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2024-03-14

Gamba v. Baus

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Civil Court of the City of New York
County of Kings

Index # LT-050280-23/KI

Vicenta Gamba

Petitioner(s)

Decision / Order

-against-

Carlos Baus; Yolanda Baus; "John" "Doe";
"Jane" "Doe"

Respondent(s)

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

Papers	Numbered
Order to show Cause/ Notice of Motion and Affidavits /Affirmations annexed	NYSCEF 12-13
Answering Affidavits/ Affirmations	NYSCEF 14-19
Reply Affidavits/ Affirmations	NYSCEF 20
Memoranda of Law	
Other	

This is a holdover proceeding. The petition alleges that the premises is not subject to the Rent Stabilization Code. Respondent brings this motion seeking summary judgment on several grounds. As is pertinent for this decision, respondent alleges that petitioner failed to properly describe the regulatory status of the subject unit. According to respondent, the building was constructed in 1920, and contains more than six units. Petitioner, represented by counsel, does not contest respondent’s allegations but states in opposition, that “due to financial pressure the Petitioner had converted the subject premises of 329 7th Street, Brooklyn, New York 11215, 4th Floor into seven units and rented as such.” (NYSCEF Doc. 14 at ¶ 38).

A building constructed prior to January 1, 1974, that contains more than six units is subject to rent stabilization coverage. 25 NYCRR § 2520.11; see also Joe Lebnan, LLC v. Oliva, 39 Misc.3d 31, 965 N.Y.S.2d 268 (AT 2d Dep’t, 2nd, 11th, & 13th Jud. Dists. 2013); Rashid v. Cancel, 9 Misc.3d 130(A), 808 N.Y.S.2d 920 (AT 2nd Dep’t, 2nd & 11th Jud. Dists. 2005); Rosenberg v. Gettes, 187 Misc.2d 790, 723 N.Y.S.2d 598 (AT 1st Dep’t 2000); Matter of Gracecor Realty Co. v. Hargrove, 90 N.Y.2d 350, 355, 660 N.Y.S.2d 704, 683 N.E.2d 326

(1997). The building is rent stabilized even if it did not have six unit on January 1, 1974, but instead was converted to a building with six or more units after that date. Ortiz v. Sohngen, 56 Mic.3d 19, 50 N.Y.S.3d 239 (AT 2nd Dep't, 2nd, 11th, & 13th Jud. Dists. 2017).

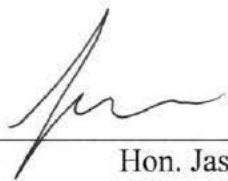
It is uncontested here that the subject building was constructed prior to January 1, 1974, and contains more than six units. As such, each unit in the subject building is subject to rent stabilization. The petition is therefore defective as it fails to plead the proper regulatory status for the subject unit. RPAL § 741.

ORDERED: Respondent's motion for summary judgment is GRANTED. The petition is DISMISSED.

This constitutes the decision and order of the court, which will be delivered to the parties via posting on NYSCEF.

Date: 2/21/24

Civ-GP-85


Hon. Jason P. Vendzules, J.H.C.