

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

X

RICH MAYER,

Petitioner,

-against-

812-816 BROADWAY, LLC,
LIGHTHOUSE PROPERTIES, LLC,

-and-

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

Co-Respondents.

X

RECITATION, AS REQUIRED BY CPLR 2219(A), OF THE PAPERS CONSIDERED IN
THE REVIEW OF THIS MOTION BY RESPONDENTS TO REARGUE

PAPERS

NUMBERED

Notice of Motion, Affidavits & Affirmation Annexed	1-2
Answering Affidavits	10
Replying Affidavits	
Exhibits	3-9, 11-12

UPON THE FOREGOING CITED PAPERS, THE DECISION/ORDER IN THIS MOTION
AS FOLLOWS:

Petitioner commenced this HP proceeding on or about September 2, 2015, seeking an order directing Respondent to restore elevator service at the subject building which he alleges was previously provided 24 hours a day, 7 days a week. Petitioner asserts that the elevator service had previously been provided in the building at all times, but presently elevator service is only available when the part-time superintendent is present at the building. Petitioner states that the lack of elevator service is putting a strain on his disabled roommate who has to take the stairs when the superintendent is not at the building.

The proceeding first appeared on the Court's calendar on September 24, 2015. Respondents appeared by counsel and the proceeding was adjourned. Respondents subsequently interposed an answer asserting several affirmative defenses, and later cross-moved for an order dismissing the proceeding or granting summary judgment in their favor. Petitioner opposed the motion. By decision and order dated January 25, 2016, this Court denied Respondents' cross-motion finding that there was a question of fact as to whether Respondents complied with the New York City Administrative Code as the mere presence of an elevator in the building is insufficient to comply with the letter of the law.

Respondents now move to reargue this Court's January 25, 2016 decision, and upon reargument seek an order dismissing this proceeding for lack of subject matter jurisdiction and failure to state a cause of action as Petitioner does not allege a condition constituting an HPD violation or a violation of a housing standard which may be adjudicated in this Court; alternatively, Respondents seek an order granting summary judgment and dismissing the petition as time barred. In support of their motion, Respondents contend that the Court misapprehended the meaning of § 27-989 (a) of the New York City Administrative Code in that this statute requires elevator service 24/7 for Fire Department use which is not alleged in the petition. In addition, Respondents contend that the petition should be dismissed because only the Loft Board can hear a claim for diminution of services. Respondents assert that Petitioner is the protected tenant of Apartment #501 at the subject building. However, Respondents state that the apartment was leased to another individual in August 1981, that said lease expired on September 30, 1984, and that the individual died in 1987. Respondents further maintain that Petitioner has never been a lessee, but that pursuant to Article 30 of the lease the landlord agreed to provide "necessary elevator facilities on business days between the hours of 8:30 p.m. to 5 p.m." Respondents further contend that despite the lease which has governed the parties' relationship for almost 35 years, Petitioner seeks 24/7 elevator service because he alleges that the superintendent provided this service until sometime in 2000. Moreover, Respondents state that although Petitioner is seeking the elevator use for his new roommate based on her unexplained disability, his roommate is not a party to this proceeding. Also, Respondents contend that Petitioner is not alleging that the elevator is malfunctioning or that it is unavailable for immediate use by the FDNY.

Respondents rely upon RCNY § 2-04 (b) (9) as the regulation which governs the minimum housing standards with respect to elevator service in an interim multiple dwelling ("IMD" herein) and addresses a landlord's diminution of elevator service. Respondents further contend that even if Petitioner's claim could be heard in Housing Court, passenger elevator service is not a minimum housing service that the owner of an IMD is required to provide. Also, Respondents state that the rules do prohibit the diminution of legal elevator service if the service was being provided as of the effective date of the Loft Law (June 21, 1982), but that neither Petitioner nor his roommate can address the level of service provided at the time since they are not parties to the lease and they did not occupy the apartment at the time.

Lastly, Respondents contend that if Petitioner is alleging a breach of the lease by Respondents when in 2000 when the unlimited elevator service was terminated, the statute of limitations ran out six years later in 2006.

In opposition, Petitioner asserts that Respondents improperly rehash arguments made in their original cross-motion. Petitioner argues that the Loft Board does not have exclusive jurisdiction over claims relating to entitlement of services. Specifically, Petitioner contends that the amendment of the Loft Law in 2010 permits loft law applicants to file HP proceedings to enforce their entitlement to services. Petitioner contends that this Court has jurisdiction to hear Petitioner's claim as to the diminished elevator service which is a violation of a housing standard that this Court has the power to enforce. Petitioner further states that Respondents' motive for claiming that the Loft Board should hear this dispute is to cause delays in the hope that Petitioner will tire of the circumstances and waive his rights under the Loft Law. Also, Petitioner states that because Respondent has obtained a residential certificate of occupancy for the building, by the time Petitioner's claim is ready for adjudication, the Loft Board will no longer have jurisdiction, and the Petitioner will then have to resort to commencing another HP proceeding.

Further, Petitioner contends that based on the opinion of his architect, because the building is being converted to a multiple dwelling it has to comply with the 1968 Building Code which includes handicapped requirements for elevator service under these circumstances whether or not a handicapped person resides in the building. Also, Petitioner contends that because the law provides that elevator service must be provided, no statute of limitations applies.

Pursuant to CPLR § 2221 (d), leave to reargue shall be based on matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion, but shall not include matters of fact not offered on the prior motion. The motion to reargue must be made within 30 days after service of a copy of the order determining the prior motion and written notice of entry. "A motion to reargue[is] directed to the sound discretion of the Court...Its purpose is not to serve as a vehicle to permit the unsuccessful party to argue once again the very questions previously decided" (*Matter of Simmons v Joy*, 24 Misc3d 1030, 879 NYS2d 898 [Sup County, Albany County 2009] [internal quotations marks and citation omitted]).

Based on the arguments raised herein, Respondents' motion seeking an order granting reargument is granted and upon reargument this Court vacates its prior order. Upon further review and examination of the parties' submissions, this Court finds that it lacks the subject matter jurisdiction to entertain Petitioner's claim which sounds more in a diminution of services claim than in a claim for the interruption of essential services. Although the Court previously relied upon NYC Administrative Code § 27-289 (a), this provision is more specifically tailored toward use by the Fire Department, and the provisions of law relied upon by Petitioner to support his position that the Court does have jurisdiction over this proceeding dictate a different outcome. Specifically, MDL § 282-a applies to situations where there is an interruption in services while an occupant's application for coverage under the Loft Law is pending determination. The other provisions of the Rules of the City of New York requiring minimum housing maintenance standards specifically address diminution of services claims, including elevator service, which fall within the jurisdiction of the Loft Board (*see* RCNY § 2-04 [b][9]). Although, it is undisputed that Respondents have now been issued a residential certificate of occupancy, this alone does not remove the property from the Loft Board's jurisdiction because the owner must apply for removal from the Loft Board's jurisdiction, and the Loft Board must issue a removal order which includes several considerations (*see* RCNY § 2-01).

Based on the foregoing, Respondents' motion seeking reargument is hereby granted, and upon regargument this Court finds that it lacks jurisdiction to hear this diminution in services claim. Respondents' cross-motion seeking an order dismissing the proceeding is hereby granted and the proceeding is dismissed. This order is without prejudice to Petitioner's right to seek this relief in any other appropriate forum.

This constitutes the decision and order of the Court.

DATED: June 16, 2016



HON. CHERYL J. GONZALES

Cheryl J. Gonzales, J.H.C.