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1212 COLLEGE, LLC v. McPherson

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

-----X
1212 COLLEGE, LLC,

Petitioner,

-against-

MICHAEL MCPHERSON,
SHANIECE ALLEN,
AND/OR "JOHN DOE (2)",

Respondents.

Premises: 1212 College Avenue
Apartment A3
Bronx, New York 10456

-----X
BERNADETTE G. BLACK, Judge:

Recitation, as required by CPLR § 2219(a), of the papers considered in the review of Petitioner's motion for summary judgment and a monetary judgment for use and occupancy:

NYSCEF Documents 22 - 42

Upon the death of the record tenant of this rent-stabilized unit, Petitioner commenced this licensee holdover proceeding for possession of the subject premises. Respondents McPherson and Allen asserted a succession defense and retained counsel. Following discovery, Petitioner filed the subject motion for summary judgment citing insufficient documentary evidence in support of Respondent's claim and seeking a monetary judgment for use and occupancy. For the reasons stated below Petitioner's motion is denied.

Summary judgment deprives a party of the right to a trial and is a drastic remedy, to be granted only in the absence any material issue of fact. *See, Alvarez v. Prospect Hosp.*, 68 NY2d 320, 324 (1986); *Zuckerman v. City of New York*, 49 NY2d 557, 562 (1980); *Andre v. Pomeroy*, 35 NY2d 361, 364 (1974). Pursuant to CPLR § 3212, the party seeking summary judgment must

Index No. L&T 315216-22

MOTION SEQ. 02

DECISION/ORDER

the light most favorable to the nonmoving party, affording every reasonable inference in its favor and without any determination as to credibility. *Ortiz v. Varsity Holdings, LLC*, 18 NY2d 335, 339 (2011).

Respondents' multiple sworn affidavits in opposition to the motion, and in support of the succession claim, sufficiently raise material issues of fact, despite the paucity of documentary proof, thus far. *See, Alvarez v. Prospect Hosp., supra; 157 East 89th Street, LLC v. McAuliffe*, 42 Misc. 3d 143(A) (App. Term, 1st Dept. 2014). Accordingly, Petitioner's motion for summary judgment is denied. The branch of the motion seeking a judgment for use and occupancy is also denied, with leave to renew. Following conference, as the parties were unable to reach settlement, the proceeding is transferred for trial. This constitutes the decision and order of the court.

Dated: Bronx, New York
August 10, 2023



Bernadette G. Black, J.H.C.