupants (both protected occupants and coverage applicants) of an interim multiple dwelling (*see* Multiple Dwelling Law § 281), seeking various relief, including an order to correct certain conditions and an injunction prohibiting certain conduct defined as "harassment" in the New York City Housing Maintenance Code. A threshold question is whether the standards set forth in the New York City Housing Maintenance Code are enforceable in an interim multiple dwelling. This court holds that they are not.

The New York State Legislature created the New York City Loft Board and, instead of relying on the existing New York City Housing Maintenance Code, required it to issue and enforce "rules and regulations governing minimum housing maintenance standards" in

interim [*2]multiple dwellings (Multiple Dwelling Law § 282 [1] [iv]). Pursuant to that statute, the Loft Board did issue "minimum housing maintenance services" (29 RCNY 2-04 [b]) and a procedure for their enforcement (29 RCNY 2-04 [e]). Where the New York City Legislature has already enacted "minimum standards . . . in dwellings" (NY City Housing Maintenance Code [Administrative Code of City of NY] § 27-2002) and the New York State Legislature subsequently required the Loft Board to issue its own standards specifically applicable to interim multiple dwellings, the court cannot conclude that both sets of housing standards are applicable. Were the Housing Maintenance Code enacted by New York City already applicable to interim multiple dwellings, then there would be no necessity for the legislature to empower the Loft Board to issue minimum housing standards (29 RCNY 2-04), as doing so would render one or the other meaningless (*cf. Matter of Avella v City of New York*, 29 NY3d 425, 434 [2017] [statutory construction that renders one part meaningless should be avoided]). Accordingly, the court concludes that {**71 Misc 3d at 1127} the New York City Housing Maintenance Code is inapplicable to and not enforceable in interim multiple dwellings.

As has been observed repeatedly, the Housing Part of the Civil Court of the City of New York was created in 1972 with the purpose to hear "actions and proceedings involving the enforcement of state and local laws for the establishment and maintenance of housing standards" (NY City Civ Ct Act § 110 [a]; *Prometheus Realty Corp. v City of New York*, 80 AD3d 206, 209 [1st Dept 2010]). However, while CCA 110 created the court and gave it subject matter jurisdiction to hear various actions and proceedings, it did not create any causes of action for any actions or proceedings. For example, while the court has subject matter jurisdiction to hear summary eviction proceedings (CCA 110 [a] [5]), absent the provisions of article 7 of the Real Property Actions and Proceedings Law no such cause of action for summary eviction exists.

Likewise, the causes of action for the types of cases the court is permitted to hear are found elsewhere. A cause of action for the collection of civil penalties by the Department of Housing Preservation and Development (HPD) is created by section 27-2116 of the Housing Maintenance Code (Administrative Code of City of NY § 27-2116). Similarly, a cause of action for the collection of civil penalties by New York City, where such penalties have been imposed by the Loft Board, is created by Multiple Dwelling Law § 282 (2). A cause of action for HPD to obtain an injunction ordering an owner to correct a condition that violates the Housing Maintenance Code is created by section 27-2120 of the Housing Maintenance Code (Administrative Code of City of NY § 27-2120). As pertains to unlawful "repeated interruptions or discontinuances of essential services" intended to cause an applicant for Loft

Law coverage to vacate an interim multiple dwelling, a cause of action for the applicant to enforce that provision is created by Multiple Dwelling Law § 282-a. [\[FN*\]](#)

The right of a tenant to seek injunctive relief (e.g. an "order to correct") and the imposition of civil penalties against an owner for violations of the Housing Maintenance Code is created [**71 Misc 3d at 1128](#) by section 27-2115 (h) and (i) of that code. But as the court concluded above, the Housing Maintenance Code has no applicability to interim multiple dwellings (including the [\[*3\]](#)prohibitions on "harassment" contained therein). The question is not whether the Loft Board has exclusive jurisdiction to hear a complaint about violations of the housing maintenance standards for interim multiple dwellings. Inasmuch as the Loft Board rules are a "housing standard," this court would have jurisdiction to hear a proceeding for their enforcement. But no such proceeding by a tenant for an order to correct exists. Other than the enforcement mechanism contained in the Loft Board rules themselves, there is no statute that creates a cause of action for occupants of an interim multiple dwelling to seek a remedy for such violations in any court, including Housing Court. This is even more evident from the fact that there are statutes, such as Multiple Dwelling Law §§ 282 (2) and 282-a, that do create certain causes of action for the City and coverage applicants with respect to interim multiple dwellings.

Accordingly, respondent's motion is granted, and it is ordered that the petition is dismissed.

Footnotes

[Footnote *](#): Petitioners allege a cause of harassment under the Housing Maintenance Code. Were the facts alleged to constitute a repeated interruption or discontinuance of essential services, the court would not dismiss these claims (as to the coverage applicant respondents) because they would have stated a claim under Multiple Dwelling Law § 282-a, even if not pleaded as such. However, they do not.