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JW Holdings NY LLC. V. Pujadas

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

JW Holdings NY LLC.,

Petitioner

Index No. LT # 311966/21

Lennard Pujadas
John Doe Jane Doe
1475 E. 84th Street
Basement
Brooklyn, New York 11236

Respondent.

-----X

HON. HANNAH COHEN:

DECISION/ORDER

Recitation, as required by CPLR §2219(a), of the papers considered in review of respondent’s motion seeking dismissal pursuant to CPLR 3211(a)(7) for failure to state a cause of action or to file an amended answer and petitioner’s cross motion for summary judgment and ensuing opposition and reply.

<u>Papers</u>	<u>Numbered</u>
Motions	1
Cross Motion	2
Opposition	3
Reply	4

Upon the foregoing cited papers, the Decision and Order on these motions are as follows:

Petitioner commenced this non-payment proceeding seeking rental arrears from Lennard Pujadas, John Doe and Jane Doe located at 1475 E. 84th Street, Basement, Brooklyn, NY 11548.

Respondents Fitzroy Thomas and Kate Bailey appeared with counsel and assert that they are the actual tenants of the premises and that Lennard Pujadas rented then the premises to them and collected the rent. Respondents seek dismissal pursuant to CPLR 3211(a)(7) for failure to state a cause of action as petitioner may not maintain a non payment proceeding as the premises are an illegally converted basement. In support respondent proffer the certificate of occupancy indicating the cellar is a legal basement and garage and not a living space.

Petitioner cross moves for summary judgment pursuant to CPLR 3212 and argues that respondents are under tenants whose rights are flow from to the tenant of record. Petitioner proffers an out of court stipulation signed by Lennard Pujadas wherein he acknowledges rent arrears and agrees to vacate the premises. Petitioner argues that respondents, under-tenants may not assert any defenses as the tenant of record in this non payment proceeding has already agreed to vacate and to a judgment of possession.

In reply respondents argue that Lennard Pujadas is not the tenant of record, but the registered agent for the petitioner per DHPD and is actually a straw man for the petitioner.

Respondent seeks dismissal pursuant to CPLR § 3212 based upon the theory that petitioner is barred from collecting rent due to lack of certificate of occupancy pursuant to Multiple Dwelling Law (“MDL”) § 302.

Summary judgement “shall be granted if, upon all the papers and proof submitted, the cause of action or defense shall be established sufficiently to warrant the court as a matter of law in directing a judgment in favor of any party.” CPLR § 3212(b). When a moving party makes a *prima facie* showing of entitlement to judgment as a matter of law giving sufficient evidence to eliminate any material issue of fact, summary judgment should be granted. *Weingrad v New York University Medical Center*, 64 N.Y. 2d 851, 853 (1985). “Failure to make such a showing requires a denial of the motion, regardless of the motion papers.” *Id* at 853.

Courts have routinely held that where petitioner lacks a certificate of occupancy, the petitioner

is barred from collecting rent from the premises. The Court of Appeals in *Chazon LLC v Maugenest*, 19 NY3d 410 [2012] found that where a landlord was not in compliance with the loft law requirements, the landlord was barred from collecting rent.. The court found in the absence of compliance, the law's command is quite clear: “No rent shall be recovered by the owner of such premises . . . and no action or special proceeding shall be maintained therefor, or for possession of said premises for nonpayment of such rent.” Those are the words of Multiple Dwelling Law § 302 (1) (b). The court went on the reason that if the result of a complete bar to collecting rent is a harsh or undesirable result, the problem is one to be addressed by the Legislature.

Prior to holding in *Chazon*, supra, , the lower courts found circumstances that limited the general application of MDL § 302. Courts looked to whether the C/O violation renders the tenant's residential occupancy unlawful, or whether arrears sought are only for the illegal units and whether the tenant was not complicate in the existence and maintenance of the illegal unit (See *58 East 130th Street LLC v. Mouton*, 25 Misc 3d 509, 2009 NY Slip Op. 29309 [Civ Ct, NY County 2009]; *Hart-Zafra v. Singh*, 16 AD3d 143 [1st Dept 2005]). In *Chazon*, supra, the Court of Appeals made it clear that no such limitation was mandated under the law and went on to opine that the limitation of the application of MDL § 302 “may make sense from a practical point of view...but we find nothing in the opinions endorsing such results... and nothing anywhere else to explain how they can be reconciled with the text of the statute. They simply cannot.” (Id. at 415; see also *West 47th Holdings LLC v. Eliyahu*, 64 Misc 3d 133[A], 2019 NY Slip Op. 51066[U] [App Term, 1st Dept 2019] [“If a dwelling or structure is ‘occupied in whole or in part for human habitation in violation of [MDL 301] [n] rent shall be recovered by the owner of such premises and no action or special proceeding shall be maintained therefore, or for possession of said premises for nonpayment such rent.’ *GVS Properties LLC v. Vargas*, 59 Misc 3d 128[A], 2018 NY Slip Op. 50396[U] [App Term, 1st Dept 2016] aff'd 172 AD3d 466 [1st Dept 2019] (non payment barred even if tenant's apartment was not one of the newly created apartments.”]; *49 Bleeker, Inc v Gatién*, 157 AD3d 619 [1st Dept 2018](owner of respondents' dwelling, was precluded from charging respondents rent or other

remuneration while the building lacked a certificate of occupancy for residential use; *1165 Fulton Ave HDFC v. Goings*, 65 Misc. 3d 1210(A), 119 N.Y.S.3d 9 (N.Y. Civ. Ct. 2019) (dismissing non payment proceeding pursuant to MDL 301 and 302); (*Malden v Wykoff S.P., LLC*, 192 AD3d 1002 [2021]; *Barrett Japaning, Inc. v Bialobroda*, 190 AD3d 544 [2021]; *Matter of GVS Props. LLC v Vargas*, 172 AD3d 466 [2019]; *Matter of 49 Bleecker, Inc. v Gatien*, 157 AD3d 619 [2018]; *Hart-Zafra v Singh*, 16 AD3d 143 [2005]; *Trafalgar Co. v. Malone*, 73 Misc. 3d 137(A), 155 N.Y.S.3d 272 (N.Y. App. Term. 2021).

In this proceeding, the parties acknowledge that there was no certificate of occupancy for the subject premises. As such, petitioner cannot maintain a non payment proceeding. Additionally the stipulation proffered as an exhibit in petitioner's cross motion was never so ordered or allecuted by the court.

Respondent's motion to dismiss is granted and petitioner's cross motion is denied. This is without prejudice to petitioner's rights to commence a holdover proceeding if possession is sought. This constitutes the decision and order of this court.

Dated: October 27, 2022
Brooklyn, New York

Hannah Cohen, J.H.C.