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[*1]

Pagan v 57 Elmhurst LLC
2022 NY Slip Op 50408(U)
Decided on April 8, 2022
Civil Court Of The City Of New York, Queens County
Sanchez, J.
Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431.
This opinion is uncorrected and will not be published in the printed Official Reports.

Decided on April 8, 2022

Civil Court of the City of New York, Queens County

Dora Pagan, Petitioner,

against

57 Elmhurst LLC, RAJESH SUBRAJ, and NEW YORK CITY DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT (DHPD), Respondents.

Index No. HP 52/20

For Petitioners: Andrew Lehrer, Esq., Catholic Migration Services

For Respondents: Michael Schnitzer, Esq., of counsel to Curtis Harger, Esq.

For Respondent DHPD: Helen Lai, Esq.

Enedina Pilar Sanchez, J.

Procedural Background:

In January 2020, petitioner filed this HP harassment case by Order to Show Cause. Petitioner alleged that respondents harassed her in violation of the *Housing Maintenance*

Code (NYC Administrative Code). Petitioner seeks a finding of harassment, a restraining order and other relief, including the restoration of the terrace screen and damages. Respondent Department of Housing Preservation and Development (DHPD) took no position on this harassment case.

Petitioner alleged that respondents removed a screen from her terrace. In February 2020, respondents filed an answer. It stated that the screen was removed from the terrace in compliance with *NYC Administrative Code §27-2007(c)* and that violation number 12980861 required that the screen be removed. They alleged that the screen obstructed access to the fire [*2]escapes.

The parties and their respective counsels and witnesses appeared via Microsoft Teams pursuant to the Administrative Orders in place due to the COVID-19 pandemic.

On August 5, 2021, this Court issued a *Ruling On Evidentiary Objections During the Trial*; hereinafter *August 5, 2021 Order*. The *August 5, 2021 Order* is incorporated herein and made a part of this Decision and Order.[FN1]

Trial:

Petitioner's Testimony and Evidence

On December 10, 2020, petitioner was provided with a Spanish interpreter and she was sworn in. Petitioner testified that she moved into the building located at 94-25 57th Avenue, Elmhurst, NY 11373 over 30 years ago. Petitioner moved into Apartment 2G with her two sisters. Petitioner has continuously resided in the Apartment 2G. At the time of her testimony, she was 78 years old. Her two sisters are also senior citizens.

Petitioner described the layout of the apartment and the screen that used to be on the terrace. Petitioner described the location of the screen, its approximate size, the materials used to make it, the way it would open and its purpose. Petitioner testified that the screen was installed over 20 years ago to abate the condition with flies, mosquitos and rodents entering the apartment. The screen allowed petitioner to keep the terrace door open for fresh air to enter the apartment, as well as to give her the opportunity to sit outside and not be subjected to insect bites. Petitioner testified that the materials cost about $800.00. The installation cost another $200.00. The total amount paid was about $1,000.00.

Petitioner testified that she had permission to install the terrace screen. Petitioner testified that before the screen was installed, she went to the management office to request permission. The owner at that time was Mydac Realty. The request was made in writing. She remembers receiving a call from Laura Romero from the management office. She went to the management office to pick up the note granting her permission to install the screen.

Petitioner introduced into evidence the approval note to install the screen. The approval note bears the stamp of the prior owner. (P's 1A). The note, written in Spanish, was officially translated. An Affidavit of Translation was attached thereto.

> *We want to presently ask your permission to cover the terrace with screens due to the amount of mosquitos that enter the apartment. Attentively, Blanca Lema, Dora Pagan*
>
> *The landlord will not pay costs incurred for the alteration of the terrace and the tenant promises to pay the rent without a discount. Approved by Laura Ramos 08/08/01 As Agent of Mydac Realty Corp.*[FN2]

The screen was on the terrace for approximately 20 years. Various photographs were entered into evidence which showed the screen, the area around the screen and the location of [*3]the nearest fire escape and its proximity to the screen.

Petitioner testified that now the screen is gone; it was removed by the respondents.

Petitioner stated that she was informed that respondents needed access to the area where the screen was located to make repairs. Petitioner had agreed to give access and then the screen panels were removed and thrown over the terrace railing onto the courtyard below. Petitioner stated that her plants and planters were also removed and thrown away. Petitioner testified that she had requested that respondents restore the terrace screen. Petitioner referenced a letter addressed to "Mr. Zara" dated March 8, 2019, stating no opposition to remove the screen panels and at the completion of the repairs, "*that our panels are re-installed in the same manner they were initially found.*" Petitioner testified that her March 8, 2019 letter was mailed to the respondents. It was included with the response to respondents' March 6, 2019 letter.

On cross examination, petitioner stated that in 1982 she moved into Apartment 2E in the building. In 1992 she moved into Apartment 2G. Petitioner was asked whether obscene language was used by the respondents, and she explained that she was not threatened with obscene language. Instead, she was threatened with an eviction letter. The March 6, 2029

letter stated that an eviction case would be filed if petitioner did not agree to the removal of the screen. Petitioner testified that she was not shown a violation from DHPD. She signed the March 6, 2019 letter presented by the respondents "*letting them in.*"

Sometime in April 2019, the screen was removed. Petitioner testified on cross-examination that respondents did not enter the apartment to remove the screen. Respondents and/or their agents climbed onto the terrace and removed the screen.

Petitioner was questioned at to whether she was familiar with violations issued by DHPD for the screen. She stated that she was not familiar, but that she had prior permission from the landlord to install the screen panels. Petitioner testified that at no time she was told that the screen was a hazard and that after it was installed the prior management office had inspected it.

Respondents' Testimony and Evidence

Respondents called Devanan Subraj as their witness. Mr. Subraj was sworn in and testified that he is the operations manager for the respondent LLC. He testified to his prior experience and degrees. Mr. Subraj testified that on or about March 6, 2019, he was walking around the property. He noticed the screen on petitioner's terrace. He stated that he received a violation from DHPD for the screen on or about March 26, 2019.[FN3]

Mr. Subraj testified that after receiving the violation, respondents visited the petitioner and explained that *"based on the violation"* they had to remove the terrace screen. He testified that he knows that the violation concerns petitioner's apartment. Mr. Subraj testified that he told the petitioner that after the repairs were done, the screen would not be restored. The witness testified as to other work being done in other parts of the building and that after that work was done the screen was addressed. The testimony was that respondents purchased the building in February 2018. In April 2019, when the screen was removed, Mr. Subraj testified that they had to do work on the outside to "waterproof" the building.

On cross examination, Mr. Subraj confirmed that he noticed the screen on the terrace in early March 2019 as he was "*doing his rounds*." He confirmed that petitioner's apartment is [*4]about 15 feet above ground.

On further inquiry, Mr. Subraj testified that the DHPD violation was issued on or about March 26, 2019. The witness stated that he did not try to open the screen panel, nor did he walk to the fire escape from the terrace screened area. The cross examination focused on how

one would get access to the east side fire escape using the terrace.

Mr. Subraj testified that the fire escape to the left of the terrace is not accessible to the petitioner. For the petitioner to get to the east side fire escape, she would have to climb or jump over two railings. The testimony is that there is a railing between petitioner's terrace and the fire escape. Furthermore, the windows in front of the fire escape do not belong to petitioner's apartment. The witness testified that petitioner's apartment has a fire escape, and that the fire escape for petitioner's apartment is located on the "north side" of the building.

The testimony confirmed that the screened area comprised less than 50% of petitioner's terrace, and then the witness argued that the terrace is a second fire escape. Mr. Subraj was asked to read the violation and whether there was any language describing a screen. The witness confirmed that the violation did not reference a screen. (*Remove the Encumbrance Obstructing Egress from Fire Escapes Cleaning Supplies and Household Trash at the Balcony, South Stack at Fire Escape, Section at West).* Mr. Subraj denied telling petitioner that if she did not consent to the removal of the screen her lease would not be renewed, or that it would be terminated, or that it was a violation of a lease term. Mr. Subraj admitted that he told petitioner that if the screen was not removed, they would be subject to a fine and that it was an *"encumbrance*."

On further cross examination, Mr. Subraj was asked to look at the March 6, 2019 letter, and whether that letter related to some steel beam work that was done in the space below the apartment. Mr. Subraj testified that a permit from the Department of Buildings (DOB) was needed to replace the steel beam. DOB permit dated July 11, 2018, was entered as evidence. (P's 26).

The cross examination continued on the next court date. Mr. Subraj was questioned about the location of the fire escape. Mr. Subraj confirmed that petitioner's apartment has one fire escape; located on the building's north side. There is another fire escape on the east side of the terrace. Upon further inquiry, Mr. Subraj testified that the terrace is on the south side of the building. The violation referenced a "south stack or west section" of the building. The witness was shown various photographs depicting the terrace and the building. Mr. Subraj testified that there is a railing separating the terrace from the east side fire escape which would require one to jump over the railing, and then jump over the fire escape itself to use that fire escape.

On redirect, Mr. Subraj testified that he believed that by removing the screen the

violation for an encumbrance would be corrected. Mr. Subraj testified that the screen interfered with egress.

The DHPD violation no. 12980861 provides

> *§27-2005, 2007 Adm Code and Dept. Rules and Regulations, Remove the Encumbrance Obstructing Egress from Fire Escapes Cleaning Supplies and Household Trash at the Balcony, South Stack at Fire Escape, Section at West.(Date Reported 03/26/2019)*

The DHPD report was recorded as "received" by respondents on April 3, 2019, bearing their office stamp as "Zara Realty Holding Corp."

Respondents called petitioner as their witness. Respondents questioned petitioner about certain leases. The leases, however, were not allowed in evidence.

Respondents called Edward Sawchuk as a witness. Mr. Sawchuk was not qualified as an [*5]expert. He works as an attorney and a "professional engineer." Pursuant to the *August 5, 2021 Order* Mr. Sawchuk testified. He was sworn in and testified that while this trial was pending, he went to the apartment[FN4] and proceeded to measure the distance from the the door to the terrace by using the "dogleg" system of measurement.

On cross examination, Mr. Sawchuk was questioned about his visit to the apartment. He confirmed that he wore his DOB identification card around his neck.[FN5] He was accompanied by respondents' employee. Mr. Sawchuk was questioned about the egress in the apartment but was not aware where the fire escape was located. Mr. Sawchuk believed that the violation applied to the screen and then that the screen did not obstruct egress to the east side fire escape. Mr. Sawchuk confirmed that he was not aware that petitioner's apartment is at the north end of the building; nor that the east side fire escape is not part of the "south stack;" that petitioner would have to climb over a railing to get to the east side fire escape; that he agreed that the railing would make access to the east side fire escape an "obstruction;" that the door to the terrace is an egress; that petitioner can access the fire escape by going to the bedroom; that he did not see the screen or measure the screen; that he counted the distance between rooms by "dogleg" measurements; that the vertical distance from the balcony/terrace to the courtyard is 20 feet to 15 feet; that there was no permit in DOB for the screen and that no permit would be required for a screen "that is less than 40 feet above the grade."

On redirect, Mr. Sawchuk was asked to define an encumbrance, he said that it included

an "enclosure."

Petitioner's Rebuttal

Petitioner called Ahren Lahvis, a paralegal who worked for Catholic Migration Services, the office of petitioner's counsel. Mr. Lahvis was sworn in and testified that he was in petitioner's apartment three times; once in 2019 and twice in July 2021. He testified that the apartment is on the north side of the building.

Mr. Lahvis presented an aerial diagram of the apartment building using data from Google Maps where he entered directional arrows for north, south, east, and west. Mr. Lahvis described the layout of the apartment by using pictures, video, and measurements he took using a measuring tape. The pictures and the videos were admitted in evidence. He testified about the space in the terrace; that if you go east there is another fire escape; that in the other direction is the courtyard; that the courtyard has 10 feet to 15 feet vertical distance. Mr. Lahvis stated that the living room is a rectangular shape, that the hallway goes from the apartment entrance door to the bedrooms. A diagram of the apartment layout was entered in evidence.

On cross examination, Mr. Lahvis was questioned about his motives and his qualifications. He stated that his goal was to have accurate measurements. He is not an expert. He drew a diagram as he walked around the apartment. He stated that it is possible that he could have made an error and so he measured three or four times. He no longer works for the legal services organization that represents petitioner. He is now in law school.

Petitioner moved into evidence certified documents provided by DOB.

Petitioner was called as a rebuttal witness and testified that the screen had a movable [*6]panel as the door. There was no key. There was no problem with air or light entering the apartment. Petitioner testified that she allowed respondents to remove the screen because she was threatened that if she did not allow its removal, her lease would be terminated. Petitioner stated that the landlord could remove the screen to make the repairs and then have the screen reinstalled. Petitioner is still waiting for the screen to be re-installed.

Petitioner was cross examined and questioned about how she was threatened. Petitioner testified that she was threatened in writing; three certified letters were sent, one to each sister. She stated that she can use the the terrace but she cannot sit outside due to the flies and mosquitos. Petitioner said "yes, there are mosquitos and roaches too."

The parties rested. Petitioner moved to amend the petition to conform to the evidence pursuant to CPLR 3025(c). Respondents' prior oral application to amend the answer to include a new defense was denied as per the *August 5, 2021 Order*. Respondents were nevertheless permitted to present their evidence as if the answer were amended. Respondents were directed to produce the witness, Edward Sawchuk, for petitioner to conduct cross-examination and develop a full record should there be appellate review of the final decision of this Court.

Legal Discussion and Decision:

Permission to Install the Screen

Petitioner showed that in 2001 she sought permission from the prior landlord to install a screen on the terrace. That permission was granted. Petitioner credibly testified that after the screen was installed the landlord inspected the screen. The screen was in use from 2001 until April 2019. When respondents purchased the property, the screen was in place. Respondents stepped into the shoes of the prior owner and therefore took ownership pursuant the written consent granted by the prior landlord. *Perez-Faringer v Heilman*, 95 AD3d 853 (2nd Dept. 2012); *659 Vt. St. Tenants' Ass'n v. Vt. Realty*, 2018 NYLJ LEXIS 4413 (Civ. Ct. NY Co. 2018).

Petitioner installed the screen pursuant to written consent from the prior owner and was not in violation of any lease term. Petitioner did not install a "framed glass door" as was alleged in respondents' March 6, 2019 letter. The consent of the prior landlord gave permission for petitioner to install a screen, and this is exactly what was done.

The Letter of March 6, 2021

Respondents' March 6, 2019 letter was issued prior to the DHPD violation of March 26, 2019. When the March 6, 2019 letter was sent the violations did not exist. The March 6, 2019 letter and the violation describe different conditions.

The March 6, 2019 letter states that petitioner is in violation her lease; that there is a framed glass door on the balcony; that it is an obstruction in the owner's effort to replace a steel beam; that an alteration was done without written consent; that the owner will exercise any and all rights under the lease; that petitioner may be subject to fees incurred; and possible

court action. Petitioner was asked to provide an access date no more than 15 days of the date of the letter.

While petitioner testified that she was willing to grant access on March 14, 2019 access was not sought. Respondents removed the screen by entering the terrace via the courtyard. The screen was removed and thrown out.

There was no evidence that the screen on the terrace had a glass framed door. There was no evidence that the screen blocked or interfered with access to the fire escape. Nor did the screen affect in any way access to the east side fire escape.

DHPD Violation No. 12980861

The DHDP violation directs the owner to *"remove the encumbrance obstructing egress from fire escapes cleaning supplies and household trash at the balcony, south stack at fire escape, section at west."*

There is no language describing a screen panel; there is no language indicating that the violation refers to the fire escape of Apartment 2G.

The DHPD violation does not refer to a glass panel as alleged in the March 6, 2019 letter. The correlation between the violation and the act of removing the screen panel cannot be found. Respondents' reliance on the DHPD violation to justify the removal of the screen is unavailing.

The Court finds that the screen did not interfere with access to or from the fire escape on the north side of Apartment 2G or the fire escape to the east of the terrace. At the conclusion of the cross examination of Mr. Subraj, it was clear that the screen was not an obstacle or in any way an encumbrance to the fire escape. Undisputedly, if any one attempted to reach the east side fire escape via the terrace one would have to jump over a railing and then the actual fire escape to use it. The fire escape that corresponds to Apartment 2G is on the north side of the building.

Moreover, the screen was installed with the approval of the prior landlord.

Petitioner has claimed that she was harassed by respondents' actions. The New York City Harassment Law was passed to protect tenants from acts by an owner that could cause or were intended to cause an eviction or to cause the tenants to give up rights.

d. The owner of a dwelling shall not harass any tenants or persons lawfully entitled to occupancy of such dwelling as set forth in paragraph 48 of subdivision a of section 27-2004 of this chapter. NYC Administrative Code 27-2005

NYC Administrative Code Section 27-2004 (a) 48 provides:

the term "harassment" shall mean any act or omission by or on behalf of an owner that(i) causes or is intended to cause any person lawfully entitled to occupancy of a dwelling unit to vacate such dwelling unit or to surrender or waive any rights in relation to such occupancy, and (ii) includes one or more of the following acts or omissions, provided that there shall be a rebuttable presumption that such acts or omissions were intended to cause such person to vacate such dwelling unit or to surrender or waive any rights in relation to such occupancy

a. using force against, or making express or implied threats that force will be used against, any person lawfully entitled to occupancy of such dwelling unit;

a-1. knowingly providing to any person lawfully entitled to occupancy of a dwelling unit false or misleading information relating to the occupancy of such unit;

a-2. making a false statement or misrepresentation as to a material fact regarding the current occupancy or the rent stabilization status of a building or dwelling unit on any application or construction documents for a permit for work which is to be performed in the building containing the dwelling unit of any person lawfully entitled to occupancy of such dwelling unit if such building is governed by the New York city construction codes;

What was the legal basis to assert that the screen panel created a violation and had to be [*7]removed from petitioner's terrace? The violation relied upon by respondents provides that something would need to be removed from the south stack fire escape. The screen was not on the fire escape and petitioner's fire escape is on the north side of the building.

The evidence shows that petitioner's apartment is on the north side. Petitioner's fire escape in on the north side of the building. The fire escape that is seen from petitioner's terrace is simply not accessible to petitioner or anyone in Apartment 2G.

To reach the east side fire escape from the terrace of Apartment 2G, one would have to walk about 6 feet distance to a railing, then jump over the railing, and then jump over the fire escape itself to be able to use the east side fire escape for its intended purpose. There was no credible evidence that the screen panel on the terrace could interfere with access to or from the east side fire escape. Nor could the screen interfere with petitioner's use of the north side fire escape. The evidence is undisputed that petitioner's fire escape is on the north side of the

building. There are no barriers, blocks, encumbrances, or blockages to the fire escape or of any other fire escape. Respondents did not present any credible testimony or documents to support the claim that the screen had to be removed.

Respondents showed a pattern of continued assertions of unreal facts. The assertion that there was a breach of a lease term, the building code violation, and the Housing Maintenance Code violation to compel petitioner to give up her right to the terrace screen constitutes acts intended to cause petitioner to surrender or waive rights. The Harassment Code sought to address such relentless unsupported pressure by the owner to compel an outcome. Petitioner's right to have the screen on the terrace was conferred in a written approval from the the prior owner. Respondents' assertions cannot be supported by any reasonable stretch of the imagination.

Indeed, the Court was asked to allow the testimony of Mr. Sawchuk. Mr. Sawchuk, through his "dogleg" measurements, wanted to tell this Court that Apartment 2G would have had a problem with "light and air" due to the screen. This was speculative testimony without factual backing. Mr. Sawchuk did not inspect Apartment 2G while the screen was in place. He inspected Apartment 2G after the screen was removed, in the middle of the trial. The testimony of Mr. Subraj showed that the removal of the screen could not be supported by the DHPD violation or the March 6, 2019 letter demanding removal of a "framed glass door" to get access to complete repairs. Mr. Sawchuk's "testimony" was a last-minute attempt to create an excuse for the removal of the screen. Mr. Sawchuk was not treated as an expert witness. His testimony was equivocal, and the testimony would not be used as a reason to amend the answer. (*August 5, 2021 Order*.)

Petitioner credibly testified that during the time the screen was up, no issues with light and air affected the apartment.

The Apartment 2G measurements and diagram presented by Mr. Lahvis adequately show that even with the screen in place there is no breach of *Section 30 of the Multiple Dwelling Law*.[FN6]

The Multiple Dwelling Law Section 30 provides:

> *4. a. Nothing in this section or section twenty-six shall be construed as prohibiting the windows or doors of any room from opening on a partially-enclosed balcony or space above a setback, provided such balcony or space opens directly to a street or to a lawful yard or court and the area of the front of the balcony or space which is open to the outer air is at least equal to seventy-five per centum of the floor*

> *surface area of such balcony or space. Any living room thus lighted and ventilated by windows or doors opening on such balcony or space shall be at most thirty feet in depth measured from the extreme outer face of the wall forming the partial enclosure of the balcony or space. The windows or doors providing light and ventilation for a room or rooms opening exclusively on such a balcony or space shall have altogether at least the area of one-tenth of the combined floor surface of such room or rooms and the portion of the balcony or space directly adjoining and in front of such room or rooms. NY CLS Mult D § 30*

The Court finds that respondents engaged in harassment in violation of the *NYC Administrative Code §27-2004(a)(48).*

Respondents' unfounded claims were designed to compel the removal of the screen. Their persistence continued right up to the very end of the trial. Respondents wrote a letter stating the a "framed glass door" was installed in violation of the lease; stating that the failure to allow the removal of the screen will allow the respondents to "*exercise any and all rights pursuant to the lease agreement which may subject you to fees being incurred and possible court action;*" when respondents alleged that a violation from DHDP required that the screen be removed; and when respondents retained the services of a witness, during the trial, to enter the apartment without prior notice or consent of petitioner's attorney to craft another unavailing defense. All this while petitioner had approval from the prior owner. These acts were designed for the purpose of the removal of the screen on petitioner's terrace. The reference to the breach of the lease, when no facts supported the claim, were not simple error. The March 6, 2019 letter clearly stated that "*you are in violation of ¶15 of the lease,"* alleging "*entry to apartment*." It also stated that "*you are in violation of ¶10 of the lease"* alleging *"changes and alterations to apartment*." The letters sent by certified mail to petitioner and her sisters were intended to cause alarm and fear. Petitioner testified that such letter caused fear of eviction. Baseless threats of eviction are contemplated by the *Housing Maintenance Code* and constitute harassment.

Based upon the credible testimony and evidence presented, petitioner's Order to Show Cause is granted. The Court finds that the owners engaged in behavior that constitutes harassment pursuant to the *Housing Maintenance Code.* Upon a finding of harassment, petitioner may seek an order restraining the owner from engaging in such conduct and imposing civil penalties of not less than $2,000.00 and not more than $10,000.00 *NYC Admin Code § 27-2115 [m][2].*

ORDERED that the respondents 57 Elmhurst LLC LLC and Rajesh Subraj harassed petitioner Dora Pagan in violation of *NYC Admin Code §27-2005* and as such a "C" violation

exist and shall be entered against the property; and it is

ORDERED that the civil penalties of $2,000.00 are assessed against the respondents 57 Elmhurst LLC payable to the New York City Department of Housing Preservation and Development within 30 days of this Order; and it is

ORDERED that the respondents 57 Elmhurst LLC and Rajesh Subraj are enjoined and restrained from engaging in any acts that constitute harassment as prohibited by the harassment law; and it is

ORDERED that petitioner Dora Pagan is granted a money judgment for compensatory damages in the sum of $1,000.00 against respondents 57 Elmhurst LLC and Rajesh Subraj, jointly and severally; and it is

ORDERED that the respondents 57 Elmhurst LLC and Rajesh Subraj restore the screen at the terrace of Apartment 2G within 35 days of the date of this Order, and for each day that the screen is not restored, respondents will be assessed a penalty of $25.00 per day payable to the petitioner; and it is

ORDERED that petitioner is awarded attorney's fees in an amount to be determined at a hearing. The hearing will be held on **May 19, 2022, at 9:30 AM** in courtroom 202.

This Decision/Order is being emailed to all the attorneys of record.

This constitutes the Decision and Order of the Court.

Dated: April 8, 2022
Queens, New York
So Ordered,

ENEDINA PILAR SANCHEZ
Judge, Housing Court

Footnotes

Footnote 1: On June 11, 2021, the sixth day of trial, respondents asked to amend their answer. After witness Edward Sawchuk testified, respondents sought to have said witness qualified as an expert to use his testimony to amend their answer and add an affirmative defense. The Court found that the amendment sought and the testimony are prejudicial and as

such not allowed. Respondents could not use clandestinely gathered information in support of their argument..

Footnote 2: Petitioner testified in Spanish that last name of agent is Romero.

Footnote 3: The DHPD violation is identified as No. 12980861. Respondents' Answer at Para. 32, states: violation "*confirming that the screens on the balcony of the Premises were an encumbrance obstructing egress from the fire escapes.*"

Footnote 4: There is no dispute that during the ongoing trial, discovery was conducted without prior notice to or consent of petitioner's counsel.

Footnote 5: Mr. Sawchuk is not employed by NYC DOB.

Footnote 6: The certified documents of NYC Department of Buildings confirm that "*balcony screens installed on or after 10/2/2011 requires permit if 40 feet or more above grade. Screens installed prior to 10/2/2011 need not have permit provided that June 17, 1976 memo is followed.*"

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