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Department of Hous. Preserv. & Dev. of the City of N.Y. v. JIMS Realty LLC

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**Department of Hous. Preserv. & Dev. of the City of
N.Y. v JIMS Realty LLC**

2022 NY Slip Op 31539(U)

February 2, 2022

Civil Court of the City of New York, Kings County

Docket Number: Index No. 304497/2021

Judge: Jack Stoller

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This opinion is uncorrected and not selected for official publication.

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

-----X
DEPARTMENT OF HOUSING PRESERVATION AND
DEVELOPMENT OF THE CITY OF NEW YORK,

Petitioner,

Index No. 304497/2021

-against-

JIMS REALTY LLC, et al.,

DECISION/ORDER

Respondent.

-----X

Present: Hon. Jack Stoller
Judge, Housing Court

The Department of Housing Preservation and Development of the City of New York (“HPD”) commenced this proceeding against JIMS Realty LLC (“Corporate Respondent”), Richard Joseph (“Individual Respondent #1”), and Joseph Popack (“Individual Respondent #2”), the respondents in this proceeding (collectively, “Respondents”), seeking an order directing that Respondents correct violations of the New York City Housing Maintenance Code at 451 Kingston Avenue, Brooklyn, New York (“the subject premises”) and civil penalties. The Court is currently in the midst of a trial on civil penalties, being held jointly with a hearing on HPD’s motion for criminal contempt. HPD rested. Respondents now move for a directed verdict with regard to HPD’s criminal contempt motion.

The basis of Respondents’ motion is that they are entitled to discovery to the extent that HPD seeks criminal contempt which they had not received at the time that HPD rested.

Respondents are correct that criminal defendants are entitled to generous discovery by law, CPL §245.20(1), and that the record does not show any evidence that HPD provided Respondents with such discovery.

However, a proceeding to punish for a criminal contempt of court arising during the trial of a civil action constitutes a civil special proceeding, Douglas v. Adel, 269 N.Y. 144, 146 (1935), to which the rules of civil procedure apply. Dep't of Hous. Pres. & Dev. v. Deka Realty Corp., 208 A.D.2d 37, 51 (1st Dept. 1995). As a civil special proceeding, the rules of civil rather than criminal procedure should govern the origination of the criminal contempt application. Dep't of Hous. Pres. & Dev. v. 24 W. 132 Equities, Inc., 137 Misc.2d 459, 461 (App. Term 1st Dept. 1987), *aff'd without opinion*, 150 A.D.2d 181 (1st Dept.), *appeal dismissed*, 74 N.Y.2d 841 (1989), *cert denied sub nom. Morfesis v. Department of Hous. Preservation & Dev.*, 493 U.S. 1078, 110 S. Ct. 1130 (1990), N.Y.C. Health & Hosp. Corp. v. Local 2507 of Dist. Council 37 of Am. Fed'n of State, etc., 139 Misc.2d 67, 69 (S. Ct. N.Y. Co. 1988). While certain attributes of a criminal case are attached to contempt proceedings under the Judiciary Law, such as right to counsel, a jury trial based on amount of the fine, and the burden of proof required for finding of contempt, N.Y.C. Dep't of Hous. Pres. & Dev. v. Outram, 160 Misc.2d 156, 158 (App. Term 2nd Dept. 1994), with regard to discovery, CPLR Article 4 provisions apply to criminal contempt provisions. N.Y.C. Health & Hosp. Corp., *supra*, 139 Misc.2d at 69.¹

Unlike CPL §245.20(1), CPLR Article 4 discovery provisions require leave of Court in order for a party to obtain discovery. CPLR §408. As Respondents have not demonstrated on their motion that the Court has awarded them leave to obtain discovery in this matter, any absence of discovery is not a ground to deny HPD's criminal contempt motion. Accordingly, it is ordered that the Court denies Respondents' motion for a directed verdict, without prejudice to

¹ In N.Y.C. Health & Hosp. Corp., *supra*, the Court granted leave pursuant to CPLR §408 to the party seeking criminal contempt to depose nonparty witnesses over the objections of the accused contemnor.

Respondents' defenses at trial and opposition to HPD's motions once a full trial/hearing record is developed.

This constitutes the decision and order of this Court.

Dated: Brooklyn, New York
February 2, 2022



HON. JACK STOLLER
J.H.C.