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2024-03-08

### DEPARTMENT OF HOUS. PRESERV. & DEV. OF THE CITY OF N.Y. v. BELMONT VENTURES LLC

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**Department of Hous. Preserv. & Dev. of the City of  
N.Y. v Belmont Ventures LLC**

2024 NY Slip Op 30891(U)

March 8, 2024

Civil Court of the City of New York, New York County

Docket Number: Index No. 306315/2021

Judge: Jack Stoller

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This opinion is uncorrected and not selected for official publication.

CIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF NEW YORK: HOUSING PART R  
-----X  
DEPARTMENT OF HOUSING PRESERVATION  
AND DEVELOPMENT OF THE CITY OF NEW YORK,

Petitioner,

Index No. 306315/2021

-against-

BELMONT VENTURES LLC, DANIEL OHEBSHALOM  
A/K/A DAN SHALOM, and ROBIN IGNICO,

DECISION/ORDER

Respondents.

-----X  
DEPARTMENT OF HOUSING PRESERVATION  
AND DEVELOPMENT OF THE CITY OF NEW YORK,

Petitioner,

Index No. 306316/2021

-against-

BELMONT VENTURES LLC, DANIEL OHEBSHALOM  
A/K/A DAN SHALOM, and ROBIN IGNICO,

DECISION/ORDER

Respondents.

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

Pages	numbered
Notice of Motion and Supplemental Affirmations Annexed, #306315/21	1, 2, 3, 4, 5, 6
Notice of Motion and Supplemental Affirmations Annexed, #306316/21	7, 8, 9, 10, 11, 12
Affirmations in Opposition #306315/21	13, 14, 15, 16, 17, 18
Affirmations in Opposition #306316/21	19, 20, 21, 22, 23, 24

Upon the foregoing papers, the Decision and Order on this motion are as follows:

The Department of Housing Preservation and Development of the City of New York, the petitioner in this proceeding (“HPD”), commenced these two proceedings against Belmont Ventures LLC (“Respondent”), a respondent in these proceedings, Daniel Ohebshalom a/k/a Dan Shalom (“Co-Respondent”), another respondent in these proceedings, and Robin Ignico

(“Second Co-Respondent”), another respondent in these proceedings (collectively, “Respondents”), seeking an order to correct violations, an order finding harassment, and civil penalties regarding the state of 705 West 170<sup>th</sup> Street, New York, New York (“705 Building”), and 709 West 170<sup>th</sup> Street, New York, New York (“709 Building”)(the Court refers to 705 Building and 709 Building collectively as “the subject premises”). The Court entered into an order dated January 5, 2024 (“the Order”) holding Respondents in contempt and staying imprisonment through February 8, 2024 (“the Deadline”) to afford Respondents an opportunity to purge. Respondents now move for an extension.

### **Pertinent information from the submissions**

The Order provided, *inter alia*, that the Court had already held Respondents in civil contempt by a previous order dated February 2, 2023; that by an order dated March 24, 2023, the Court had already ordered Respondents to correct all open “C” violations<sup>1</sup> by March 27, 2023, “B” violations by April 24, 2023, and “A” violations by June 22, 2023; that on July 11, 2023 the Court found Respondents in criminal and civil contempt of an order to hire a registered managing agent, file a multiple dwelling registration (“MDR”) as required by MDL §325, and produce a scope of work; that the Court would temporarily stay an execution of an arrest warrant to provide Respondents one final opportunity to purge, which required correction of all “B” and “C” violations where the notice of violation issued on November 10, 2022 or earlier, the filing of documentary proof of the correction of each violation to NYSCEF, the filing of an affidavit by a registered managing agent, the filing of scopes of work to NYSCEF, including plans to make

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<sup>1</sup> A class “A” violation is “non-hazardous” pursuant to N.Y.C. Admin. Code §27-2115(c)(1); class “B” violation is “hazardous” pursuant to N.Y.C. Admin. Code §27-2115(c)(2); and a class “C” violation is “immediately hazardous” pursuant to N.Y.C. Admin. Code §27-2115(c)(3). Notre Dame Leasing LLC v. Rosario, 2 N.Y.3d 459, 463 n.1 (2004).

repairs, and a description in detail of what repairs have been made and individuals who made them and what repairs cannot yet be accomplished and why, supported by an affidavit of a licensed contractor.

In opposition to the motion, HPD shows a violation summary report showing that “B” and “C” violations pre-dating November 10, 2022 remain extant as of the Deadline in, *inter alia*, apartments 1, 3, 4, 31, 32, 33, 51, 52, and 54 and the common areas of the 705 Building and in apartments 1, 2, 24, 32, 34, 42, 44 and the common areas of the 709 Building.

Tenants who live in the subject premises are in ongoing litigation with Respondents in two proceedings the tenant have commenced against Respondents pursuant to N.Y.C. Admin. Code §27-2115(h)(1) seeking an order to correct violations of the New York City Housing Maintenance Code. Counsel represents tenants in those proceedings. Respondents argue that the course of that litigation has precluded access to correct the violations by the Deadline, in part because the tenants’ counsel has insisted on arranging access through them instead of through the tenants directly. In support of this argument, Respondents annex stipulations dated January 25, 2024 to their motions. The stipulations provide for access to apartment 34 at the 705 Building on February 26 and 27 of 2024, access to apartment 41 at the 709 Building on February 2, 2024, and apartment 32 at the 709 Building on February 1, 2024.

Respondents further show that attorneys for the tenants sent Respondents a schedule proposing access on the following dates for the following apartments in the 709 Building: for apartment 1, February 9, 2024, for apartment 3, February 12, 13, and 19, 2024, for apartment 34, February 19, 2024, for apartment 42, February 7, 2024, February 8, 2024, and February 9, 2024, and for apartment 54, February 13, 21, and 26, 2024. Attorneys for the tenants also sent Respondents a schedule proposing access on the following dates for the following apartments in

the 705 Building: for apartment 3, February 12, 13, and 14, 2024, for apartment 4, February 13, 14, and 15, 2024, and for apartment 52, February 7, 8, and 9, 2024.

Respondents also aver in support of their motion that work is done in apartments 32 of the 709 Building and 52 of the 705 Building, annexing photographs to their motion in corroboration. Respondents also aver that work was done in apartments 32, 52, and 54, although they are not clear as to which building that applies to, and that work was done in apartment 41. Respondents annex to their motion an affidavit of foreman for a contractor who avers that work was completed in apartments 32 and 54 of the 709 Building and apartments 52 and 54 at the 705 Building. Respondents also annex to their motion an affidavit of a lead remediator saying that his did dust wipes in apartments 21 and 33 of the 705 Building, did a lead abatement in apartment 42 at the 709 Building, were scheduled to go into apartment 1 on February 9, 2024, and did not get access to apartment 2 or apartment 31 at the 705 Building. Respondents also annex to their motion an affidavit of a super and someone working with the super who both say that they got access to apartment 41 at the 709 Building and completed some of the work and needed access to finish some of the work.

In opposition to Respondents' motion, HPD submits emails from the tenants' attorneys proposing the following access dates at the following apartments at the 705 Building: for apartment 1, December 21 and 22, 2023 and January 8, 2024, for apartment 3, January 8, 9, and 10, 2024, for apartment 4, January 10, 11, 12, 2024, for apartment 32, December 20, 21, and 22, 2023, for apartment 33, January 3, 4, and 5, 2024, for apartment 34, February 26, 27, and 28, 2024, and for apartment 52, December 20, 21, and 22, 2023. The emails from the tenants' attorneys also proposed the following access dates for the following apartments at the 709 Building: for apartment 1, December 15 and 22, 2023, and January 5, 2024, for apartment 3,

December 12, 18, and 19 of 2023, for apartment 21, December 13, 14, and 15, 2023, for apartment 32, December 19, 20, and 21, 2023, for apartment 33, December 11, 12, and 13, 2023, for apartment 34, December 13, 15 and 18, 2023, for apartment 41, December 15, 22, 2023, and January 5, 2024, for apartment 42, January 8, 9, and 10, 2024, and for apartment 54, January 10, 11, and 12, 2024.

The tenant of apartment 3 of the 709 Building averred that she was home on December 12, 18, and 19 of 2023, but no one came, that she gave access on February 12, 2024, when Respondents did minimal work, and that no one came on February 13, or 14, 2024.

The tenant of apartment 52 of the 705 Building averred that she was home on December 20, 21, and 22 of 2023, but no one came, that she gave access on January 30 and February 2, 2024 even though that was not an agreed-upon date, that no one came on the agreed-upon access dates of February 7 and 8, 2024, and that someone came on February 9 and 10, 2024.

The tenant of apartment 1 of the 709 Building averred that he was home on December 15 and 22 of 2023 and January 5, 2024, but no one came, he gave access on February 9, 2024 and there was a dispute because he says that landlord wanted to work on things that had already been fixed rather than what he needed to have gotten done

The tenant of apartment 41 of the 709 Building averred that he was home on December 15 and 22 of 2023 and January 5, 2024, but no one came, he gave access on February 2, 2024 and they did a bad job.

### **Discussion**

While a contemnor can obtain an opportunity to purge the contempt by performance of the act required, there is no right, as such, to an order granting an opportunity to purge. People v. Williamson, 136 A.D.2d 497, 498 (1st Dept 1988). Rather, whether a contempt should go

unpunished, and, if so, on what conditions, is a matter entirely within the discretion of the court.

Id. The most striking factor informing the Court's discretion is the duration of the contempt proceeding. The Court held Respondents in civil contempt as of February 2, 2023, more than thirteen months before this writing.

Moreover, the sheer volume of extant hazardous and immediately hazardous violations bespeaks the extent of Respondents' contempt. A small sample of the uncorrected violations include serious conditions like a "C" violation for a rodent infestation in a common area of the 705 Building,<sup>2</sup> for which no access is needed, a "C" violation for mice in apartment 4 of the 705 Building,<sup>3</sup> "C" violations for lead paint and a roach infestation in apartment 31 of the 705 Building,<sup>4</sup> a "C" violation for lead paint in apartment 33 of the 705 Building,<sup>5</sup> a "B" violation for an inadequate electric supply in apartment 51 of the 705 Building,<sup>6</sup> a "C" violation for a mold infestation in apartment 1 of the 709 Building,<sup>7</sup> a "C" violation for lead paint and a "B" violation for mold in apartment 42 of the 709 Building,<sup>8</sup> a "B" violation for ceiling surfaces in apartment 34 of the 709 Building,<sup>9</sup> a "C" violation for roaches in the common area of the 709 Building,<sup>10</sup> a "B" violation for defective floor tiles in apartment 44 of the 709 Building,<sup>11</sup> "C" violations for

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<sup>2</sup> Violation #15458458.

<sup>3</sup> Violation #15362445.

<sup>4</sup> Violation #15330067 and #15158198.

<sup>5</sup> Violation #14536558.

<sup>6</sup> Violation #14360222.

<sup>7</sup> Violation #15246980.

<sup>8</sup> Violation #15233728 and #15232864.

<sup>9</sup> Violation #15143185.

<sup>10</sup> Violation #15118581.

<sup>11</sup> Violation #15086949.



roaches, mice, and defective surfaces in the kitchen ceiling in apartment 24 of the 709 Building,<sup>12</sup> and a “C” violation for lead in apartment 2 of the 709 Building.<sup>13</sup>

All of the above violations, serious conditions all, and by no means an exhaustive list of the ongoing conditions that the tenants of the subject premises have had to endure, have remained uncorrected since November of 2022, at least *sixteen months* before this writing, and often longer. After a finding of contempt has been made, the contemnor bears the burden to demonstrate by clear and convincing evidence of a purge or impossibility of a purge. Matter of Agnew v. N.Y. City Dept. of Corr., 217 A.D.3d 490, 491 (1st Dept. 2023). Rather than take advantage of the fact that the tenants have an attorney who is an intermediary to arrange access, Respondents try to spin such representation as a denial of access. Respondents’ sustained lack of seriousness in addressing these problems demonstrates that the showing they make on this motion, while perhaps arguably appropriate for a different posture of this case, is inadequate to prove by clear and convincing evidence that a purge was impossible months and years of persistence of deplorable living conditions.

Accordingly, it is

ORDERED that the Court denies Respondents’ motion, and it is further

ORDERED that the Court annexes to this order and incorporates by reference hereto, a warrant for arrest and commitment to civil jail as contemplated in this Court’s order of January

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<sup>12</sup> Violation #15044423, #14956979, and #14956978.

<sup>13</sup> Violation #14610410.

5, 2024.

This constitutes the decision and order of this Court.

Dated: March 8, 2024

New York, New York



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HON. JACK STOLLER  
J.H.C.