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2023-04-25

### Charlton v. 92 Pinehurst Ave. LLC

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"Charlton v. 92 Pinehurst Ave. LLC" (2023). *All Decisions*. 922.  
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**Charlton v 92 Pinehurst Ave. LLC**

2023 NY Slip Op 31349(U)

April 25, 2023

Supreme Court, New York County

Docket Number: Index No. 151342-2021

Judge: Lynn R. Kotler

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This opinion is uncorrected and not selected for official publication.

# 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 Pinehurst Avenue LLC

MOT. SEQ. NO. 002

The following papers were read on this motion to/for _____	ECFS DOC No(s). _____
Notice of Motion/Petition/O.S.C. — Affidavits — Exhibits	ECFS DOC No(s). _____
Notice of Cross-Motion/Answering Affidavits — Exhibits	ECFS DOC No(s). _____
Replying Affidavits	ECFS DOC No(s). _____

In motion sequence 2, defendant 92 Pinehurst LLC (defendant or 92 Pinehurst) moves to have this court modify its May 16, 2022 decision which denied defendant's motion to quash plaintiff's subpoena upon non-party DHCR. Plaintiff opposes the motion.

As a way of background, in the court's May 16, 2022, decision, it denied defendant's motion to quash the subpoena plaintiff served on DHCR for status and rent roll reports for the years 2006-2022. The court found that "... 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". Defendant appealed the court order and in an Appellate order dated July 12, 2022, the Appellate court denied defendant's request for a stay of production and restraint in reviewing or disseminating documents. Defendant then filed the instant application. For the reasons that follow, the motion is denied.

Defendant argues that the court should modify its order to prohibit plaintiff and her attorneys from disseminating, distributing and providing the confidential documents to anyone that is not a party or an attorney representing a party in this case and also to enjoin plaintiff and her attorney from using the confidential documents outside the plaintiff's stated purpose in this action. Defendant further argues that the court's May 16, 2022 "ignores the Legislature's intent and allows Plaintiff to circumvent the Rent Stabilization Law and obtain tenants' records though the Subpoena without regarded to tenants' confidential information being released to non-parties or used for any other purpose outside the scope of this action". Defendant contends that the court should modify its order so that the confidential documents cannot be used for any purpose except for calculation the default formula.

Dated: 4/25/23

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

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

Plaintiff opposes the application and argues that this application is defendant's third attempt to prevent plaintiff from using defendant's records from DHCR to prove her case, that defendant doesn't meet their standard presents to CPLR 2221 and that DHCR's regulations under NY rent laws provide for disclosure for the purposes of reinforcing the rent laws. Plaintiff argues that the subpoenaed documents are not confidential since defendant has provided this information to DHCR.

In its Reply, defendant further argues that its motion to modify seeks only to protect nonparty tenants by making sure plaintiff keeps their rental information confidential and uses the information "only for her stated purpose within the scope of this action".

Defendant's arguments focus on Rent Stabilization Law Sec. 26-517(b) and that "legislature enacted this statute to protect tenants' privacy, and to prevent their confidential rent history from being obtained and then publicly disseminated, filed, and used by third parties for their own purposes." First, plaintiff served a subpoena on non-party DHCR to obtain the records and did not make a FOIL request. In its May 16, 2022, decision, this court ruled that the information sought by subpoena is material to the facts at issue and relevant to establish a fraudulent scheme. Further, the Appellate Division First Department denied defendant's request for a stay to obtain the records as well as for dissemination of said records. Finally, defendant's argument that it seeks modification of the court order to protect nonparty tenants is rejected. This is a last-ditch effort by defendant when this same or similar argument could have been made in its first application. Moreover, if the Legislature intended to prohibit the possible conduct defendant argues, then it would have included such a prohibition in the legislation. There is nothing in this record to establish that plaintiff intends to do the very thing defendant is looking to prevent.

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: 4/25/23  
New York, New York

So Ordered:

  
\_\_\_\_\_  
Hon. Lynn R. Kotler, J.S.C.