2022-03-30

Brown v. The Wavecrest Management Team Ltd.

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF BRONX: HOUSING PART T

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[redacted] BROWN; [redacted]; [redacted]
[redacted]; [redacted]; [redacted] : L&T Index No.
MCCALLA; [redacted]; [redacted]; 301622/20
[redacted] CISSE; [redacted]; :
[redacted] RICHARDSON; [redacted] HINES;
[redacted]; [redacted] :
[redacted]; and [redacted] RIVERA,
:

Petitioners,
:

-against- Motion Seq. No. 1
:

THE WAVECREST MANAGEMENT TEAM LTD, :

Respondent, :

-and- :

PETER FINE, as officer; ALDUS STREET ASSOCIATES LP; and HOE AVENUE ASSOCIATES LP, :

Respondents, : **DECISION/ORDER**

-and- :

NEW YORK CITY DEPARTMENT of HOUSING PRESERVATION and DEVELOPMENT; NEW YORK CITY DEPARTMENT of BUILDINGS; and NEW YORK CITY DEPARTMENT of HEALTH and MENTAL HYGIENE, :

Co-Respondents.

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Present:

Hon. HOWARD J. BAUM
Judge, Housing Court

Recitation, as required by CPLR § 2219(a), of the papers considered in the review of the motion by Petitioners [redacted] Brown, [redacted] McCalla, [redacted] Cisse, [redacted] Richardson, [redacted] Hines, and [redacted] Rivera:

Papers	**Numbered**
Order to show cause, Affirmation and Affidavit in Support, Exhibits A through I, and Memorandum of Law…….….	NYSCEF Doc. # 44; 29 - 41
Affirmation in Opposition to Motion, Exhibits A through J, And Affidavit in Opposition…….…….….	NYSCEF Doc. # 49 – 60
Affirmation in Reply in Support and Exhibits J through M ……...	NYSCEF Doc. # 62 – 67

After oral argument and upon the foregoing cited papers, the decision and order on this motion is as follows:

The named petitioners commenced this HP proceeding against Respondents The Wavecrest Management Team Ltd, Peter Fine, Aldus Street Associates, LP, and Hoe Avenue Associates, LP ("Respondents") seeking an order to correct violations in the apartments that are the subject of this proceeding; a finding that the petitioners have been harassed by Respondents, pursuant to NYC Admin Code § 27-2005(d), and relief to which they may be entitled upon such a finding; the imposition of civil penalties against Respondents, pursuant to NYC Admin Code §§ 27-2115(h) and (i) for Respondents' failure to correct violations at the premises; an order requiring Respondents provide a reasonable accommodation to the extent of retrofitting fixtures and building and apartment structures; an award of the reasonable cost of relocating Respondents while the apartments are retrofitted; and an award of costs, disbursement and attorneys' fees. The New York City Department of Housing Preservation and Development ("DHPD"), the New York City Department of Buildings and the New York City Department of Health and Mental Hygiene are also named as co-Respondents in this proceeding to the extent those agencies are

responsible for the enforcement of various statutes, codes and regulations related to the claims made in the petition.

The parties have engaged in negotiations to try to settle this proceeding. In the course of the negotiations, as relevant to this motion, they have consented to 3 stipulations of settlement, dated April 28, June 10, and July 30, 2021,[1] which were "so ordered" by the court, setting up access dates for Petitioner to correct violations that have been cited by DHPD at the premises and to inspect and repair, as legally required, other conditions that have been alleged to exist.

In this motion, Petitioners [redacted] ("Petitioner Brown," "Petitioner McCalla," "Petitioner Cisse," "Petitioner Richardson," "Petitioner Hines" and "Petitioner Rivera" individually; collectively "Petitioners") seek an order punishing Respondents for civil contempt of court based on Respondents' alleged failure to correct violations, which Petitioners assert exist in the apartments in which they live, as required by the stipulations of settlement. Further, Petitioners seek an order finding that mold conditions found by independent contractors who are not affiliated with DHPD are housing code violations and the entering of notices of violation against Respondents; an order finding that the time for Respondent to correct violations, pursuant to NYC Admin Code § 27-2115(c), has expired and awarding civil penalties, pursuant to NYC Admin Code §§ 27-2115(a) and 27-2115(i), based on Respondents' alleged failure to correct such violations; an order enjoining Respondent from permitting alleged violations to exist and from permitting any future conditions to exist that endanger the life, health and safety of

[1] Prior to these stipulations of settlement, the parties entered into stipulations of settlement on January 13 and March 9, 2021, which were "so ordered" by the court, that set up access dates for repairs.

petitioners and their families; an order requiring Respondents to pay relocation costs to Petitioners to the extent the repair work that may be needed in the apartments results in the constructive eviction of Petitioners; and an order requiring Respondents to pay reasonable attorney's fees incurred in relation to the filing of this motion.

Petitioners assert Respondents defaulted on half the access dates arranged in the stipulations of settlement. Further, Petitioners Brown, McCalla, Richardson, Hines, and Rivera assert Respondents did not adequately address violations.

Additionally, Petitioners assert they have been prejudiced by Respondents' failure to comply with the "so ordered" stipulations by the diminished use of the apartments in which they live; by the hours wasted preparing their apartments (e.g., moving furniture) for workers who did not come to their apartment on pre-arranged access dates; and by causing those of them who have asthma and other respiratory illnesses to continue living in conditions that impact on their health.

Each of the Petitioners participating in this motion have submitted an affidavit in support of this motion particularizing how Respondents have defaulted on the stipulations of settlement by missing arranged access dates and failing to correct violations in the apartments in which they reside.

Respondents argue the motion seeking to hold them in civil contempt of court should be denied because it does not differentiate which Respondents have defaulted on their responsibility to comply with the repairs required by the "so ordered" stipulations of settlement in that this proceeding involves 2 different buildings and not each Respondent is responsible for repairs in each building. Respondents explain that one of the buildings, located at 941 Hoe Avenue, in the

Bronx, is owned by Hoe Avenue Associates and the other building, located at 951 Hoe Avenue, in the Bronx, is owned by Aldus Street Associates, LP. Of the Petitioners participating in this motion, 3 reside in apartments at 941 Hoe Avenue and 3 reside in apartments at 951 Hoe Avenue. Consequently, Respondents assert Petitioner's motion is defective as it does not differentiate who defaulted on the responsibility to correct which apartment. Moreover, to the extent the motion seeks to punish Respondents for civil contempt of court, Respondents argue they were not served with the motion in the manner required of a motion seeking to punish a party for civil contempt of court and that the warning language in the Order to Show Cause is not in the proper location and is not in the required 14-point font size. Moreover, Respondents contend they have acted in good faith. Respondents also argue Petitioners have not adequately demonstrated they have been prejudiced by the alleged defaults on the stipulations.

Further, Respondents assert Petitioners have not adequately demonstrated a default by Respondents on their obligations under the stipulations. Respondents argue they corrected violations that existed in the subject apartments and to the extent there are violations they did not correct, their inability to timely make repairs in the apartment was due "in whole and/or in part" to the actions of Petitioners in failing to provide access and interfering with Respondents' workers. In support of these assertions, Respondents have provided an affidavit from a property manager, who states he has been involved in the repairs at the apartments, that details the work that was done in each apartment.

Discussion

The "so ordered" stipulations of settlement, dated April 28, June 10, and July 30, 2022, all have the same language related to the enforcement of the terms of the stipulation. They state that, "Upon default to assess and repair conditions on the schedule stipulated below, the Petitioners…may seek appropriate relief from this court…including, but not limited to: entering an Order to Correct, entering an Order and judgment for civil penalties, and/or punishing Respondents for civil contempt of the Court's lawful so-ordered stipulations after re-inspection." Additionally, although each stipulation adjourns the proceeding and lacks any language that they are in settlement of the claims in the petition, the stipulations state that Petitioners "preserve all claims from the…petition not expressly settled."

A default on the stipulation is defined, within each stipulation, as a "failure to assess and repair conditions rising to the level of violations of the Housing Maintenance Code existing at the time of this agreement."[2] Based on this definition of a default, and the right of the parties to chart their course in litigation (*Mitchell v. New York Hosp.*, 61 NY2d 208 [1984]; *1420 Concourse Corp. v. Cruz*, 135 AD2d 371 [1st Dept 1987]) as was done here in the successive stipulations, any condition covered by the April 28 and/or June 10, 2021, stipulation, that was not also mentioned in the July 30, 2021, stipulation, cannot serve as the basis for any of the relief sought in this motion. Moreover, to obtain any of the relief sought in this motion, Petitioners are required to prove Respondents defaulted on the stipulation of July 30, 2021, in the manner the term "default" is defined by the stipulation.

[2] See, Paragraph 6 of the stipulation dated April 28, 2021; Paragraph 8 of the stipulation dated June 10, 2021; and Paragraph 13 of the stipulation dated July 30, 2021.

Petitioners' Motion for an Order Punishing Respondents for Civil Contempt of Court

Civil contempt seeks "the vindication of a private right of a party to litigation and any penalty imposed upon the contemnor is designed to compensate the injured private party for the loss of or interference with that right." *Matter of McCormick v. Axelrod*, 59 NY2d 574 (1983) citing *State of New York v. Unique Ideas*, 44 NY2d 345 (1978). The elements necessary to support a finding of civil contempt are that a lawful order of the court, clearly expressing an unequivocal mandate, was in effect; that it must appear with reasonable certainty that the order has been disobeyed; that the party to be held in contempt had knowledge of the court order; and that the right of a party to the litigation has been prejudiced by the failure of the party to be held in contempt to comply with the court order. *McCain v. Dinkins*, 84 NY2d 216 (1994); *Matter of McCormick v. Axelrod*, 59 NY2d 574 (1983); *P.B. #7, LLC v. 231 Fourth Avenue Lyceum, LLC*, 167 AD3d 1028 (2d Dept 2018); *Simens v. Darwish*, 104 AD3d 465 (1st Dept 2013).

A stipulation of settlement that is "so ordered" by a judge can be the basis of a finding of civil contempt. *Ross v. Congregation B'nai Abraham Mordechai*, 8 Misc 3d 136(A)(App Term 1st Dept 2005); *Various Tenants of 446-448 W. 167th St. v. New York City Dep't of Hous. Pres. & Dev.*, 153 Misc 2d 221 (App Term 1st Dept 1992) aff'd, 194 AD2d 311 (1st Dept 1993).

Once the party moving to punish for civil contempt establishes the elements stated above, by clear and convincing evidence, the burden shifts to the alleged contemnor to refute that showing or offer evidence of a defense to the alleged contempt. *Ferrante v. Stanford*, 172 AD3d 31 (2d Dept 2019).

Respondents' various arguments that the motion, to the extent it seeks their punishment for civil contempt of court, should be denied lack merit.

Respondents have not demonstrated the motion was improperly served. The motion, filed by order to show cause, was served by e-mail upon the attorney for Respondents. This type of service was permitted by the order to show cause signed by the court. Judiciary Law § 761. Moreover, Respondents specifically consented to the service of the order to show cause by e-mail to their attorney within the stipulation of settlement, dated September 13, 2021.[3]

Additionally, Respondents fail to provide a statutory citation for their argument that Petitioners' order to show cause is defective in that the warning language it contains is not in the proper location and not in 14-point minimum font. Judiciary Law § 761 requires that the warning language be on the face of the application and that it be in at least eight-point bold type. The warning language on Petitioners' application meets these requirements.

Respondents' assertion that they cannot be punished for civil contempt of court because they have acted in "good faith" is also unavailing. Aside from a sentence in which Respondents give a general statement that they have acted in good faith no legal argument has been provided explaining how this is a defense to a motion seeking to punish Respondents for civil contempt of court. On the contrary, generally, acting in good faith, alone, is not a defense to civil contempt. *McCain v. Dinkins*, 192 AD2d 217 (1st Dept 1993), aff'd 84 NY2d 216 (1994); *Matter of Bonnie H*, 145 AD2d 830 (3d Dept 1988).

[3] *See*, stipulation, dated September 13, 2021, paragraph 4 (the stipulation skips from paragraph 2 to paragraph 4).

Respondents' assertion that Petitioners have not sufficiently alleged prejudice because they have not demonstrated, for example, evidence of a medical condition or food expenditures, is without merit. The alleged failure by Respondents to correct violations in the apartments in which they live sufficiently states prejudice suffered by Petitioners. *Various Tenants of 446-448 W. 167th St. v. New York City Dep't of Hous. Pres. & Dev.*, 153 Misc 2d 221 (App Term 1st Dept 1992) aff'd, 194 AD2d 311 (1st Dept 1993); *Anumudu v. Bennett*, 72 Misc 3d 1219(A) (Civ Ct Bronx County 2021); *Randolph v. New York City Housing Authority East River Houses*, 44 Misc 3d 1207(A) (Civ Ct NY County 2014).[4] Moreover, Petitioners have each alleged the conditions in the apartments in which they live, which have allegedly not been corrected by Respondents, exacerbate illnesses from which they and/or their family members suffer.

Respondents' argument that the motion is defective, to the extent it seeks to punish them for civil contempt, because it does not express an unequivocal mandate as to which Respondent is responsible for correcting conditions in the various apartments is misplaced. It is the "so ordered" stipulation that must state an unequivocal mandate. Paragraph 3 of the July 30, 2021, stipulation states "Respondents refers to Wavecrest and officers and/or agents of owners." Moreover, the stipulation contains an individual section for each of the Petitioners participating in this motion that begins with a statement that "Respondents agree to repair the conditions listed

[4] Petitioners' assertions that they have been prejudiced by Respondents' alleged failure to adhere to the access schedules in each stipulation and make repairs at the various apartments in which Petitioners reside on the dates stated for access in the stipulation, in itself, is not within the definition of default on the stipulation for which Petitioners can seek to punish Respondents for contempt of court. However, a failure to adhere to the agreed upon access schedule may be a relevant factor in Petitioners' attempt to prove Respondents defaulted on the stipulations by failing to "assess and repair conditions rising to the level of the Housing Maintenance Code existing [at the time the parties executed each stipulation]."

below as required by law."[5] Under these circumstances, based on the language of the so ordered stipulation, to which Respondents consented, Petitioners will be given the opportunity to prove at a hearing which Respondents it seeks to punish for the alleged instances of civil contempt. Further, to the extent the court may find Respondents are in civil contempt, it may exercise its discretion in the punishment that is ordered against the various parties.

A hearing is also required to determine whether, with reasonable certainty,[6] Respondents have defaulted on the stipulation of July 30, 2021, and whether Respondents can prove the defenses they have raised.

Petitioner Brown alleges that the two conditions in the living room, defective windowsills in the second bedroom,[7] cockroaches throughout the apartment, and mold on the bathroom ceiling, alleged in the July 30, 2021, stipulation, still exist in the apartment in which she resides. Additionally, Respondent Brown's affidavit lists another condition, ceiling work in the first bedroom, that is not listed in the stipulation. In opposition to the motion, Benjamin DeLeon ("DeLeon"), the property manager at the buildings that are the subject of this proceeding, asserts that the alleged conditions have been corrected and that, in regard to the alleged cockroach

[5] These individual sections are what make up the schedule of what Respondents were required to repair as stated in paragraph 13, within the "Enforcement" section of the stipulation, which states, in pertinent part, "Upon default to assess and repair conditions on the schedule stipulated below, the Petitioner-tenants may seek appropriate relief from this Court by motion…"

[6] The standard of proof required to punish Respondent for civil contempt of court is "reasonable certainty." However, for the other forms of relief sought in this motion, aside from punishing Respondents for civil contempt of court, Petitioners need only prove Respondents defaulted on the stipulation, as a default is defined by the stipulation, by a preponderance of the evidence.

[7] The conditions related to the windowsills are listed within the category of conditions throughout the apartment in which Respondent Brown lives within the stipulations.

condition, Petitioner Brown has refused access to the inspector sent by Respondents on numerous occasions.

Petitioner McCalla alleges that all the conditions listed within the July 30, 2021, stipulation still exist in the apartment in which she resides. In opposition to the motion, DeLeon asserts that Respondents have corrected all the conditions Petitioner McCalla alleges still exist except for a leak at the bathroom ceiling and damage on the bathroom walls.[8] As to those remaining conditions, DeLeon asserts Respondents have traced their cause to the tenant residing above McCalla overflowing the bathtub in the apartment above.

Petitioner Richardson alleges that all the conditions listed within the July 30, 2021, "so ordered" stipulation still exist in the apartment in which she resides. In opposition to the motion, DeLeon asserts that Respondents have repeatedly been denied access to the apartment in which Petitioner Richardson resides.

Petitioner Hines alleges that of the conditions listed within the July 30, 2021, stipulation, holes and gaps where the floor meets the walls in the hallway, mildew under the kitchen sink, mildew at kitchen counter, mouse infestation, and cockroach infestation still exist in the apartment in which she resides. In opposition to the motion, DeLeon asserts that Respondents have corrected all the conditions Petitioner Hines alleges still exist. Also, DeLeon asserts that to the extent there was damage to the floor in the hallway it was caused by Petitioner Hines' dog urinating and defecating on it.

[8] The stipulations and Petitioner McCalla's affidavit assert the water damage at the ceiling in the bathroom, not the bathroom walls, still exists.

Petitioner Rivera alleges that all the conditions listed within the July 30, 2021, stipulation under the headings "Hallways," "Living Room," "Bedrooms,"[9] and "Throughout" still exist in the apartment in which she resides. In opposition to the motion, DeLeon asserts that Respondents corrected all the conditions that Petitioner Rivera states still exist. DeLeon specifies that the mold violations in the apartment were corrected by mid-April 2021, that DHPD removed the mold violation in the apartment in mid-June 2021, and that the infestation of roaches and vermin were remediated by the end of May 2021. DeLeon also asserts various conditions related to doors in the apartment have been repaired. However, the affidavit is unclear as to when the work was done. In one paragraph DeLeon states "the doors in the apartment were replaced" on November 12, 2021. In two other paragraphs, DeLeon specifies repairs to the entrance door to the apartment and to a hallway closet door.

Petitioners have provided prima facie evidence that a number of the conditions listed in the July 30, 2021, stipulation were cited as violations and were not corrected as of mid-September 2021. Petitioners have annexed, as exhibits to their motion, violation printouts from DHPD's online database, printed on various dates between September 10th and 14th, 2021. To the extent violations listed in those printouts, corresponding to violations and conditions listed in the stipulation, were cited prior to July 30, 2021, and were not certified as corrected, they constitute prima facie evidence, which may be rebutted by Respondents that they existed at the time of the stipulation and were not corrected as of the date of the printout in mid-September 2021. NYC Admin Code § 27-2115(f)(7); *Department of Hous. Preserv. & Dev. of City of N.Y.*

[9] The conditions listed in the stipulation under the headings "Bathroom off master bedroom" and "Bathroom at end of hallway," are not alleged to still exist.

v. Knoll, 120 Misc 2d 813 (App Term 2d Dept 1983); *Department of Hous. Preserv. & Dev. of City of N.Y. v. Living Waters Realty Inc.*, 14 Misc 3d 484 (Civ Ct NY County 2006). On the other hand, the cutting and pasting of citations to violations from DHPD online violation reports into the relevant so ordered stipulations in this proceeding and Petitioners' affidavits submitted in support of this motion, does not prove the cited violations existed at the time the stipulation or affidavit were executed or any later time necessary for Petitioners to prove Respondents' civil contempt of court. The cited violations pasted into the stipulations and affidavits give no indication of the date of the printout from which they were cut. Therefore, there is no way to know if those violations were open in the DHPD database at the time the stipulations or affidavits were executed or at a later date.

For all these reasons, Petitioners' motion is granted to the extent that a hearing will be held at which time Petitioners Brown, McCalla, Richardson, Hines and Rivera must prove that they are entitled to relief against the various Respondents, pursuant to the terms of the July 30, 2021, stipulation and the elements of their motion seeking an order punishing Respondents for civil contempt of court. Respondents will have the opportunity at the hearing to defend against Petitioners' claims that they are in civil contempt and prove the defenses they have raised in their opposition papers to the motion.

Petitioner Cisse alleges that the conditions that still exist in the apartment in which she resides are mouse infestation and roach infestation. However, the schedule of conditions in the individual apartment within the stipulation of July 30, 2021, that is subject to the "Enforcement" provisions of the stipulation, does not state these conditions existed. The schedule of conditions only requires Respondent to provide "regular pest control treatments as posted in the first-floor

hall bulletin board" and there is no allegation by Petitioner Cisse that Respondents have defaulted on the stipulation in this regard. Accordingly, Petitioner Cisse has not provided a basis to punish Respondents for civil contempt of court. For these reasons, Petitioners' motion seeking to punish Respondents for contempt of court based on their alleged default in correcting violations in Petitioner Cisse's apartment is denied.

Petitioners' Motion for the Entry of an Order to Correct and Imposition of Civil Penalties

The enforcement section of the July 30, 2021 "so ordered" stipulation lists the entry of an order to correct as relief Petitioners may seek in the event Respondents default on the stipulation. Moreover, the factual allegations made by Petitioners that the conditions in their apartments were not repaired and constitute housing code violations closely overlap with the allegations that are relevant to a request for the entry of an order to correct.

To the extent Petitioners request that the court allow evidence presented by contractors who are not affiliated with DHPD to serve as the basis of finding housing code violations exist for which an order to correct is entered, in addition to violations cited by DHPD, an order to correct can be entered for violations the court finds exist based on other governmental records, photographs, or testimony. *Schlueter v. East 45th Development LLC*, 9 Misc 3d 1105(A)(Civ Ct NY County 2005); *Mite v. Pipedreams Realty*, 190 Misc 2d 543 (Civ Ct Bronx County 2002).

Although not stated directly in their opposition, Respondents' assertions that the conditions in Petitioners' apartments constituting violations have been corrected is a defense to the entry of an order to correct. *D'Agostino v. Forty-Three E. Equities Corp.*, 12 Misc 3d 486 (Civ Ct NY County 2006), aff'd 16 Misc 3d 59 (App Term 1st Dept 2007).

Accordingly, Petitioners' motion seeking the entry of an order to correct is granted to the extent that a hearing will be held for the court to determine whether an order to correct should be entered. At the hearing Petitioners will have the opportunity to present any evidence permitted by the court that proves that violations, alleged in the July 30, 2021, stipulation continue to exist in the apartments in which Respondents Brown, McCalla, Richardson, Hines and Rivera reside and Respondents will have the opportunity to present their defense that the alleged violations have been corrected as well as any other defense they have raised that is applicable to a claim for the entry of an order to correct.

Similarly, the entry of an "order and judgment for civil penalties" is also listed as a form of relief Petitioners may seek for a default on the stipulation. Additionally, the factual allegations made by Petitioners, as to cited violations in their apartments that were not repaired, overlap with the allegations that are relevant to a request for the imposition of civil penalties pursuant to NYC Admin Code § 27-2115(a) and 27-2115(i)[10] based on a default on the July 30, 2021, stipulation.

Accordingly, Petitioners' motion seeking the entry of an order and judgment for civil penalties is granted to the extent that a hearing will be held for the court to determine whether civil penalties, pursuant to NYC Admin Code § 27-2115(i), should be entered in relation to violations, alleged in the July 30, 2021, stipulation that continue to exist in the apartments in which Respondents Brown, McCalla, Richardson, Hines and Rivera reside. At the hearing,

[10] The "Fifth Claim for Relief: Civil Penalties" in the petition asserts both NYC Admin Code § 27-2115(i) and NYC Admin Code § 27-2115(h) as bases for the imposition of civil penalties against Respondents.

Respondents will have the opportunity to present their defenses to the imposition of civil penalties raised in their papers in opposition to the motion.

Moreover, DHPD has not stated its position on whether it is seeking the imposition of civil penalties, pursuant to NYC Admin Code § 27-2115(i), under the circumstances presented here. Considering any civil penalties to be paid are to the benefit of DHPD (*D'Agostino v. Forty-Three E. Equities Corp.*, 12 Misc 3d 486 [Civ Ct NY County 2006], *aff'd on other grounds* 16 Misc 3d 59 [App Term 1st Dept 2007]), the agency has the right to decline the imposition of civil penalties. *Amsterdam v. Goldstick*, 136 Misc 2d 831 (Civ Ct NY County 1987). At the next conference in this proceeding, DHPD is required to state its position on this matter. If DHPD declines the imposition of civil penalties, pursuant to NYC Admin Code § 27-2115(i), there is no need for the hearing to include Petitioners' claim for this relief.

Petitioners' Motion for an Order Enjoining Respondents From Permitting Violations to Exist

Petitioners' motion is denied to the extent it seeks injunctive relief enjoining Respondents from permitting alleged violations to exist and from permitting future conditions to exist that endanger the life, health and safety of Petitioners and their families. Petitioners have not provided any legal argument related to their claim for this relief.

To a large extent, Petitioners' request for relief related to the elimination of violations that currently exist is duplicative of their request for the entry of an order to correct. Further, Petitioners have not stated any legal basis for Respondents to be enjoined from ever allowing future conditions to occur that "endanger the life, health and safety of Petitioners and their families."

Petitioners' Motion For An Order Requiring Respondents to Pay Relocation Costs

Petitioners have provided no legal argument for this relief that they have sought in the motion. Nevertheless, this relief is granted solely to the extent that the court should not be limited in any remedy, program, procedure, or sanction it may fashion to accomplish compliance with housing standards and to protect and promote the public interest. New York City Civil Court Act § 110(c); *Missionary Sisters of Sacred Heart v. Meer*, 131 AD2d 393 (1st Dept 1987); *Department of Housing Preservation of the City of New York v. HYK-273 W. 138th Street, LLC*, 50 Misc 3d 140(A) (App Term 1st Dept 2016). In the context of an HP proceeding seeking the entry of an order to correct, pursuant to the broad powers granted to the Housing Part by New York City Civil Court Act § 110(c), a landlord may be required to relocate a tenant who has been displaced based on a landlord's failure to correct violations in an apartment in appropriate circumstances (*Revilla v. 620 West 182nd Street Heights Associates LLC*, 47 Misc 3d 1211[A][Civ Ct NY County 2015]) or reimburse a tenant for relocation expenses (*Farber v. 535 East 86th Street Corp.*, 2002 WL 317987 [App Term 1st Dept 2002]; *Gonzalez v. Kwik Realty*, LLC, 42 Misc 3d 433 [Civ Ct NY County 2013]) where the tenant has proven relocation is required.

Petitioner's Motion for Attorneys' Fees

It is well settled in New York that a prevailing party may recover attorneys' fees from the losing party only if it is authorized by statute, agreement, or court rule. *U.S. Underwriters Ins. Co. v. City Club Hotel, LLC*, 3 NY3d 592, 597 (2004); *RMP Capital Corp. v. Victory Jet, LLC*, 139 AD3d 836 (2d Dept 2016). Pursuant to this general rule, prevailing parties in HP proceedings are entitled to collect attorneys' fees. *Rosario v. 288 St. Nicholas Realty*, 177 Misc

2d 78 (App Term 1st Dept 1998); *Brown v. 315 E 69 St. Owners Corp.*, 11 Misc 3d 1069(A) (Civ Ct NY County 2006).

Petitioners have made no allegation that their leases with Respondents contain a legal fees provision that authorizes the recovery of legal fees. However, Judiciary Law § 773 permits the recovery of attorneys' fees and costs as part of actual damages suffered by a party as a result of civil contempt. *L&R Exploration Venture v. Grynberg*, 90 AD3d 538 (1st Dept 2011); *Jamie v. Jamie,* 19 AD3d 330 (1st Dept 2005).

For these reasons, Petitioners' motion seeking an order requiring Respondents to pay reasonable attorneys' fees and costs incurred in relation to this motion is granted to the extent Petitioners will be given the opportunity to prove their entitlement to, and the amount of, such fees and costs in relation to that aspect of their motion seeking to punish Respondents for civil contempt at the hearing that will be held on this motion.

Conclusion

For the reasons stated above, Petitioners' motion is denied to the extent it seeks an order enjoining Respondents from permitting alleged violations to exist and from permitting future conditions to exist that endanger the life, health and safety of Petitioners and their families.

Also, the motion is denied to the extent it seeks relief related to alleged conditions in the apartment in which Petitioner Cisse resides.

As to the other forms of relief sought by Petitioners, the parties are required to appear before the court, Part T (Room 410 at the courthouse located at 851 Grand Concourse, Bronx, New York), on April 11, 2022, at 2:00 p.m., for a pre-hearing conference on the remaining issues in Petitioners' motion for which a hearing has been ordered as stated in this Decision/Order and

for DHPD to inform the court and the parties whether it is seeking the imposition of civil penalties against Respondents pursuant to NYC Admin Code § 27-2115(i). The hearing that has been granted shall be structured at the discretion of the court conducting the hearing to address the various forms of relief Petitioners are seeking in this motion.

This constitutes the decision and order of the court.

Dated: Bronx, New York
March 30, 2022

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HON. HOWARD J. BAUM,
J.H.C.