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### RENAISSANCE EQUITY HOLDING LLC v. FORD

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CIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF KINGS: HOUSING PART C----- X  
RENAISSANCE EQUITY HOLDING LLC,

Petitioner-Landlord,

Index No. L&amp;T 305861/21

- against -

**AMENDED**  
**DECISION/ORDER**

MICHELLE FORD,

Respondent-Tenant,

-and-

“JOHN DOE” “JANE DOE”

Respondents-Tenants,

3301 Foster Avenue, Apartment 4G, Brooklyn, New York 11210

“Subject Premises”

----- X  
Present: Hon. Kevin McClanahan  
Judge, Housing Court

Recitation, as required by CPLR §2219(a), of the papers considered in the review of this motion:

<b>Papers</b>	<b>Numbered</b>
Respondent’s Notice of Motion, along with Affidavits, Affirmations and exhibits	1, 2, 3, 4, 5
Petitioner’s Affidavit in Opposition along with Affidavits, Affirmations and exhibits	6, 7
Respondent’s Affidavit in Reply	8, 9, 10
Papers considered: (NYSCEF Doc Nos. 16 through 25)	

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**Facts and Procedural History**

This nonpayment proceeding was commenced on June 23, 2021. On August 17, 2021, after Respondent’s failure to respond, Petitioner filed a notice of motion to restore the matter to the calendar for a hearing as well as requesting a default judgment. On January 18, 2022, Respondent’s counsel filed a notice of appearance. The parties appeared on January 19, 2022, whereby Petitioner

withdrew its motion and Respondent was given until February 11, 2022, to answer. Respondent filed an answer on February 7, 2022, and filed the instant motion on February 11, 2022, requesting the following relief: Granting summary judgment to Respondent on her defense of laches pursuant to C.P.L.R. §3212. Petitioner opposed the motion.

The Court has taken judicial notice of a previous nonpayment proceeding by Petitioner against Respondent which was commenced and settled in 2018<sup>1</sup> for rent due through and including the rental month ending July 31, 2018, which had been satisfied.<sup>2</sup> Therefore, the Court acknowledges that the subject time period began on August 1, 2018.

For the foregoing reasons, this motion is granted in part and denied in part.

### **Discussion**

In order to prevail on a motion for summary judgment, the proponents must “establish his cause of action or defense ‘sufficiently to warrant the court as a matter of law in directing judgment’ in [his] favor and he must do so by tender of evidentiary proof in admissible form. On the other hand, to defeat a motion for summary judgment the opposing party must show facts sufficient to require a trial of any issue of fact.” *Zuckerman v. City of New York*, 49 N.Y.2d 557, 562 (2<sup>nd</sup> Dep’t, 1980); *citing* (CPLR 3212, subd. (b)). “Laches is an equitable doctrine based on fairness. For the doctrine to apply, there must be a showing of unexplained delay and prejudice. Whether a party has suffered injury, change of position, loss of evidence, or some other disadvantage resulting from the delay depends on the facts of the case.” *Karagiannis v. Nasar/Hyer*, 35 Misc.3d 37 (App. Term 2012)(Internal citations omitted).

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<sup>1</sup> Index No. LT-069807-18/KI

<sup>2</sup> NYSCEF Doc. No. 26. Letter from Brooklyn Legal Services NYC and Order by Hon. Elizabeth Donoghue dated July 19, 2022.

“The four basic elements of laches are, (1) conduct by an offending party giving rise to the situation complained of, (2) delay by the complainant asserting his or her claim for relief despite the opportunity to do so, (3) lack of knowledge or notice on the part of the offending party that the complainant would assert his or her claim for relief, and (4) injury or prejudice to the offending party in the event that relief is accorded the complainant. *Dwyer by Dwyer v. Mazzola*, 171 A.D.2d 726, 727 (2<sup>nd</sup> Dep’t, 1991).

Respondent has established a *prima facie* case for her defense of laches. Respondent’s failure to pay rent is the conduct giving rise to the situation complained of. It is apparent that there has been delay by Petitioner in asserting their claim for relief. While Petitioner’s rent ledger demonstrates Respondent’s failure to pay rent since 2018, Petitioner failed to bring an action until June 2021. Respondent also alleges a lack of notice by Petitioner that they planned to commence a legal proceeding against her. Petitioner does not refute these statements in their opposition papers and fails to assert any attempts to collect said rent prior to 2021 nor do they assert any reasonable excuse for their delay in seeking the unpaid rent.

Respondent demonstrates that she would be prejudiced in the relief accorded the complainant as the stated rent owed is over \$17,000. As stated in Respondent’s affidavit, she has been experiencing health issues since 2019 and cannot work. Respondent is also a Section 8 rental subsidy recipient.

Petitioner fails to raise any triable issue of law or fact in their opposition papers. Therefore, this Court finds that Respondent is entitled to summary judgment with respect to the months of August 1, 2018, to May 2021<sup>3</sup>, although petitioner may seek a monetary judgment for those amounts at trial.

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<sup>3</sup> “The number of months which are too stale is the precise issue required to be decided by the laches claim. This number, then, is determined not by facts which are extrinsic to the laches issue, but by the very facts which prove

This Court declines to grant summary judgment in favor of Respondent with respect to unpaid rent for the period of May 2021 to August 2021<sup>4</sup>. The proceeding may move forward to trial on unpaid rent for the period of May 2021 to August 2021. If Petitioner prevails, it will be entitled to a possessory judgment for the proven arrears.

The Court restores this proceeding to the Part C calendar on October 16, 2023, at 10 AM, Room 406, Room 402 for settlement or trial. This constitutes the decision and order of the Court, which shall be uploaded to NYSCEF.

Dated: Brooklyn, New York  
October 3, 2023

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HON. KEVIN MCCLANAHAN,  
J.H.C.

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laches—most important, facts showing the number of months as to which there is no excuse for delay, and the number of months as to which unexcused delay has caused prejudice.” *Marriott v. Shaw*, 151 Misc. 2d 938, 945 (Kings Ct. Civ. Ct. 1991). Petitioner’s first attempt at service of the predicate notice took place on April 10, 2021. Therefore, the Court finds that it would be inequitable to attribute laches to any rental periods after April 1, 2021, in this matter.

<sup>4</sup> “[T]he denial of a motion for summary judgment is not an adjudication on the merits and establishes nothing except that summary judgment is not warranted at this time.” *Karagiannis v. Nasar/Hyer*, 35 Misc. 3d 37, 40 (App. Term 2012)(internal citations omitted).