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Robertson v. Jones

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

-----X
FELICE ROBERTSON; TRICIA WILLIAMS; DEBRA
FOUCHONG-JAMES; MICHAEL KIRK; REGINA THOMAS;
VIVIENNE MUIR,

Index No. 001659/19

Petitioners-Tenants,
-against-

DECISION/ORDER
Hon. Remy Smith, J.H.C.

GREGORY JONES; RYAN VILLARUEL; 941 WASHINGTON
AVENUE LLC; SAFEGUARD REALTY MANAGEMENT, INC.,

Respondents-Owners,
-and-

THE DEPARTMENT OF HOUSING PRESERVATION AND
DEVELOPMENT,

Respondent,
-and-

NEW YORK CITY DEPARTMENT OF BUILDINGS,
Respondent.

-----X
Recitation, as required by CPLR §2219(a), of the papers considered in the review of
petitioner's motion.

Papers

Numbered

Respondent-New York City Department of Buildings ("DOB") Motion to Dismiss and Memorandum of Law in Support.....	<u>1</u>
Petitioners-Tenants ("Petitioners") Opposition.....	<u>2</u>
Court File.....	<i>Passim</i>

Upon the foregoing cited papers, the decision and order on this motion is as follows:

This is respondent-DOB's motion to dismiss the instant proceeding as to DOB pursuant to New York City Civil Court Act §1002 and Section 3211(a)(7) of the New York Civil Practice Law and Rules ("CPLR") on the grounds that petitioners failed to state a cause of action. DOB further moves this court to deny petitioners' request for relief in the form of an order compelling DOB to register outstanding conditions not yet registered as violations, issue and collect fines,

issue stop work orders, and audit or revoke permits. DOB's motion to dismiss is denied and its motion to deny petitioners' request for relief in the form of an order compelling DOB is granted.

Petitioners are tenants of the premises located at 941 Washington Avenue, Brooklyn, NY 11225. Respondents are landlord-owners and their agents, New York City Department of Housing Preservation and Development ("DHPD") and DOB. Petitioners commenced the underlying Housing Part ("HP") proceeding by filing an order to show cause dated June 5, 2019, seeking order to correct, harassment finding and temporary restraining order. Petitioners, *inter alia* sought a finding that conditions described in their petition constitute construction and public safety violations under the purview of DOB and sought DOB to register such as violations, collect fines, issue stop work orders, and audit or revoke all permits granted to respondent-owners.

A party may move for judgment dismissing one or more causes of action if the pleading fails to state a cause of action. See CPLR §3211(a)(7). On a motion to dismiss for failure to state a cause of action, the challenged pleading is to be construed liberally; accepting the facts alleged as true, and according plaintiffs the benefit of every possible favorable inference, a court must determine only whether the facts alleged fit within any cognizable legal theory. See Bernberg v. Health Mgmt. Sys., 303 A.D.2d 348, 756 N.Y.S.2d 96, 2003 N.Y. App. Div. LEXIS 2110 (N.Y. App. Div. 2d Dep't 2003) (internal citations omitted).

Here, DOB asserts that the petitioners do not state a claim and as such the court must dismiss this instant proceeding as to DOB. Although, DOB is correct in so far as petitioners fail to allege any facts against DOB, following existing line of case law¹ and statutory authority vested upon HP, this court denies DOB's motion to dismiss. The Civil Court Act ("CCA")

¹ See Schanzer v. Vendome, et.al, 7 Misc. 3d 1018(A), 801 N.Y.S.2d 242 (NY Cnty Civ. Ct. 2005); Rivellini v. Rolf, 43 Misc. 3d 1202(A), 992 N.Y.S.2d 160 (NY Cnty Civ. Ct. 2014).

explicitly gives HP jurisdiction to grant injunctive relief to enforce “state and local laws for the establishment and maintenance of housing standards, including, but not limited to, the Multiple Dwelling Law (“MDL”), the New York City Administrative Code’s Housing Maintenance Code (“HMC”), the Building Code, and Health Code”. See CCA §110 (a)(4); 203 (k),(o); cf. Ford v. Tower W. Assocs., 120 Misc. 2d 240 (App Term, 1st Dept 1983); Chan v. 60 Eldridge Corp., 129 Misc. 2d 787, 494 N.Y.S.2d 284 (NY Cnty Civ. Ct. 1985). Petitioners allege respondent-owners obtained permits from DOB with false information. Petitioners also allege respondent-owners sent a letter to occupants informing them that they had to shut off gas on a date certain due to DOB regulations. Furthermore, this court takes judicial notice of various open Environmental Control Board (“ECB”) violations on DOB’s website – numbers 37016999L, 3535888K, 35358881N, 35364172L, 35352295N, 35352246L.² Since HP has jurisdiction to enforce Building Code, an inquiry as to whether lack of gas is a violation of housing standard must be made at trial. Additionally, there are open ECB violations including electrical, construction and plumbing, and these violations may impact health and safety of the occupants. As such, this court finds DOB’s participation in this proceeding is essential and DOB’s motion to dismiss is denied.

DOB further moves this court to deny petitioners’ request for relief in the form of an order compelling DOB to find outstanding conditions as violations, issue and collect fines, issue stop work orders, and audit or revoke permits. This court agrees with DOB that statutory authority does not give HP the power to compel DOB to take steps enumerated supra. While HP has the power to order correction of violations that impact health and safety of the occupants including Building Code violations, HP may not direct DOB to issue and collect fines, issue stop

² #37016999L: date 12/09/2019, electrical; #3535888K: violation date 01/02/2019, electrical; #35358881N: violation date 01/02/2019, electrical; #35364172L: violation date 10/03/2018, construction; #35352295N: violation date 11/11/2018, plumbing; #35352246L: violation date 11/11/2018, plumbing.

work orders, and audit or revoke permits. See Schanzer v. Vendome, et.al, 7 Misc. 3d 1018(A), 801 N.Y.S.2d 242 (NY Cnty Civ Ct. 2005). As such, DOB's motion to dismiss the relief in paragraphs 21-22 of petition is granted.

All parties are ordered to return to Kings County Housing Court, Part B, Room 409 on February 5, 2020 at 9:30AM.

This constitutes the decision and order of the court.

Dated: January 28, 2020
Brooklyn, New York

SO ORDERED



Hon. Remy Smith
Judge, Housing Court

Hon. Remy Smith
Judge, Housing Court