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2022-06-02

### 11-15 New Montrose Ave. Tenant Assn. v. 11-15 New Montrose Ave. Hous. Dev. Fund Corp.

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**11-15 New Montrose Ave. Tenant Assn. v 11-15 New Montrose Ave. Hous. Dev. Fund Corp.**

2022 NY Slip Op 32614(U)

June 2, 2022

Civil Court of the City of New York, Kings County

Docket Number: Index No. 301035/21

Judge: Sergio Jimenez

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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 B

-----X

11-15 NEW MONTROSE AVENUE TENANT ASSOCIATION,  
YAJAIRA PEREZ in her capacity as President of the 11-15 New  
Montrose Avenue Tenant Association,  
LYDIA AYALA, PETRA TECO, OLGA PEREZ,  
YESENIA MORA, GLADYS APONTE, ANGEL MARTINO,  
CIRILA COATL and ERNESTO RIVERA,

Index No. 301035/21

Tenants-Petitioners,

-against-

**DECISION AND ORDER**

11-15 NEW MONTROSE AVENUE HOUSING  
DEVELOPMENT FUND CORPORATION, as Owner,  
PEOPLE'S FIREHOUSE, INC., as Managing Agent  
DANIEL RIVERA, as Head Officer  
DEL TEAGUE, as Shareholder,  
MARIA RIVERA, as Site Manager, and  
RUBEN RIVERA, as Superintendent,

Owner-Respondents

and

NEW YORK CITY DEPARTMENT OF HOUSING  
PRESERVATION AND DEVELOPMENT,

Respondents.

-----X

Present:

Hon. Sergio Jimenez  
Judge, Housing Court

Recitation, as required by CPLR § 2219(a), of the papers considered in the review of petitioner's  
motion for contempt any other relief as the court may find appropriate:

<b>Papers</b>	<b>Numbered</b>
Order to Show Cause.....	<u>1 (NYSCEF 34-45)</u>
Notice of Motion and Affidavits Annexed .....	
Answering Affirmations/Affidavits .....	<u>2 (NYSCEF 47)</u>

Replying Affirmations..... 3 (NYSCEF 49-50)  
 Exhibits .....  
 Memorandum of law.....

In this Housing Part (HP) action, petitioners filed the papers initiating this case in March of 2021 alleging the presence of conditions in the subject premises and alleging harassment. The harassment claims were disposed of by order of Hon. Jack Stoller in July of 2021. Prior to that however, Hon. Julie Poley entered an order to correct on June 4, 2021 directing the respondent to perform repairs on the various violations issued by DHPD. The petitioners seek to restore this proceeding back to the calendar for a finding of contempt. The motion was fully briefed and arguments were heard, virtually, on May 5, 2022. Following the argument, the court reserved decision.

Motion for Contempt

Petitioner now moves for contempt against the respondent pursuant to Judiciary Law §774, the Housing Maintenance Code §27-2124 and CPLR §5104 for failing to do the necessary repairs within the allotted timeframe. Petitioner also moves to withdraw the claims of Ernesto Rivera. Respondent opposes stating the movants have not met their burden for a finding of contempt but does not oppose the withdrawal of claims by Ernesto Rivera.

The moving party bears the prima facie burden of proof to obtain the relief sought (*Matter of Stop & Shop Cos. Inc. v. Assessor of the City of New Rochelle*, 32 Misc.3d 496 [Sup. Ct. Westchester Co, 2011]). Civil contempt has four elements. “First, it must be determined that a lawful order of the court, clearly expressing an unequivocal mandate, was in effect. Second, [i]t must appear, with reasonable certainty, that the order has been disobeyed. Third, the party to be held in contempt must have had knowledge of the court's order, although it is not necessary that

the order actually have been served upon the party. Fourth, prejudice to the right of a party to the litigation must be demonstrated” (*El-Dehdan v. El-Dehdan*, 26 N.Y.3d 19 [2015]; citing, *Matter of McCormick v. Axelrod* 466 N.Y.S.2d 279 [1983]). The movant bears the burden of establishing contempt with clear and convincing evidence (*El-Dehdan* 26 N.Y.3d 19 at 29; citing, *Graham v. Graham*, 543 N.Y.S.2d 735 [App. Div. 2d Dept 1989]; *Tener v. Cremer* 931 NYS2d 552 [App. Div. 1st Dept 2011]; *Town of Copake v. 13 Lackawanna Props., LLC*, 900 N.Y.S.2d 508 [App. Div. 3d 2010]). It was not disputed that both parties had knowledge of the order. Respondents contend that the June 4, 2021 order was not unequivocal due to the court’s “understanding” that COVID would create difficulties in the completion of the work. Alternatively, respondents’ counsel argues that all the work has been done pursuant to the order. Petitioners counter, contending that the opposition is unsupported by an affidavit with someone with personal knowledge, that the repairs have not, in fact, been made and that the order was unequivocal.

Respondents’ argument that this makes the order unequivocal is not convincing. The order issued by the Hon. Julie Poley is a lawful order that is in effect at the time of its issuance and provides a clear unequivocal mandate of what must be completed to comply. There are no vague and indefinite terms (*Holtzman v. Beatty*, 97 AD2d 79 [App Div 2d Dep’t, 1983]). In fact, the timeframes are quite clear. Respondents ask this court to expand the decree beyond the meaning of its terms by implication, something the appellate courts have not allowed (*Korn v. Gulotta*, 186 AD2d 195 [App Div 2d Dep’t, 1992]).

Further, respondents’ opposition is not supported by an affidavit of anyone with personal knowledge, containing only an attorney affirmation. Attorney affirmations have no probative value and should be disregarded if asserting facts the affirmant has no personal knowledge of. (*Israelson v. Rubin*, 20 AD2d 668 [App Div 2d Dep’t 1964]). Respondents, through an attorney



affirmation only, have made factual assertions as to the condition of the premises Here, where the facts are being disputed, an affidavit from someone with personal knowledge of the facts is necessary to counter moving papers with affidavits. As such, respondents do not address the factual allegations that the repairs are not yet made considering the DHPD violation summary report and petitioners' papers, which include affidavits from six different tenants. While readily petitioners admit that some of the work was satisfactorily completed, there is no dispute that some of the repairs remaining were things covered by Hon. Julie Poley's June 4, 2021 order. As such, the court need not hold a hearing for a finding of contempt. The timeframes for the period in which respondent could address the repairs have long since passed. The presence of current violations constitutes prejudice to the petitioners. Conclusion

The motion is granted to the extent of allowing the claims by Ernesto Rivera to be withdrawn. The motion is further granted to the extent of finding owner-respondents in civil contempt of the June 4, 2021 order. The court notes that some violations from June 2021 remain open as per HPD's website and that numerous subsequent violations have been issued at the premises. As such, the court retains continuous jurisdiction over housing standards and the record is void of any defense to an order to correct, pursuant to CPLR § 409(b) the Court enters an Order pursuant to New York City Civil Court Act §110(c) directing Respondents to correct all outstanding violations recorded by HPD through the date of this Order within seven (7) days of this order for C violations, within thirty (30) days of this order for B violations, within ninety (90) days for A violations. (See, <https://hpdonline.hpdnyc.org/HPDOnline> - for the specific unit violations).

Respondents are found in civil contempt of court pursuant for disobeying the June 4, 2021 order. Respondents shall pay \$250 to each non-entity petitioner by July 30, 2022.

Upon default in payment, petitioners may restore the matter to the court's calendar by order to show cause seeking appropriate relief.

Respondents shall correct all outstanding violations including those listed in the June 4, 2021 order. The parties, through counsel, shall arrange specific access, but shall do so no later than July 1, 2022, where reasonably feasible. For purposes of further contempt, the June 4, 2021 order remains in effect.

Petitioners' request for civil penalties is denied with leave to renew with proposed calculations. Petitioners' request for legal fees is denied with leave to renew by motion seeking a hearing with attached calculations and documentary backing.

This order is without prejudice to petitioners' right to seek further contempt of court against respondents. Respondents may seek additional time to complete repairs by order to show cause which the court will entertain on good cause shown.

This constitutes the Decision/Order of the Court, which is uploaded to NYSCEF.

Dated: June 2, 2022  
Brooklyn, New York

  
Sergio Jimenez  
Judge, Housing Court

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