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2022-12-14

YANG v. UNIVERSAL CHINESE GROUP INC.

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CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF QUEENS: HOUSING PART A
SHE XIAN YANG

Petitioner,

-against-

Index No.: L&T 303486/2022
DECISION/ORDER

UNIVERSAL CHINESE GROUP INC.,

Respondent,

YUNFEI XIAO, MICHAEL E. GIBOWICZ JR.,
TASHEKA MONIQUE ESCOFFERY
"JOHN DOE" & "JANE DOE"

Respondents/Undertenants.

Hon. Kimon Thermos, J.H.C.

Recitation, as required by CPLR §2219(a), of the papers considered in the review of this Motion for Default and Judgment and Cross Motion to Dismiss;

<u>Papers</u>	<u>Numbered</u>
Notice of Motion, Affirmation, Affidavit & Attached Exhibits	<u>1</u>
Notice of Cross Motion, Affirmation, Affidavit & Attached Exhibits	<u>2</u>
Affirmation in Opposition to Cross Motion & Affidavit With Attached Exhibits	<u>3</u>
Affirmation in Reply	<u>4</u>

The underlying proceeding is an non payment petition commenced in March 2022 wherein petitioner seeks alleged rental arrears due from June 2019-March 2020 and July 2021-March 2022 totaling \$59,850.00. In April 2022 petitioner moved for an Order seeking a default judgment and monetary judgment with issuance and execution of the warrant of eviction. Thereafter, respondent Michael Gibowicz retained New York Legal Assistance Group as his attorney who filed a cross motion to dismiss the proceeding. Petitioner's motion is thus denied now that respondent has appeared and is represented.

Respondent now cross moves seeking dismissal of the petition pursuant to CPLR §3211(a)(1), (7), and (8), or in the alternative, for leave to file an answer. Specifically, respondent argues that the proceeding must be dismissed because petitioner failed to properly register the premises in accordance with NYC Admin Code §27-2097. They further allege that the petitioner is operating the premises as a defacto multiple dwelling in violation of Multiple Dwelling Law §302.

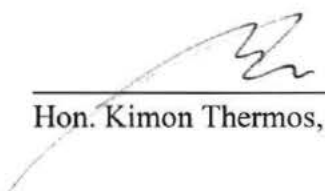
An owner is prohibited from recovering rent where there is no certificate of occupancy for a premises operating as a multiple dwelling. MDL 302.1 as well as relevant case law (*Mannino v. Fielder*, 165 Misc2d 605). Here, respondent alleges petitioner was well aware that the prime tenant, Universal Chinese Group Inc., was maintaining at least six independent tenancies within the premises. However, other than bald assertions, respondent failed to provide evidence demonstrating that the premises were so partitioned either literally or by operation. Further, no evidence was offered that petitioner had knowledge of this arrangement and thus acquiesced thereto.

NYCAC §27-2097(b)(3) requires “all one- and two-family dwellings where neither the owner nor any family member occupies the dwelling” to file a new registration statement annually. The Code also states the penalties for failure to properly register in NYCAC §27-2107(b) which states, “An owner who is required to file a statement of registration under this article and who fails to file as required shall be denied the right to recover possession of the premises for the nonpayment of rent during the period of non compliance, and shall, in the discretion of the court, suffer a stay of proceedings to recover rents, during such period.”

In the case at bar, it is undisputed that premises were not registered at the time this proceeding was commenced and continuing through to when the motions were submitted. In fact, petitioner’s attorney asserted that as a single-family dwelling registration is not required. (Affirm. In Opp. Paragraph 4).

As such, this Court cannot allow this case to proceed. Accordingly, respondent’s motion is granted to the extent the proceeding is dismissed without prejudice.

Dated: December 14, 2022



Hon. Kimon Thermos, J.H.C.