

CIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF NEW YORK

INDEX NO. 73408/11

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200 EAST TENANTS CORP.,

Petitioner,

-against-

DECISION/ORDER

EDWARD C. WONG & ELLA W. HUNG,

Respondents.

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SCHNEIDER, J.

In this summary holdover proceeding, the petitioner, a cooperative corporation, seeks possession of the subject cooperative apartment based upon a claim that the respondents, the shareholders and proprietary lessees, violated their lease by (1) denying petitioner access to the apartment, (2) causing a leak into the apartment below, and (3) making alterations to the apartment that were not approved by the cooperative. In each case petitioner claimed that respondents had failed to cure the lease violations after service of a notice to cure. Respondents contested all of petitioner's claims.

The matter was tried before me on May 29, June 13 and 14, July 30 and 31, and September 11, 12, and 13, 2012. Both sides were represented by counsel. Both counsel submitted post-trial memoranda in October 2012.

At the close of petitioner's case, I dismissed petitioner's first two claims, those based upon the leak and the denial of access, because petitioner had presented no evidence of any

leaking or any denial of access following service of the notice to cure.

On these first two claims, petitioner's evidence was as follows. In the spring of 2010, the petitioner discovered a slow leak that caused minor damage – dampness and staining – to the ceiling of a closet in Apartment 15 K, directly below the respondents' apartment. The leak was first detected on April 10, 2010. Petitioner sent respondents a letter on May 3, 2010 asking them to correct the leak. Respondents apparently believed they had done so with some additional caulking in and around the shower in their second bathroom.

After a second complaint from the residents of Apartment 15K in late May 2010, petitioner conducted a water test, running the water in the shower in the second bathroom in Apartment 16K for one hour and observing the apartment below. No leaking was observed during the water test. Nevertheless, on June 14, 2010, petitioner sent respondents a second letter, stating that petitioner believed the leak was coming from respondents' shower and that petitioner intended to correct the problem.

Then on July 1, 2010, when petitioner knew the respondents to be out of the country, petitioner entered respondents' apartment with a contractor and, essentially, demolished the second bathroom. The contractor broke up the bathroom floor with a jack hammer and removed the shower, the shower pan, and the shower drain assembly. A few weeks later, at the end of July, petitioner also removed the toilet and toilet drain assembly in the second bathroom.

On August 3, 2010, petitioner's engineer, Tony Accardo, reported that there was no longer any leaking into Apartment 15K. On January 3, 2011, Mr. Accardo prepared a report indicating that the leaking had stopped when the shower and toilet were removed. He recommended no further investigation or testing in this report.

The predicate notice to cure demanded that respondents stop the leak by March 31, 2011.

Since the uncontradicted testimony of petitioner's own witnesses established that the leak had stopped by August 3, 2010, petitioner is entitled to no relief on this claim.

Further, there was no evidence of any denial of access by the respondents at any time. In fact, petitioner's evidence demonstrated that petitioner had keys to the respondents' apartment at all times and that petitioner used those keys freely and at will to enter the apartment, to conduct tests, and even to demolish portions of the apartment.

To the extent that petitioner's access claim might be based on respondents' refusal to authorize petitioner to demolish additional portions of their second bathroom in late 2010, I note only that the leak had stopped many months earlier when this request was made, and that Mr. Accardo's January 3, 2011 report recommended no additional demolition or testing. There is simply no evidence to support the claim of denial of access.

On petitioner's third claim, that respondents made unauthorized alterations to the apartment, I find the following facts. In 2002, shortly after they purchased the apartment, respondents submitted an alteration application to the petitioner in accordance with the coop's regular procedure. Respondents sought, among other things, to renovate the apartment kitchen and the second bathroom. The alteration application was approved by the manager then in charge, who did not testify at the trial.

I credit the testimony of respondent Ella Hung that the application submitted in 2002 included a diagram of the second bathroom that included clearly the addition of a stall shower to that room. I further credit Mr. Hung's testimony, uncontradicted by petitioner, that the installation was inspected regularly by petitioner's resident assistant manager during the construction, and that it was inspected, tested, and approved upon completion. After the final inspection, respondents' construction deposit was returned to them in full. The credible evidence

establishes that petitioner was aware of and approved the installation of the shower.

I further find that the installation of the shower and the toilet in the second bathroom was done in a workman-like manner. I credit the testimony of respondent's engineer, Joseph Menasce, that the shower drain assembly and the toilet drain fixtures were standard fittings and that the installation of both was done in accordance with accepted plumbing practices. I note, on this issue, that petitioner removed the allegedly offending fixtures and discarded or destroyed them during the demolition of the bathroom in 2010 so that respondents' expert was unable to examine them. The expert relied upon photographs of the fixtures taken by the petitioner, and I find that his opinions, based upon the photographs, were reliable. In any case, I find that the installation of both the toilet and the shower were competent and in accordance with the approved alteration application.

In order to decide the petitioner's claims in this case, it is not necessary to determine the cause or source of the leak into Apartment 15K and I have not done so.

For all of the foregoing reasons, the proceeding is dismissed with prejudice.

Dated:

12/3/12



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J. H. C.