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2022-05-16

### Charlton v. 92 Pinehurst Ave. LLC

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| <b>Charlton v 92 Pinehurst Ave. LLC</b>  |
| 2022 NY Slip Op 31734(U)   |
| May 16, 2022   |
| Supreme Court, New York County   |
| Docket Number: Index No. 151342-2021   |
| Judge: Lynn R. Kotler  |
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LYNN R. KOTLER, J.S.C.

PART 8

Leena Charlton

INDEX NO. 151342-2021

- v -

MOT. DATE

92 Pinchurst Avenue LLC

MOT. SEQ. NO. 001

The following papers were read on this motion to/for
Notice of Motion/Petition/O.S.C. — Affidavits — Exhibits
Notice of Cross-Motion/Answering Affidavits — Exhibits
Replying Affidavits

ECFS DOC No(s).
ECFS DOC No(s).
ECFS DOC No(s).

This is a motion to quash a subpoena served by plaintiff upon nonparty New York State Division of Housing and Community Renewal ("DHCR") seeking status and rent roll reports for the years 2006-2022 for the building at 92 Pinehurst Avenue, New York, New York, which is owned by the defendant. Defendant further seeks a protective order. Plaintiff opposes the motion. For the reasons that follow, the motion is denied.

"[A] motion to quash a subpoena duces tecum should be granted only where the materials sought are utterly irrelevant to any proper inquiry" (Velez v Hunts Point Multi-Serv. Ctr., Inc., 29 AD3d 104, 112 [1st Dept 2006]). The party seeking to quash a subpoena must "establish[] that the requested documents and records are utterly irrelevant" or that the subpoenas subject the witness to harassment (Myerson v. Lentini Bros. Moving & Storage Co., Inc., 33 NY2d 250 [1973]).

Plaintiff's counsel has detailed the efforts made to obtain the records sought vis-à-vis the underlying subpoena, which was so ordered by the court on March 1, 2022. Assuming arguendo that defendant has even met its prima facie burden on this motion, plaintiff has established that the records sought are relevant and material to facts at issue, since the records may enable plaintiff to prove a fraudulent scheme by defendant to evade the rent stabilization law.

Accordingly, it is hereby ORDERED that the motion is denied in its entirety.

Any requested relief not expressly addressed herein has nonetheless been considered and is hereby expressly rejected and this constitutes the decision and order of the court.

Dated: 5/16/22

HON. LYNN R. KOTLER, J.S.C.

- 1. Check one: [ ] CASE DISPOSED [X] NON-FINAL DISPOSITION
2. Check as appropriate: Motion is [ ] GRANTED [X] DENIED [ ] GRANTED IN PART [ ] OTHER
3. Check if appropriate: [ ] SETTLE ORDER [ ] SUBMIT ORDER [ ] DO NOT POST [ ] FIDUCIARY APPOINTMENT [ ] REFERENCE