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VAZQUES v. NOSTRAND III EQUITIES LLC

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CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF KINGS: HOUSING PART

-----X

GILBERTO VAZQUES, ET AL.,

Index No. 316950/22

Petitioner,

DECISION/ORDER

-against-

Mot. seq. no. 3

NOSTRAND III EQUITIES LLC, ET AL.,
DEPARTMENT OF HOUSING PRESERVATION
AND DEVELOPMENT OF THE CITY OF NEW
YORK,

Respondents.

-----X

WEISBERG, J.:

The following e-filed documents, listed by NYSCEF document number 38-46 (motion no. 3) were read on this motion to extend Respondent-Landlords’ time to comply with the parties consent order and toll the date for the imposition of civil penalties.

Almost three months after the Department of Buildings issued a full vacate order for the six-unit apartment building that they have lived in, Petitioners commenced this “HP action/proceeding” for an order to correct the conditions that resulted in the vacate order. On February 6, 2024, the parties entered into a consent order (NYSCEF Doc. 36) that obligated Respondent-Landlords to “do all work necessary to lift the DOB vacate (sic) by 4/20/24.” However, the order also provided that “Respondents may move for additional time to correct upon evidence [of] good cause shown.” The order is silent as to when or on what basis the time to correct should be extended.

Respondent-Landlords have moved for an order extending their time to comply with the order and for a tolling of the imposition civil penalties. The motion is supported by an affidavit, somewhat threadbare, of Respondent Ledys Velez, an officer of the building’s corporate owner, dated April 18, 2024 (NYSCEF Doc. 43). Velez alleges that “work on the house is almost completed...the holdups at present are work which remains on the plumbing system and to a lesser extent electric systems.” He further alleges that “Respondents have experienced several problems with DOB which have halted progress on the necessary work,” noting that DOB has

twice issued objections to Respondent-Landlords' architect's plumbing plans. Some DOB documents, unexplained, are annexed to the motion.

Petitioners oppose Respondent-Landlords' request. The gist of Petitioners' argument is that Respondent-Landlords first applied for certain permits in February 2024 (when they entered into the consent order). However, Petitioners correctly note, the vacate order was issued in May 2022.¹ In other words, Petitioners seem to be arguing, you should have applied for those permits early, and since you didn't, you should have to pay penalties.

What neither party addresses is what information had been shared when they entered into the consent order. Velez says, "with knowledge that our plans were being filed, on or about February 6, 2024 the parties to this case entered into a consent order." The DOB website confirms that an application was filed on February 11, 2024. However, as Petitioners note, "DOB objections are known to be a possible part of large construction projects, which is why it is important for projects like this to start as soon as possible, rather than months or years after repairs become necessary."

So having yet to file the permit application, Respondent-Landlords' agreed to have the work completed in only two and a half months. Similarly, knowing that the permit application had yet to be filed, and aware that DOB might have objections that would delay the process, Petitioners apparently expected that Respondent-Landlords could complete the work in only two and a half months. Or did they? The consent order contemplates that Respondent-Landlords might ask for, and thus perhaps receive, an extension of time to complete the work.

Meanwhile, more than five months have passed since the motion was submitted for decision. The court would have expected that Respondent-Landlords would have provided post-submission updates with their progress in completing the work. They did not. The court does take notice that, according to the DOB website, a plumbing permit was issued on July 18, 2024 and has since expired.

Accordingly, it is ORDERED that the motion is granted to the extent below; and it is further

¹ Petitioners have not yet been able to move back into the building after more than two years. Although not relevant here, the court cannot help but note that their continued desire to do so reflects the extreme dearth of affordable housing in New York City.

ORDERED that Respondent-Landlords' time to complete the work contemplated by the consent order is extended through June 30, 2024 for the purposes of calculating any civil penalties, and the period for completion is tolled through that date; and it is further

ORDERED that the parties shall appear in Part B/Room 409 on _____ for a hearing on whether and how much civil penalties should be imposed for Respondent-Landlords' failure to complete the required work by June 30, 2024; and it is further

ORDERED that on such date, Respondent-Landlords shall have all witnesses and evidence necessary to demonstrate that civil penalties should not be imposed.

This is the court's decision and order.

Dated: October 28, 2024



Michael L. Weisberg, JHC