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HLP1 MRU LLC v Ishrak
2023 NY Slip Op 50837(U)
Decided on July 11, 2023
Civil Court Of The City Of New York, Queens County
Schiff, J.
Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431.
This opinion is uncorrected and will not be published in the printed Official Reports.

Decided on July 11, 2023

Civil Court of the City of New York, Queens County

<p style="text-align: center;">HLP1 MRU LLC, Petitioner-Landlord,</p> <p style="text-align: center;">against</p> <p style="text-align: center;">Azmain Ishrak et al., Respondents-Tenants</p>
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Index No. L&T 301076/23

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Logan J. Schiff, J.

Recitation, as required by CPLR § 2219(a), of the papers considered in the review of this motion for summary determination pursuant to CPLR 409(b) in lieu of inquest: NYSCEF 5-14.

Upon the foregoing cited papers, the Decision/Order on Petitioner's motion is as follows:

This is a breach of lease holdover in a rent-stabilized apartment pursuant to 9 NYCRR (Rent Stabilization Code) § 2524.3(a) based primarily on allegations of excessive noise. The

matter was initially scheduled for March 6, 2023, and upon Respondents' non-appearance was scheduled for inquest on April 28, 2023, and thereafter on June 30, 2023. Postcards were mailed to all Respondents. In lieu of an inquest, Petitioner now moves for summary determination pursuant to CPLR 409(b).

Unlike in a nonpayment proceeding pursuant to RPAPL § 711(2), which does not call for the scheduling of a hearing in the absence of an answer and requires the court to render a judgment upon application without an inquest (*see* RPAPL § 732(3); *Brusco v Braun*, 84 NY2d 674 [1994]), all other proceedings under Article 7 of the RPAPL contemplate a hearing (*see* RPAPL § 731(2); CPLR 409(a)). Where the respondent does not appear, the court will typically hold a one-sided trial called an inquest (*see Cobble Hillbillies, LLC v Interior Design*, 2004 NYLJ 3985 [Civ Ct, Kings Co 2004]; 22 NYCRR §§ 208.43(f) and 208.14(b)(1))

While inquests are customary in summary proceedings, this court can discern no statute or court rule that makes them mandatory. Indeed, CPLR 409(b), which is applicable to summary proceedings, provides that the court is obligated to survey the sufficiency of all pleadings, papers, and admissions before the hearing and to render any relief permitted on a motion for summary judgment (*see* CPLR 409(b); *Bahar v Schwartzreich*, 204 AD2d 441, 443 [2d Dept 1994]); *Greenport Preserv. L.P. v Heyward*, 160 N.Y.S.3d 734, 735 [App Term, 2d, 11th & 13th Jud Dists, 2d Dept 2021]; [1646 Union v Simpson, 62 Misc 3d 142\(A\)](#) [App Term, 2d, 11th & 13th Jud Dists, 2d Dept 2019]). As Petitioner correctly notes, CPLR 409(b) does not require [*2]the joinder of issue as a condition precedent to granting summary relief and allows the court to consider not just the pleadings but *admissions* in lieu of testimony, including affidavits (*see Brusco v Braun*, 199 AD2d 27, 32-33 [1st Dept 1993], *affd* 84 N.Y.2d 674 [1994]; *901 Bklyn Realty, LLC v Woods-Najac*, 119 N.Y.S.3d 811 [App Term, 2d, 11th & 13th Jud Dists, 2d Dept 2019]). Even where a tenant answers in a summary proceeding, the court is only directed to hold a trial where there are triable issues of fact (*see* CPLR 410; RPAPL § 745(1)).

Here, the court cannot identify any defects in Petitioner's pleadings or moving papers. The verified Petition was timely served. Petitioner's motion attaches the parties' original lease from September 2021, which bars objectionable conduct that impacts the lives of other residents in the building (paragraph 16) and includes a conditional limitation clause (paragraph 21) allowing Petitioner to terminate the lease early and commence a summary eviction proceeding. Petitioner has properly exercised its rights under the conditional limitation provision by serving a detailed 10-day notice to cure, followed by a 7-day notice of

termination, which alleges that Respondents have not cured and cites to specific new incidents following the end of the cure period. The motion is supported by two affidavits based upon personal knowledge, including Petitioner's agent and a neighbor whose sworn statement provides detailed dates and time-specific allegations of excessive noise caused by loud music late at night that is adversely impacting her use and enjoyment of the premises.

In the absence of any rebuttal by Respondents, Petitioner has met its prima facie burden of establishing a breach of the parties' lease and is hereby awarded a judgment of possession. That being said, the court is unable to determine solely on the papers if the alleged conduct is sufficiently objectionable so as to preclude the mandatory thirty-day cure period provided for by RPAPL § 753(4) (*cf.* RPAPL § 753(3); *Marine Terrace v Preserv. L.P. v Arabadjis*, 202 NY Slip Op 50298[U] [App Term, 2d, 11th & 13th Jud Dists, 2d Dept 2023]), as the crux of the allegations appear to be a dispute with one neighbor over noise. It is well-settled that in urban environments such as New York City, tenants do not have a reasonable expectation that they should be "surrounded by the stillness which prevails in a rural district." *Carroll v. Radoniqi*, 2012 NY Misc. LEXIS 4423 (Sup Ct, NY Co. 2012), *affd*, 105 AD3d 493, 494 (1st Dept. 2013), and in order to be legally actionable the noise must be "so excessive that [the neighbor was] deprived of the essential functions that a residence is supposed to provide" ([Armstrong v. Archives L.L.C.](#), 46 AD3d 465, 465 [1st Dept. 2007] [internal citations omitted]). Indeed, in this regard an inquest with live testimony may well have been preferable, as it would have allowed the court to better assess the scope of the alleged misconduct and to determine if Respondents' behavior constitutes nuisance-type behavior or is more the result of personnel animus between neighbors, and to request any additional information or testimony as needed pursuant to CPLR 409(a).

Accordingly, given the policy of the courts to avoid the needless forfeiture of rent-regulated housing ([see 2246 Holding Corp. v. Nolasco](#), 52 AD3d 377 [1st Dept 2008]), the court stays issuance of the warrant for thirty days from service of this order in order to provide Respondents with an opportunity to cure by ceasing all objectionable conduct. Petitioner is directed to serve Notice of Entry of this order on the Respondents pursuant to RPAPL 735, or by first class mail with certificate of mailing and overnight mail, and to file proof of service on NYSCEF. If service is effectuated by mailing, issuance of the warrant will be stayed an additional one day. At the end of the thirty-day cure period, Petitioner may move by order to show cause for issuance of the warrant based on the failure to cure, supported by an affidavit [*3] based on personal knowledge. Petitioner is also directed to provide a non-military affidavit for all Respondents. If the court concludes that the conduct has been cured, or if Petitioner does not move to restore this matter on or before October 13,

2023, the court will deem issuance of the warrant permanently stayed.

Dated: July 11, 2023

Queens, NY

HON. LOGAN J. SCHIFF

Judge, Housing Court

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