

Fordham Law School

## FLASH: The Fordham Law Archive of Scholarship and History

---

[All Decisions](#)

[Housing Court Decisions Project](#)

---

2022-05-23

### Burden v. Glenridge Mews Condo

Follow this and additional works at: [https://ir.lawnet.fordham.edu/housing\\_court\\_all](https://ir.lawnet.fordham.edu/housing_court_all)

---

#### Recommended Citation

"Burden v. Glenridge Mews Condo" (2022). *All Decisions*. 1104.  
[https://ir.lawnet.fordham.edu/housing\\_court\\_all/1104](https://ir.lawnet.fordham.edu/housing_court_all/1104)

This Housing Court Decision is brought to you for free and open access by the Housing Court Decisions Project at FLASH: The Fordham Law Archive of Scholarship and History. It has been accepted for inclusion in All Decisions by an authorized administrator of FLASH: The Fordham Law Archive of Scholarship and History. For more information, please contact [tmelnick@law.fordham.edu](mailto:tmelnick@law.fordham.edu).

[\*1]

<b>Burden v Glenridge Mews Condo</b>
2022 NY Slip Op 22163
Decided on May 23, 2022
Civil Court Of The City Of New York, Queens County
Guthrie, J.
Published by <a href="#">New York State Law Reporting Bureau</a> pursuant to Judiciary Law § 431.
This opinion is uncorrected and subject to revision before publication in the printed Official Reports.

Decided on May 23, 2022

Civil Court of the City of New York, Queens County

**Crystal Burden as trustee of BURDEN IRR[EV]OCABLE TRUST,  
Petitioner,**

**against**

**Glenridge Mews Condo, DELKAP MANAGEMENT, Respondents,  
NEW YORK CITY DEPARTMENT OF HOUSING  
PRESERVATION AND DEVELOPMENT (HPD), Respondent.**

Index No. L & T 302717/22

Crystal Burden, Esq.  
Petitioner, pro se

Mark Axinn, Esq.  
Jeremy Bachrach Siegfried, Esq.  
Phillips Nizer LLP  
485 Lexington Avenue, 14th Floor  
New York, NY 10017  
Attorneys for Respondent Glenridge Mews Condominium

Department of Housing Preservation and Development  
Housing Litigation Bureau  
100 Gold Street

New York, NY 10038  
Respondent

Clinton J. Guthrie, J.

Recitation, as required by CPLR § 2219(a), of the papers considered in the review of respondent Glenridge Mews Condominium's motion to dismiss pursuant to CPLR §§ 3211(a) (2), (3), and (7) *and* petitioner's cross-motion pursuant to CPLR § 3025 to amend the petition:

<b>Papers</b>	<b>Numbered</b>
Notice of Motion & Affirmation/Exhibits/Memorandum of Law	Annexed 1 ( <i>NYSCEF No.10</i> )
Notice of Cross-Motion & Affirmation/Exhibits	Annexed 2 ( <i>NYSCEF #11</i> )
Memorandum of Law in Opposition	3 ( <i>NYSCEF #12-13</i> )

Upon the foregoing cited papers, the decision and order on respondent's motion and petitioner's cross-motion (consolidated for determination herein) is as follows.

### **PROCEDURAL HISTORY**

This HP action for an order to correct and other relief was commenced by order to show cause in March 2022. Following an initial adjournment, respondent Glenridge Mews Condominium (hereinafter "Glenridge Mews"), through counsel, made a motion to dismiss and petitioner (appearing pro se) made a cross-motion to amend the petition to add a petitioner, Elizabeth Burden, and to "include pertinent section of the applicable laws of the city and state of New York." After the motions were briefed, the court heard argument on them on April 13, 2022. Upon the conclusion of the argument, the court reserved decision.

### **RESPONDENT'S MOTION**

Respondent Glenridge Mews seeks dismissal pursuant to multiple subsections of CPLR § 3211(a). Glenridge Mews first argues that the court lacks subject matter jurisdiction (CPLR § 3211(a)(2)) because there is no "landlord-tenant relationship" between the parties. Glenridge Mews annexes the deed for the subject condominium unit (showing Crystal Burden as Trustee of the Burden Irrevocable Trust as owner) and the by-laws in support. Petitioner does not specifically address this basis for dismissal but asserts in her affirmation in support of her cross-motion and in opposition to respondent's motion that Glenridge Mews

is an "owner" as defined by the Housing Maintenance Code and that it can be compelled to repair common area conditions.

It is well established that this court is "vested with subject matter jurisdiction over housing matters by statute (NY City Civ. Ct. Act § 110)." *170 West 85th Street Tenants Ass'n v. Cruz*, 173 AD2d 338, 339 [1st Dept 1991]; *see also 433 West Assocs. v. Murdock*, 276 AD2d 360, 360-361 [1st Dept 2000]; *716 Realty, LLC v. Zadik*, 38 Misc 3d 139[A], 2013 NY Slip Op 50194[U] [App Term, 2d Dept, 2d, 11th & 13th Jud Dists 2013]. Moreover, while Glenridge Mews is correct that the relevant appellate caselaw has foreclosed statutory warranty of habitability claims between condominium owners and associations (*see Frisch v. Belmarc Mgt.*, 190 AD2d 383 [1st Dept 1993]), the Appellate Division, Second Department has recognized that condominiums are not exempted from "the generally beneficial requirements of Article 27 of the [N.Y.C.] Administrative Code." *Board of Managers v. Lamontanero*, 206 AD2d 340, 341 [2d Dept 1994]. Nonetheless, NYC Admin. Code § 27-2115(n), which became effective on February 5, 2018, specifically provides that the harassment provisions of the Housing Maintenance Code "shall not apply where the owner of record of a dwelling unit owned as a condominium, or those lawfully entitled to reside with such record owner, resides in such condominium unit[.]" *See Kossoff v. 910 Fifth Ave. Corp.*, 2021 NY Slip Op 32737[U], \*3 [Sup Ct, NY County 2021]. As the deed annexed by Glenridge Mews establishes that petitioner is the record owner of the subject condominium unit and the petition pleads that petitioner is the "residential" tenant/shareholder (§ 7), the court lacks subject jurisdiction of over the harassment [\*2] claims (under the Housing Maintenance Code) raised in the petition. [\[FN1\]](#) Accordingly, the prong of Glenridge Mews' motion made pursuant to CPLR § 3211(a)(2) is granted to the extent that petitioner's harassment claims made pursuant to NYC Admin. Code § 27-2005(d) are dismissed.

Glenridge Mews next moves to dismiss pursuant to CPLR § 3211(a)(3), upon the assertion that petitioner lacks standing and/or capacity to proceed herein. In the Second Department, "lack of standing" has been interpreted as being within the ambit of CPLR § 3211(a)(3). [See \*Wilmington Sav. Fund Socy., FSB v. Matamoro\*, 200 AD3d 79](#), 89 [2d Dept 2021]. Nonetheless, it is the movant's burden "to establish, prima facie, the [petitioner's] lack of standing as a matter of law." *Id.* at 90. Glenridge Mews' main argument under CPLR § 3211(a)(3) is that since petitioner does not reside in the subject condominium unit, she does not have standing to proceed herein. Under the Housing Maintenance Code, a "lawful occupant or group of lawful occupants" may apply to this court for an order to correct violations. *See* NYC Admin. Code § 27-2115(h)(1). The Code does not require a person to be in actual physical possession to seek an order to correct. *See e.g. Parker v. 92-98*

*Morningside Av LLC*, 2003 NY Misc LEXIS 2066 [Civ Ct, NY County, Sept. 10, 2003, Index No. 000181/2003].

Glenridge Mews also argues that petitioner is the "owner" of the subject unit and that it (Glenridge Mews) is a "non-owner." While this is technically correct, various courts have held that the Housing Maintenance Code can nonetheless be enforced against condominium associations for common-area conditions. *See e.g. Pershad v. Parkchester South Condo.*, 174 Misc 3d 92, 95 [Civ Ct, Bronx County 1997], *affd* 178 Misc 2d 788 [App Term, 1st Dept 1998]; *Smith v. Parkchester N. Condominium*, 163 Misc 2d 66, 67 [Civ Ct, Bronx County 1994]; *Gazdo Properties Corp. v. Lava*, 149 Misc 2d 828, 831-833 [Civ Ct, Kings County 1991], *appeal dismissed* 150 Misc 2d 1019 [App Term, 2d Dept, 2d & 11th Jud Dists 1991]; [see also \*Leprovost v. Pitts\*, 46 Misc 3d 1216](#)[A], 2015 NY Slip Op 50102[U], \*5 [Civ Ct, NY County 2015] ["Owner" under the Housing Maintenance Code includes "a condominium association"]; Gerald Lebovits and James P. Tracy, *Cooperatives and Condominiums in the New York City Housing Court*, 36-2 NY State Bar Real Property Law Journal 45 [Spring 2008] ["The Housing Part also has jurisdiction over condominium common areas and to condominium units that a unit owner leases."]. The court also finds significance in the City Council's amendment of the Housing Maintenance Code to specifically exempt condominium and cooperative owners and shareholders from the harassment provisions of the Code but not similarly exempting them from the housing standards enforcement provisions. [See e.g. \*Matter of Walsh v. New York State Comptroller\*, 34 NY3d 520](#), 524 [2019] ["A statute 'must be construed as a whole and [] its various sections must be considered together and with reference to each other.'"] [Quoting [Matter of New York County Lawyers' Assn. v. Bloomberg](#), 19 NY3d 712, 721 [2012]]; [Kimmel v. State of New York](#), 29 NY3d 386, 394 [2017] ["Where the legislature has addressed a subject and provided specific exceptions to a general rule the maxim *expressio unius est exclusio alterius* applies (see McKinney's Cons Laws of NY, Book 1, Statutes § 240 at 412-413 ['where a statute creates provisos or exceptions as to certain matters the inclusion of such provisos or exceptions [\*3] is generally considered to deny the existence of others not mentioned'])"]. [\[EN2\]](#) For each of these reasons, the court finds Glenridge Mews has not demonstrated, prima facie, that petitioner lacks capacity and/or standing to proceed herein with regard to the portion of the petition seeking an order to correct and related remedies under the Housing Maintenance Code. Accordingly, the prong of Glenridge Mews' motion made pursuant to CPLR § 3211(a) (3) is denied.

Finally, Glenridge Mews moves pursuant to CPLR § 3211(a)(7) to dismiss on the basis

that petitioner has filed to state a cause of action. On a CPLR § 3211(a)(7) motion, the petition "is to be afforded a liberal construction, the facts alleged are presumed to be true, the [petitioner] is afforded the benefit of every favorable inference, and the court is to determine only whether the facts as alleged fit within any cognizable legal theory." [Watts v. City of New York, 186 AD3d 1577](#), 1578 [2d Dept 2020]. When evidentiary material is offered and considered on such a motion, "the criterion is whether the proponent of the pleading has a cause of action, not whether he has stated one[.]" *Guggenheimer v. Ginzburg*, 43 NY2d 268, 275 [1977].

The court has already found that petitioner lacks a cause of action for harassment under the Housing Maintenance Code (*see* NYC Admin. Code § 27-2115(n)), so the motion is granted to the extent that the harassment claims are dismissed. As far as the claim seeking an order to correct pursuant to the Housing Maintenance Code is concerned, the alleged conditions related to leaks and a vermin infestation, when afforded a liberal construction, constitute common-element conditions of the subject condominium that, if proven as violations, would be the basis for an order to correct under NYC Admin Code § 27-2115(h) (1). *See* NYC Admin. Code §§ 27-2017.4 and 27-2027. The by-laws annexed by Glenridge Mews provide that "[a]ll maintenance, repairs and replacements to the [c]ommon [e]lements shall be made by the Board of Managers[.]" (Exhibit B, Section 10(b). Similarly, Real Property Law § 339-ee(1) (Condominium Act) provides that "the board of managers shall be deemed the person in control of common elements, for purposes of any law or code[.]" The court need not determine whether the conditions pleaded are actually common-element violations in the context of the instant motion to dismiss. A determination of whether the conditions exist and whether they are violations of the Housing Maintenance Code shall be made at trial. *See Pershad*, 174 Misc 3d at 95-96; [Kahn v. 230-79 Equity, Inc., 2 Misc 3d 140\[A\]](#), 2004 NY Slip Op 50302[U] [App Term, 1st Dept 2004]. For each of these reasons, Glenridge Mews' motion to dismiss for failure to state a cause of action is granted only to the extent that the petitioner's harassment claims are dismissed.

### **PETITIONER'S CROSS-MOTION**

Petitioner's cross-motion seeks to amend the petition pursuant to CPLR § 3025, in order to add Elizabeth Burden as a petitioner and in order to include reference to certain laws of the city and state of New York. Glenridge Mews opposes the cross-motion in its entirety. Pursuant to CPLR § 3025(b), "[a] party may amend his or her pleading . . . at any time by leave of court or by stipulation of all parties. Leave shall be freely given upon such terms as

may be just including granting of costs and continuances." [\*See e.g. Faiella v. Tysens Park Apts., LLC\*, 110 AD3d 1028](#), 1029 [2d Dept 2013] ["Leave to amend a pleading should be freely given absent prejudice or surprise to the opposing party, unless the proposed amendment is palpably [\*4]insufficient or patently devoid of merit."]. Moreover, "[a]ny motion to amend shall be accompanied by the proposed amended or supplemental pleading clearly showing the changes or additions to be made to the pleading." CPLR § 3025(b). Although the affirmation in support of the cross-motion states that Elizabeth Burden has resided at the subject property for the past 32 years, the proposed amended pleading does not actually include allegations regarding her status as a party (in fact, does not name her as a party in the body of the proposed amended petition or caption), except incidentally in describing alleged violations of the Housing Maintenance Code. Insofar as petitioner is permitted to proceed on her claim for an order to correct, the court sees no potential merit in also adding Elizabeth Burden as a party, especially when the proposed amended pleading does not adequately allege her party status.

With regard to the references to laws that petitioner seeks to add to her petition, it is noted at the outset that every court shall take judicial notice without request of all public statutes of "every state and of all local laws and county acts" pursuant to CPLR § 4511(a) and may take judicial notice without request of "ordinances and regulations of officers, agencies or governmental subdivisions of the state or of the United States" pursuant to CPLR § 4511(b). *See Rothstein v. City Univ. of New York*, 194 AD2d 533, 534-535 [2d Dept 1993] [Lower court's sua sponte decision to take judicial notice of New York City Building Code provisions was authorized by CPLR § 4511(b)]. [\[FN3\]](#) Here, the bulk of the additional legal references in the proposed amended petition (as a part of Paragraph 12) are unlabeled and without reference to any specific law. Since the court is already permitted to take judicial notice of the laws, ordinances, and regulations that are relevant to petitioner's surviving claims, there is no basis for the proposed amendment, which mostly consists of an incomplete, unidentified portion of a law. As a result, petitioner's cross-motion is denied in its entirety.

## **CONCLUSION**

In accordance with the foregoing determinations, respondent Glenridge Mews' motion to dismiss is granted to the extent that petitioner's claims related to harassment under the Housing Maintenance Code are dismissed. The motion to dismiss is otherwise denied. Petitioner's cross-motion to amend the petition is denied. This action will be restored to the

Part C calendar for a pre-trial conference on June 3, 2022 at 9:30 AM (Room 407, 89-17 Sutphin Boulevard, Jamaica, New York 11435). This Decision/Order will be filed to NYSCEF.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

Dated: Queens, New York  
May 23, 2022

---

HON. CLINTON J. GUTHRIE, J.H.C.

### Footnotes

**Footnote 1:** Without specifically assessing the merits of the cross-motion, the proposed additional petitioner, Elizabeth Burden, would be a person "lawfully entitled to reside with" petitioner for the purposes of NYC Admin. Code § 27-2115(n). *See* Article VI, Section 11 of By-Laws annexed as Exhibit B to Glenridge Mews' motion; Real Property Law § 339-h.

**Footnote 2:** The provisions of the NYC Administrative Code are subject to usual rules of statutory interpretation. *See Lynch v. City of New York*, 35 NY3d 517, 520 [2020].

**Footnote 3:** NYC Admin. Code § 1-104(a) also provides a basis for courts to take judicial notice of the Administrative Code.

[Return to Decision List](#)