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322 West 57th Owner LLC v. Penhurst Productions, Inc.

N.Y.City Civ.Ct.,2007.

(The decision of the Court is referenced in a table in the New York Supplement.)

Civil Court, City of New York.  
322 WEST 57TH OWNER LLC,  
Petitioner-Landlord,

v.

PENHURST PRODUCTIONS, INC.,  
Respondent-Tenant.  
No. 63319/06.

March 19, 2007.

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respondents.[DAVID B. COHEN](#), J.

### I.Question Presented

\*1 Whether unregulated holdover **tenants** may invoke the protection of the Martin Act to avoid eviction by the sponsor of a non-eviction condominium conversion plan, which has been accepted for filing by the Attorney General?

### II.Introduction

#### A.Parties

Petitioner-landlord, 322 West 57th Owner LLC (“petitioner”), is the owner of a residential building located at 322 West 57th Street (known as “the **Sheffield**”), New York, New York (“the building”) and is the sponsor of a condominium conversion plan of the **Sheffield**.

Respondents are **tenants** residing at the **Sheffield**, who are holding over beyond the time of their expired unregulated leases. Twenty-three (23) distinct holdover proceedings brought by petitioner are currently pending against respondents, with the proceedings against respondent Penhurst Productions,

Inc. (“Penhurst”), having the lowest index number.<sup>FN1</sup> Because all respondents are in substantially similar circumstances, all parties have stipulated to be bound by the court's decision on the case against Penhurst, including the motion to dismiss on Martin Act grounds.

**FN1.** In addition to *Penhurst*, these proceedings are: *322 West 57th Owner LLC v. Rovelli*, 63326/06; *v. Mazzella*, 66409/06; *v. Moulton*, 66416/06; *v. Lenoble Lumber Co., Inc.*, 66419/06; *v. Ragoowansi*, 66420/06; *v. McCarthy*, 66423/06; *v. Gem Investment Advisor, Inc.*, 66429/06; *v. Mavroides*, 66430/06; *v. Ames*, 66432/06; *v. Gladstein*, 66433/06; *v. Rijsinghani*, 66439/06; *v. Stock*, 66441/06; *v. Cohen*, 66442/06; *v. Bandera*, 66444/06; *v. Rosenzweig*, 67375/06; *v. McRay*, 67376/06; *v. Sturm*, 67382/06; *v. Schoenblum*, 70837/06; *v. Naderi*, 70839/06; *v. Leicht*, 80002/06; *v. Lorimer*, 80004/06; and *v. Callahan*, 80005/06.

#### B.Factual Background

Petitioner, as sponsor, is attempting to convert the **Sheffield** from rental to condominium ownership. In June 2005 petitioner submitted a proposed offering plan (“the plan”) to the New York State Department of Law for review by the New York State Attorney General (“Attorney General”), and provided the **tenants** of the **Sheffield** with copies of the plan. All respondents reside in unregulated apartments; their leases have now expired and have not been renewed.

The circumstances of all respondents are similar to those of Penhurst and Rovelli. The initial residential lease of respondent Penhurst ran from August 9, 1997 through August 31, 1999 at a rent of \$3,575, with the president and sole shareholder residing in the apartment, and was repeatedly renewed until the most recent renewal lease expired on February 28, 2006. Respondent Rovelli's initial lease ran from August 9, 1997 through August 31, 1999 at a rent of \$2,610, and was successively renewed until the most recent renewal lease expired on February 28, 2006. Petitioner has not accepted rent from any of the respondents since the expiration of their most recent renewal leases (which would have created a

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month-to-month tenancy).

On June 22, 2006, the petitioner's condominium conversion plan was accepted for filing by the Attorney General. Subsequent to the submission of the plan, and prior to its acceptance by the Attorney General, the petitioner served notice on the respondents that it would not be renewing their leases. When the respondents did not vacate, petitioner commenced these summary holdover proceedings in Housing Court.

Respondents contest petitioner's efforts to recover possession of their apartments. Respondents Penhurst and Rovelli have stated that they "have been eagerly awaiting the filed offering plan" so that they could have "the opportunity to purchase the apartment[s]."<sup>FN2</sup>

[FN2](#). (Aff. of Kenneth Waissman, ¶ 8 [Apr. 3, 2006], Aff. of Nancy Rovelli, ¶ 8 [Apr. 3, 2006], attached as Ex. P to Respondent's Notice of Motion [Oct. 26, 2006]).

### C.Procedural History

\*2 These 23 holdover proceedings were commenced on or after March 2006, by petitioner against respondents. All are what are commonly known as "no cause" holdover proceedings, based only upon the expiration of respondents' leases and petitioner's claims that their apartments are not subject to rent control or rent stabilization. Petitioner does not alleged that respondents have breached any obligations of their leaseholds, seeks a final judgment awarding it possession of the respondents' apartments and an award of use and occupancy.

Respondents allege as a defense and counterclaim that the proceedings should be dismissed pursuant to [General Business Law \(GBL\) § 352-eeee](#) *et seq.* (the "Martin Act") because respondents are protected from eviction pursuant to that section as the Attorney General has accepted petitioner's condominium conversion plan for filing.<sup>FN3</sup> These proceedings were referred to Housing Part H for trial.<sup>FN4</sup>

[FN3](#). Respondents allege a number of other defenses and counterclaims: (1) that the proceedings were commenced in retaliation for respondent's participation in the **tenants'** association, and should be dismissed

pursuant to [section 223-b of the Real Property Law](#) and common law, and for damages; (2) that respondent is the lawful **tenant** because only a court can terminate a tenancy; and (3) that the use and occupancy sought exceeds the fair market value of the premises, and that, in any event, respondent is entitled to an offset for conditions at the subject premises which it claims violate the warrant of habitability.

[FN4](#). Initially, *Penhurst* had been consolidated on motion with that of two other **Sheffield** proceedings: *322 West 57th Owner LLC v. Filip Grozea, L & T 60472/06*, and *322 West 57th Owner LLC v. Rovelli, L & T 63326/06*, with the *Grozea* proceedings being the lead case. Judge Marc Finkelstein had considered and denied respondents' motion to dismiss on the [GBL § 352-eeee \(4\)](#) grounds, however, his decision was premised on the fact that the offering plan had not yet been accepted for filing by the Attorney General. Subsequent to Judge Finkelstein's decision *sub nom 322 West 57th Owner LLC v. Filip Grozea, L & T 60472/06*, et al [Sept. 18, 2006], respondent Grozea's proceeding was discontinued and *Penhurst*, having the next lowest index number, was substituted as the lead case. In the interim, some of the proceedings have been settled or otherwise discontinued.

At this point, no final judgments of possession nor warrants of eviction have been issued and respondents remain in possession of their apartments.<sup>FN5</sup>

[FN5](#). This matter was set down for trial on January 10, 2007. The parties agreed that in lieu of trial, and because many underlying facts are undisputed, the court would decide the pending legal issues that have been presented in pre-trial motions and in additional briefing, inasmuch as a resolution of these issues may render any fact-finding unnecessary. The parties additionally briefed respondents' procedural objections to the sufficiency of the notices of termination sent to them by petitioner.

### III.The Martin Act

### A.General Legislative Purpose

The Martin Act, [GBL § 352-eeee](#)*et seq.*, is intended to regulate the process of conversion of rental buildings to cooperative or condominium ownership. The statute was designed to promote the conversion of these rental buildings in an orderly manner while at the same time protecting affected **tenants** against the forced dislocations which might result from these conversions, particularly in the City of New York where there is a shortage of housing in general, and affordable housing, in particular (Legislative Finding, L 1982, ch 555, § 1). However, affordable housing was not the only consideration behind the legislation; the Legislature was also cognizant of the disruptive effects of conversions on the life and welfare of all **tenants** who may become displaced in the process (*id.*). The legislative history of the Martin Act supports an expansive view of the statute, particularly as it relates to the protection of existing **tenants** in buildings undergoing a conversion plan.<sup>FN6</sup>

<sup>FN6</sup>. In pertinent part, the legislative findings read:

[T]hat it is sound public policy to encourage such conversions while, at the same time, *protecting tenants in possession* who do not desire or who are unable to purchase the units in which they reside *from being coerced into vacating such units by reason of deterioration of services or otherwise* or into purchasing such units under the threat of imminent eviction; that in the city of New York the position of non-purchasing **tenants** is worsened by a serious public emergency characterized by an acute shortage of housing accommodations; .. that preventive action by the legislature in *restricting rents and evictions during the process of conversion* from rental to cooperative or condominium status is imperative to assure that such conversions will not result in unjust, unreasonable and oppressive rents and rental agreements affecting non-purchasing **tenants**..., *and other disruptive practices affecting all tenants during the conversion process* which threaten the public health, safety and general welfare; and that *in order to prevent uncertainty, hardship and dislocation in connection with the conversion process*, the provisions of this act are necessary and desirable to protect the public health, safety

and general welfare. (L 1982, ch 555, § 1, *Legislative finding* [emphasis added] ).

### B.Anatomy of a Conversion Plan

A conversion plan has three main steps: (1) First, the sponsor must submit a plan for filing with the Attorney General and distribute the plan to **tenants** ([GBL § 352-eeee \[2\]\[f\]](#); *see also* [GBL § 352-e \[1\]](#) ); if, following a review, the Attorney General accepts the plan for filing, the sponsor can then enter into purchase contracts for the dwelling units ([GBL § 352-eeee \[2\]\[c\]\[i\]](#); *see also* [GBL § 352-e \[1\], \[2\]](#) ); (3) when the sponsor has obtained the requisite number of contracts, the plan can be declared effective by the Attorney General ([GBL § 352-eeee \[1\]\[b\], \[c\]](#); [\[2\]\[c\]\[i\]](#) ).

Petitioner has elected to file a non-eviction plan.<sup>FN7</sup> **Tenants** in occupancy on the date the Attorney General accepts a non-eviction plan for filing are entitled to receive a purchase offer from the sponsor in a non-discriminatory manner ([GBL § 352-eeee \[2\]\[c\]\[i\]](#) ).<sup>FN8</sup> The sponsor must obtain written purchase agreements for 15% of the dwelling units from “bona fide **tenants** in occupancy” or from “bona fide purchasers who represent that they intend ... [to] occupy the dwelling unit when it becomes vacant” before a “non-eviction plan” may be declared effective (*id.*).<sup>FN9</sup>

<sup>FN7</sup>. The Martin Act provides for “eviction” and “non-eviction” plans. In an eviction plan a sponsor must obtain the agreement of 51% of the bona fide **tenants** in occupancy to purchase before an “eviction plan” may become effective. The sponsor who files such a plan is barred from evicting “non-purchasing **tenants**” for at least three years and is permanently barred from evicting eligible senior citizens and disabled persons and from subjecting them to unconscionable rent “increases beyond ordinary rentals for comparable apartments” ([GBL § 352-eeee \[2\]\[d\]\[iii\]](#) ). A non-eviction plan may not be amended at any time to provide that it shall be an eviction plan ([GBL § 352-eeee \[2\]\[c\]\[v\]](#) ).

<sup>FN8</sup>. “As to **tenants** who were in occupancy on the date a letter was issued by the attorney general accepting the plan for filing, the purchase agreement shall be executed and delivered pursuant to an

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offering made without discriminatory repurchase agreements or other discriminatory inducements” (GBL § 353-eeee [2][c][i]).

FN9.GBL § 353-eeee (2)(c)(i) provides: “The plan may not be declared effective until written purchase agreements have been executed and delivered for at least fifteen percent of all dwelling units ... subscribed for by bona fide **tenants** in occupancy or bona fide purchasers who represent that they intend that they or one or more members of their immediate family occupy the dwelling unit when it becomes vacant.”

\*3 The sponsor of a non-eviction plan is permanently barred from evicting “non-purchasing **tenants**” based on “expiration of tenancy” FN10 and from subjecting such **tenants** to unconscionable rent increases (GBL § 352-eeee [2] [c][ii], [iv]; see generally *Langdale Owners Corp. v. Lane*, 166 Misc.2d 439, 441-443 [App Term, 2d Dept 1995]; *Paikoff v. Harris*, 185 Misc.2d 372, 377 [App Term, 2d Dept 1999] ). A “non-purchasing **tenant**” is “[a] person who has not purchased under the plan and who is a **tenant** entitled to possession at the time the plan is declared effective” (GBL § 352-eeee [1][e]). FN11

FN10.“No eviction proceedings will be commenced *at any time* against non-purchasing **tenants** for failure to purchase or any other reason applicable to expiration of tenancy; provided that such proceedings may be commenced for non-payment of rent, illegal use or occupancy of the premises, refusal of reasonable access to the owner or a similar breach by the non-purchasing **tenant**...” (GBL § 353-eeee [2][c][ii] [emphasis added] ).

FN11.GBL § 352-eeee (1)(e) defines a “non-purchasing **tenant**” as: “A person who has not purchased under the plan and who is a **tenant** entitled to possession at the time the plan is declared effective or a person to whom a dwelling unit is rented subsequent to the effective date. A person who sublets a dwelling unit from a purchaser under the plan shall not be deemed a non-purchasing **tenant** .”

Further, GBL § 352-eeee (4) prohibits “any person”

from engaging in conduct which “substantially interferes with or disturbs the comfort, repose, peace or quiet of any **tenant** in his use or occupancy of his dwelling unit” (GBL § 352-eeee [4]). FN12

FN12.GBL § 352-eeee (4) provides:

It shall be unlawful for any person to engage in any course of conduct, including, but not limited to, interruption or discontinuance of essential services, which substantially interferes with or disturbs the comfort, repose, peace or quiet of any **tenant** in his use or occupancy of his dwelling unit or the facilities related thereto. The attorney general may apply to a court of competent jurisdiction for an order restraining such conduct and, if he deems it appropriate, an order restraining the owner from selling the shares allocated to the dwelling unit or the dwelling unit itself or from proceeding with the plan of conversion; provided that nothing contained herein shall be deemed to preclude the **tenant** from applying on his own behalf for similar relief.

### C. Protections Afforded to Tenants in Non-Eviction Plans

The Martin Act provides a number of protections to existing **tenants** in buildings undergoing conversion under a non-eviction plan, including: (1) the right to purchase one's apartment or the shares allocated thereto (GBL § 353-eeee [2][c][i] ); (2) the corresponding right to be free from eviction in the event one chooses not to purchase their dwelling or for any other reason applicable to “expiration of tenancy” (GBL § 353-eeee [2][c][ii] ); and (3) protection from unconscionable rent increases, harassment, and other conduct which “substantially interferes” with the use and occupancy of one's dwelling (GBL § 353-eeee [2][c][iv]; [4] ).

The right to purchase accrues or vests to **tenants** in occupancy at the time that the Attorney General “accepts” the sponsor's offering plan for the building at issue (GBL § 353-eeee [2][c][i]; *Rubenstein v. 160 West End Owners Corp.*, 74 N.Y.2d 443, 445-446 [1989]; *Weinstein v. Hohenstein*, 69 N.Y.2d 1017, 1019 [1987], *affg* 122 A.D.2d 842, 844 [1st Dept 1986]; *DeKovessey v. Coronet Props. Co.*, 69 N.Y.2d 448, 457 [1987]; *Consolidated Edison v. 10 West 66th Street Corp.*, 61 N.Y.2d 341, 344-345 [1984]; *Applebaum v. Applebaum*, 142 A.D.2d 300, 302 [1st Dept 1988] ). Thus, the date for determining

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whether a party is a “**tenant** in occupancy” entitled to participate in cooperative conversion is the date the offering plan is accepted for filing by the Attorney General (*Manolovici v. 136 East 64th Street Assoc.*, 70 N.Y.2d 785, 787 [1987]).<sup>FN13</sup> At that point, the statute mandates that these **tenants** “shall” receive a good faith offer to purchase on a non-discriminatory basis (GBL § 352-eeee [1][b]; [2][c][i]).

**FN13.** In opposition to the motion to dismiss, petitioner argued that “the critical date is the acceptance of the conversion plan by the Attorney General, and not the date of the conversion plan’s submission to the Attorney General for consideration....This rule makes perfect sense, since it would be anomalous to conclude that a **tenant** would have specific statutory rights and protections with respect to a proposed conversion plan that may, or may not, be approved by the Attorney General” (Petitioner’s Mem. of Law in Opp. to Mo. To Dism. [April 25, 2006], at 6).

Closely akin to the right to purchase is the **tenant’s** right to be protected from eviction. GBL § 353-eeee (2)(c)(ii) provides unequivocally that “[n]o eviction proceedings will be commenced *at any time* against non-purchasing **tenants** for failure to purchase or any other reason *applicable to expiration of tenancy*” except in the case of “non-payment of rent, illegal use or occupancy of the premises, refusal of reasonable access to the owner or a similar breach”(id.[emphasis added]). A “non-purchasing **tenant**” is defined as “a **tenant** entitled to possession at the time the plan is declared *effective*” (GBL § 352-eeee [1][e] [emphasis added]). Accordingly, petitioner argues that respondents are not protected from eviction because the offering plan has not yet been declared effective. Such an interpretation is inconsistent with the Martin Act’s purpose.

\*4 In interpreting a statute, the purpose of the act and the objectives to be accomplished must be considered (*People of the State of New York v. Cypress Hills Cemetery*, 208 A.D.2d 247, 251 [2d Dept 1995]). In effectuating that objective, the courts are first bound to ascertain the legislative intent from the literal reading of the words of the statute (*McKinney’s Cons Laws of NY, Book 1, Statutes § § 92[b], 94; Patrolmen’s Benevolent Assn. v. City of New York*, 41 N.Y.2d 205, 208 [1976]). Where the legislative intent is clear and unambiguous from the language of the statute, the words used should be construed so as

to give effect to their plain meaning (*Matter of State of New York v. Ford Motor Co.*, 74 N.Y.2d 495, 500 [1989]) and resort to extrinsic evidence, such as the legislative history of the statute, is inappropriate (*McKinney’s Cons Laws of NY, Book 1, Statutes § 120; Giblin v. Nassau County Med. Center*, 61 N.Y.2d 67, 74 [1984]). However, there are limits to literalism; “in the exposition of a statute, the intention of the lawmaker will prevail over the literal sense of the terms; and its reason and intention will prevail over the strict letter” (“*Sanders v. Winship*, 57 N.Y.2d 391, 396 quoting Kent’s Comm [13th ed], at 462 [1982]). The Court of Appeals has held that although a statute is clear and unambiguous on its face, “the absence of ambiguity facially is never conclusive. Sound principles of statutory interpretation generally require examination of a statute’s legislative history and context to determine its meaning and scope” (*Uniformed Firefighters Assn. v. Beekman*, 52 N.Y.2d 463, 471 [1981]; *New York State Bankers Assn. v. Albright*, 38 N.Y.2d 430, 434 [1975]). As such, where extensive legislative history would show that the literal reading proposed would frustrate the statutory purpose, one may look to the presumed lawful intent of the Legislature (*Commissioner of Social Services v. Jessie B.*, 111 Misc.2d 617, 620 [Fam Ct, N.Y. County 1981]). Additionally, not all statutory language must in all circumstances be literally or mechanically applied, when such application would cause an anachronistic or absurd result contrary to the contextual purpose of the enactment (*Doctors Council v. New York City Employee’s Retirement System*, 71 N.Y.2d 669, 675 [1988]; *All State Insurance Co. v. Libow*, 106 A.D.2d 110, 114 [2d Dept 1984], *aff’d* 65 N.Y.2d 807 [1985]). Applying these principles to the relevant sections of the Martin Act, the prohibition against evictions contained in GBL § 353-eeee (2)(c)(ii) must apply to **tenants** in occupancy at the date of the offering plan’s acceptance.

The Martin Act is intended to protect **tenants** in occupancy from eviction “during the process of conversion” (Legislative Finding, L 1982, ch 555, § 1). A reading of GBL § 353-eeee (2)(c)(ii) and § 352-eeee (1)(e) to imply that **tenants** in occupancy may be evicted from their dwellings *after* the date of acceptance and *prior* to the effective date, but are protected from eviction *afterward*, is neither logical nor consistent with the legislative intent of the Martin Act. It defies logic to suggest that **tenants** who possess the right to *purchase* their apartments, upon the acceptance of the plan, may at the same time be *evicted* from their apartments, cutting off their right to purchase. Such a result is inconsistent with and

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would frustrate the legislative purpose an intent of the Act.

\*5 Respondents also claim protection from eviction under GBL § 352-eeee (4) which prohibits “any person” from engaging in “any course of conduct ... which substantially interferes with or disturbs the comfort, repose, peace or quiet of *any tenant* in his use or occupancy of his dwelling unit” (GBL § 352-eeee [4] [emphasis added] ).GBL § 352-eeee (4), which protects **tenants** subject to a conversion plan from harassing conduct such as interference with essential services, is sufficiently broad to also provide protection from evictions.

As previously stated, where the legislative intent is clear and unambiguous from the language of the statute, the words used should be construed so as to give effect to their plain meaning (*Matter of State of New York v. Ford Motor Co.*, 74 N.Y.2d at 500). Certainly, removing or attempting to remove a **tenant** from his apartment constitutes conduct which “substantially interferes with ... his use or occupancy of his dwelling unit” within the plain meaning and language of GBL § 352-eeee (4).<sup>FN14</sup> Such an interpretation is supported by the legislative intent underlying the Martin Act to restrict evictions and dislocations of affected **tenants** residing in buildings subject to a plan of conversion (*see* Legislative Finding, L 1982, ch 555, § 1).

**FN14.** Borrowing from the realm of criminal law, it is noteworthy that several criminal statutes defining conduct constituting “unlawful eviction” contain almost identical language to that of GBL § 352-eeee (4). For example, the New York City Rent and Rehabilitation Law (Administrative Code § § Y51-1.0 *et seq.*) governing rental and eviction proceedings in the city prohibits the use of harassing tactics to cause a **tenant** to vacate the premises or to waive any rights of tenancy. Specifically prohibited is “any course of conduct including, but not limited to, interruption or discontinuance of essential services which interferes with or disturbs or is intended to interfere with or disturb the comfort, repose, peace or quiet of such **tenant** in his use or occupancy” (Administrative Code § § Y51-10.0 [d]; *see, e.g. People v. Podolsky*, 130 Misc.2d 987, 997 [Sup Ct, Crim Term, N.Y. County 1985]).

In 1982, an amendment to the

Administrative Code (Local Law, 1982, No. 56 of City of New York, as amended by Local Law, 1984, No. 40 of City of New York) created the class A misdemeanor of “unlawful eviction”:

Unlawful eviction.-a. It shall be unlawful for any person to evict or attempt to evict an occupant of a dwelling unit ... except to the extent permitted by law pursuant to a warrant of eviction or other order of a court of competent jurisdiction or a governmental vacate order by:

...

(2) engaging in a course of conduct which interferes with or is intended to interfere with or disturb the comfort, repose, peace or quiet of such occupant in the use or occupancy of the dwelling unit, to induce the occupant to vacate the dwelling unit including, but not limited to, the interruption or discontinuance of essential services; (Administrative Code § § D16-1.01; *see People v. Podolsky*, 130 Misc.2d at 997).

Thus, two provisions of the Martin Act, GBL § 352-eeee (2)(c)(i), (ii) and § 352-eeee (4), protect **tenants** in occupancy in a building undergoing conversion, upon acceptance of the offering plan, from eviction or removal absent some good cause shown, such as nonpayment of rent or similar breach.

#### IV. Respondents Fall Within the Class of Individuals Protected by The Martin Act

##### A. “Tenants In Occupancy” Are Protected by the Martin Act

The rights and protections afforded under the Martin Act accrue at the time the plan is accepted for filing to those individuals deemed “**tenants** in occupancy,” a term which is not otherwise defined in the statute (*see* GBL § 352-eeee [2][c][i]; *Weinstein v. Hohenstein*, 69 N.Y.2d at 1017 [1987]; *DeKovessey v. Coronet Props. Co.*, 69 N.Y.2d at 457).

The Court of Appeals has held that the “**tenant** in occupancy” must be “in actual possession and occupying the unit at the time the conversion plan is accepted for filing [the critical date] in order to qualify at all” (*DeKovessey, supra*), but has also found “**tenant** in occupancy” status where the [rent regulated] apartment in question was not actually used as the primary residence (*see Manolovici v. 136*

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E. 64th St. Assocs., 70 N.Y.2d 785, 515 N.E.2d 1212, 521 N.Y.S.2d 414 [1987]; Burns v. 500 E. 83rd St. Corp., 59 N.Y.2d 784, 451 N.E.2d 475, 464 N.Y.S.2d 728 [1983] ). The lynchpin of the analysis is whether the **tenant** has “maintained a sufficient nexus with the apartment as of the critical date to qualify as a **tenant** in occupancy” (Manolovici, 70 N.Y.2d at 787; Lieberman v. Henry Norman Realty, 186 A.D.2d 790, 792, 589 N.Y.S.2d 88 [1992] ).

\*6 (Steier v. Schreiber, 25 AD3d 519, 521-522 [1st Dept 2006], *lv to appeal denied* 6 NY3d 714 [2006] ).

In the absence of a precise statutory definition, the issue of who is a “**tenant** in occupancy” under the Martin Act often turns upon an analysis of whether an individual has a sufficient connection with the apartment to qualify as a “**tenant** in occupancy” within the meaning of GBL § 352-eeee (*see Manolovici v. 136 East 64th Street Assoc.*, 70 N.Y.2d at 787 [divorcing husband had coequal right with his wife to purchase shares as “**tenants** in occupancy” since he maintained sufficient nexus with rent stabilized apartment, which was actually being used to raise and shelter his family, on “critical date” of acceptance of plan by Attorney General] ); Steier v. Schreiber, 25 AD3d at 521-522 [“where there are adverse claims to the status of **tenant** in occupancy, resolution of the issue should turn on a practical analysis of the relationship of the competing parties to the demised property, not necessarily on whose name happens to appear on the lease”] *citing McSpadden v. Dawson*, 117 A.D.2d 453, 457 [1st Dept 1986]; Lack v. Daven Realty Corp., 144 A.D.2d 236 [1st Dept 1988] [individual who never physically occupied subject apartment and was not named lessee could be “**tenant** in occupancy” under GBL § 352-eeee]; *see also Baron v. Sherwood*, 124 A.D.2d 527, 528 [1st Dept 1986] ).

Primarily, **tenants** in occupancy must be in actual possession and occupying the unit at the time the plan is accepted for filing to qualify (Consolidated Edison v. 10 West 66th Street Corp., 61 N.Y.2d at 344-345; accord Rubenstein v. 160 West End Owners Corp., 74 N.Y.2d at 445-446 [where deceased **tenant** of record died before apartment was offered for sale under subsequently accepted cooperative conversion plan, decedent's estate utilizing apartment for storage of decedent's personal property was not **tenant** in occupancy entitled to purchase shares allocated to decedent's dwelling; such result would be inconsistent with legislative intent]; DeKovessey v. Coronet Props. Co., 69 N.Y.2d at 457 [although decedent was “**tenant** in occupancy” at time

conversion plan was accepted for filing by Attorney General and would have had right to purchase apartment shares, decedent's estate did not acquire right to do so where **tenant** had not exercised the right before death; such result would frustrate legislative intent of protecting “**tenants** in occupancy” from dislocation and unjust eviction] ).

#### B. Respondents Are “Tenants In Occupancy” Entitled to Protection

The court must consider whether respondents, as “holdover **tenants**” whose leases the petitioner has declined to renew, are precluded from invoking the protections of GBL § 352-eeee (2)(c) and (4). It is undisputed that the petitioner has not accepted rent from respondents, which would have created month-to-month tenancies. Petitioner thus argues that it had the right to refuse to renew the respondents' leases, inasmuch as they are unregulated **tenants**, and is therefore entitled to remove them from occupancy of the subject apartments. While this may be true with respect to holdover proceedings generally, a much broader standard is applied to **tenants** under conversion plans (*see Libani v. Concorde & CIE*, 269 A.D.2d 213 [1st Dept 2000] [landlord may not evict plaintiff **tenants** on grounds that lease had expired since GBL § 352-eeee (2)(c)(ii), incorporated into offering plan as a matter of law, in non-eviction plans, prohibits eviction proceedings against nonpurchasing **tenants** for failure to purchase or expiration of tenancy]; Bruenn v. Cole, 165 A.D.2d 443 [1st Dept 1991] [long-term occupant of apartment, rather than named **tenant**, was entitled to purchase shares allocated to apartment pursuant to cooperative conversion under circumstances where **tenant** did not exercise dominion and control over premises, and landlord-**tenant** relationship existed between occupant and partnership which acted as landlord immediately prior to cooperative conversion]; Lack v. Daven Realty Corp., 144 A.D.2d 236 [whether plaintiff, who never physically occupied subject apartment but who was the assignee of named lessee, had sufficient connection to apartment to be “**tenant** in occupancy” within meaning of GBL § 352-eeee was an open question that required trial] ).

\*7 An individual accorded the status of “**tenant** in occupancy” and hence entitled to purchase the shares allocated to an apartment under a conversion plan need not be a lessee (Steier v. Schreiber, 25 AD3d at 522, *lv to appeal denied* 6 NY3d 714 [status of **tenant** in occupancy depends on the relationship of the party

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to the demised premises, not necessarily on whose name happens to appear on the lease]; *see also* [Libani v. Concorde & CIE](#), 269 A.D.2d 213; [Bruenn v. Cole](#), 165 A.D.2d 443; [Lack v. Daven Realty Corp.](#), 144 A.D.2d 236).

The fact that a holdover proceeding has been commenced against an individual to recover possession does not prevent the occupant from being accorded the status of “**tenant** in occupancy” and hence entitled to purchase the shares allocated to the premises under a conversion plan (*see* [Steier v. Schreiber](#), 25 AD3d at 522 [although holdover proceeding had been commenced against plaintiff prior to conversion of subject premises, plaintiff, who had been the roommate of occupant-lessee, was the “**tenant** in occupancy” of a rent-stabilized apartment, based on her ongoing occupation of the apartment as her primary residence, and was entitled to purchase pursuant to condominium conversion plan]).<sup>FN15</sup>

<sup>FN15</sup>. That *Steier* involved a rent-controlled dwelling is not material to the issue presented herein, because the legislative history of the Martin Act reveals the intent to create “a city-wide, comprehensive set of rules [governing conversion plans] equally applicable to all rental apartments” (*see* Sponsors' Mem, Bill Jacket, L 1982, ch 555, *Justification*, at 2). Thus, *Steier v. Schreiber* is instructive on the issue of a holdover **tenant's** claim to status as a “**tenant** in occupancy” for purposes of [GBL § 352-eeee](#).

A number of recent court decisions have considered a **tenant's** statutory right to purchase an apartment on conversion where the **tenant** is allegedly in default under the lease or the owner otherwise has the right to terminate the leasehold. “The courts have uniformly held that if such action has not been taken and a favorable [judicial] determination received as of the date the offering plan is accepted for filing (and the leasehold thus expired) then the **tenant** qualifies as a ‘**tenant** in occupancy’ and is granted the exclusive right to purchase” (Di Lorenzo, N.Y. Condo. and Coop. Law, 2d ed § 6.6 [1995], *citing* [Hanson v. 136 East 64th Street Assoc.](#), 118 A.D.2d 486 [1st Dept 1986]; [Lizby Assoc. v. Baron](#), 130 Misc.2d 834, 835 [Sup Ct, N.Y. County 1985]; [58 West 58th Street Tenant Assoc. v. 58 West 58th Street Assoc.](#), 126 Misc.2d 500 [Sup Ct, N.Y. County 1984]; *see also* [Steier v. Schreiber](#), 25 AD3d 519, *lv to appeal denied* 6 NY3d 714; [Libani v. Concorde &](#)

[CIE](#), 269 A.D.2d 213; [Eight Cooper Equities v. Abrams](#), 143 Misc.2d 52, 54 [Sup Ct, N.Y. County 1989]).

“[W]here a summary proceeding to recover possession of real property has been instituted, the landlord-**tenant** relationship may only be terminated by actual surrender of the premises” or by “issuance of a warrant of eviction” ([Eight Cooper Equities v. Abrams](#), 143 Misc.2d at 54 [citations omitted] [under Martin Act warehousing provisions, **tenants** or subtenants are counted as “bona fide” **tenants** for purposes of [GBL § 352-eeee \(2\)\(e\)](#), although summary proceedings had been commenced against them, until such time as there has been a final judgment and warrant of eviction issued]; *cited with approval by* [Webb v. Barskey](#), 9 Misc.3d 138[A], 2005 N.Y. Slip Op 51748[U] [App Term, 2d Dept 2005]; *see* 1 Dolan, *Rasch's Landlord and Tenant-Summary Proceedings* § § 10:8-10:9, at 453-454 [4th ed]).

\*8 Thus, the critical factor in determining the status of the respondents herein as of the date of acceptance of the plan by the Attorney General, is whether a final judgment and warrant of eviction has been issued, since “as a matter of law, the landlord-**tenant** relationship [is] not extinguished until the issuance of the warrant” ([Eight Cooper Equities](#), 143 Misc.2d at 55, 56). In the absence of a judicial determination of the propriety of the landlord's rejection of the tenancy or subtenancy, the legality of the tenancy in question “must be presumed” (*id.* at 56).

Here, all respondents were bona fide **tenants** with existing leases at the time the proposed offering plan was submitted to the Attorney General and distributed to **tenants** in June 2005, and at no time was it alleged that respondents had breached the obligations under their leaseholds. Subsequent to the submission, and prior to the acceptance of, the plan by the Attorney General, the petitioner notified respondents that it would not be renewing their leases, and commenced these summary holdover proceedings to recover possession of the subject apartments. During the pendency of these proceedings, on June 22, 2006, the Attorney General accepted the offering plan. There has been neither the surrender of the premises by the respondents, nor has a final judgment of possession or a warrant of eviction been issued (*see* [Eight Cooper Equities v. Abrams](#), 143 Misc.2d 52). In the absence of a final judicial determination of the propriety of the petitioner-landlord's refusal to renew the respondents' leases, the legality of their tenancies in question must

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be presumed (*id.*). Accordingly, respondents herein are “**tenants** in occupancy” of the subject premises and are entitled to the protections of the Martin Act (GBL § 352-eeee [2][c][i], [ii]; [4]; see *Eight Cooper Equities v. Abrams*, 143 Misc.2d 52).

### C.The Legislature Intended to Protect Respondents

The conclusion that respondents are “**tenants** in occupancy” and entitled to the protections of the Martin Act finds support in the relevant legislative history to the Act.

As stated in *Paikoff v. Harris* (185 Misc.2d 372), in construing provisions of General Business Law § 352-eeee, “[A] proper construction of the statute must be based upon an understanding of the protection that the Legislature intended to provide. It is a familiar principle that in construing a statute a court ‘should consider the mischief sought to be remedied ... and ... should construe the act in question so as to suppress the evil and advance the remedy’ (*McKinney’s Cons Laws of NY, Book 1, Statutes § 95*; see, e.g., *T.D. v. New York State Off. of Mental Health*, 228 A.D.2d 95, 106;*Lincoln First Bank v. Rupert*, 60 A.D.2d 193, 197)” (*id.* at 376). When the legislative history is ameliorative in nature, the statute should be liberally construed so as to give effect to its beneficial purpose (*People v. Lexington Sixty-First Assoc.*, 38 N.Y.2d 588, 595 [1976];*Paikoff v. Harris*, 185 Misc.2d at 376).

\*9 The legislative history of the Martin Act, GBL § 352-eeee et seq., supports an expansive interpretation of the statute, consistent with its articulated goal of “*protecting tenants in possession who do not desire or who are unable to purchase the units in which they reside from being coerced into vacating such units by reason of deterioration of services or otherwise...restricting rents and evictions during the process of conversion ...and other disruptive practices affecting all tenants during the conversion process which threaten the public health, safety and general welfare; and ...prevent[ing] uncertainty, hardship and dislocation in connection with the conversion process...*” (Legislative Finding, L 1982, ch 555, § 1 [emphasis added]).

The interests of owner and **tenant** in a cooperative conversion are often divergent. The owner often has a financial incentive to “warehouse” apartments and to evict existing **tenants** in pursuit of the greater profits to be realized by selling units at prevailing market

rates instead of selling to **tenants** at insider prices, while **tenants**, facing the prospect of dispossession and relocation, are often in a position of relatively little bargaining power (see *Lizby Assoc. v. Baron*, 130 Misc.2d at 835). It is against this financial incentive to displace the nonpurchasing **tenant** that the Legislature sought to protect. Further, there is a public interest in avoiding such dislocations, and statutes promoting a public interest are to be liberally construed (see *Forest Vistas Co. v. Abrams*, 103 A.D.2d 730 [1st Dept 1984], *aff’d* 64 N.Y.2d 928 [1985];*Paikoff v. Harris*, 185 Misc.2d at 377).<sup>FN16</sup>

FN16. As explained in *Paikoff v. Harris*, 185 Misc.2d at 377:

It is apparent that the protections afforded nonpurchasing **tenants** were necessitated by the change in the owner’s economic incentives as a result of the conversion. In the case of a rental building, it is to the owner’s economic benefit to retain a nonobjectionable **tenant** who is paying a market rent. In that situation, the owner’s interest coincides with the **tenant’s** interest in not being dislocated and with the public interest in stable and undisrupted tenancies. However, after a conversion, the apartment may be more valuable to the owner empty than occupied by a **tenant**, even one paying a market rent. In that case, it is in the owner’s economic interest to evict the **tenant**, and the interest of the owner diverges from those of the **tenant** and the public. It is ... against this financial incentive to displace the nonpurchasing **tenant** that the Legislature sought to protect. As the Legislative Finding (L 1982, ch 555, § 1) makes clear, there is a “public interest” in avoiding such dislocations, and statutes promoting a public interest are to be liberally construed (*McKinney’s Cons Laws of NY, Book 1, Statutes § 341*).

Consequently, the finding that respondents are “**tenants** in occupancy” and entitled to the protections of the Martin Act is fully consistent with the letter and spirit of the relevant legislative history accompanying the Act itself. The situation faced by respondents herein is precisely the type of circumstance that the legislators wished to protect against in enacting the revisions to GBL § 352-eeee in 1982.<sup>FN17</sup> Respondents fall squarely within the class of persons protected from eviction as “**tenants** in occupancy” by both the plain language and the

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articulated legislative intent of the Martin Act, [GBL § 352-eeee \(2\)\(c\)\(ii\)](#) and [§ 352-eeee \(4\)](#) (see [Libani v. Concorde & CIE](#), 269 A.D.2d 213; [Eight Cooper Equities v. Abrams](#), 143 Misc.2d 52, 54).

**FN17.** Respondent Rovelli asserts that when the proposed offering plan was distributed in June 2005, there were approximately 1,250 **tenants** in the subject premises of 845 apartments, but that “[t]he landlord's campaign has resulted in nearly 75% of the apartments in the building becoming vacant. At one time, the lobby was full of moving boxes, furniture and movers.” Aff. of Nancy Rovelli, ¶¶ 12, 16 [Apr. 3, 2006], Ex. P to Respondent's Notice of Motion [Oct. 26, 2006]).

#### V. Dismissal of the Housing Court Proceedings Are Warranted

The rights afforded by the Martin Act accrued to respondents at the time the plan was accepted for filing. In the instant matter, it is undisputed that this triggering event took place on June 22, 2006. Having found respondents to be “**tenants** in occupancy,” they are entitled to the protections of the Martin Act governing non-eviction plans in these holdover proceedings.

The Martin Act gives respondents the right to be free from eviction in the event they choose not to purchase their dwellings or for any other reason applicable to “expiration of tenancy” (GBL § 353-eeee [2][c][i], [ii]). The 23 proceedings herein are “no cause” holdover proceedings, based only upon the expiration of respondents' leases and petitioner's claims that their apartments are not subject to rent control or rent stabilization. Thus, the respondents may invoke the protections of § 353-eeee (2)(c)(ii) inasmuch as these proceedings are brought on account of the expiration of their tenancies.

\*10 Further, respondents are protected from any conduct which “substantially interferes” with their use and occupancy of the subject dwellings (GBL § 353-eeee [4]). Eviction or removal from their apartments constitutes a “substantial interference” with their use and occupancy of their dwelling units. Thus, **tenants** such as respondents may invoke GBL § 353-eeee (4) to protect them from eviction.

Where **tenants** are protected by the Martin Act,

dismissal of Housing Court proceedings are warranted ([Libani v. Concorde & CIE](#), 269 A.D.2d 213 [landlord may not evict plaintiff **tenants** on grounds that lease had expired since [GBL § 352-eeee \(2\)\(c\)\(ii\)](#) prohibits eviction proceedings against nonpurchasing **tenants** for failure to purchase or expiration of tenancy]; [Paikoff v. Harris](#), 178 Misc.2d 366, 372, 376, *affd in part and mod in part* 185 Misc.2d 372).

The Martin Act has been recognized as a defense to holdover proceedings ([Paikoff v. Harris](#), 178 Misc.2d at 372, 376, *affd in part and mod in part* 185 Misc.2d 372 [in holdover proceedings based on expiration of tenancy, respondents were “non-purchasing **tenants**” under [GBL § 352-eeee](#) entitled to protection of Martin Act; landlord's petition dismissed]; see [Geiser v. Maran](#), 189 Misc.2d 442, 445 [App Term, 2nd Dept 2001] [[Paikoff](#) holding followed but distinguished on grounds that subject building was converted prior to effective date of Martin Act]; see, e.g. [Pembroke Square Assoc. v. Coppolla](#), 27 HCR 270A, NYLJ, May 5, 1999, at 32, col 6 [Civ Ct, Queens County][Martin Act defense considered but rejected on facts]; [Parkchester Preserv. Co. v. Hanks](#), 185 Misc.2d 786 [Civ Ct, Bronx County 2000] [holdover **tenant** was not protected as “non-purchasing **tenant**” under [GBL § 352-eeee](#) because **tenant's** leasehold began *after* effective date of plan, thus **tenant** had no right to continued occupancy]; [Park West Village Assoc. v. Nishoika](#), 187 Misc.2d 243 [App Term, 1st Dept 2000] [holdover **tenant** was not protected as “non-purchasing **tenant**” under [GBL § 352-eeee](#) because **tenant** did not lease the premises until approximately five years *after* conversion of the premises under the plan]).

As discussed, *supra*, the eviction or removal of a **tenant** in a building undergoing conversion, *after* acceptance of the plan, is prohibited by the terms of the Martin Act ([GBL § 352-eeee \[2\]\[c\]\[ii\]](#); [4]), absent some good cause shown, such as nonpayment of rent or similar breach (see [GBL § 352-eeee \[2\]\[c\]\[i\], \[ii\]](#)). Respondents are the subjects of “no cause” evictions as their leases were not renewed through no fault or breach on their part; petitioner simply declined to renew their leases. Consequently, the Martin Act, [GBL § 352-eeee \(2\)\(c\)\(i\), \(ii\)](#) and [§ 352-eeee \(4\)](#), is a valid defense to eviction proceedings in buildings undergoing conversion once the plan is accepted for filing ([Libani v. Concorde & CIE](#), 269 A.D.2d 213; [Paikoff v. Harris](#), 178 Misc.2d 366, 372, 376, *affd in part and mod in part* 185 Misc.2d 372; see also [Steier v. Schreiber](#), 25 AD3d

[519](#), *lv to appeal denied* [6 NY3d 714](#); *Geiser v. Maran*, [189 Misc.2d 442, 445](#); *Eight Cooper Equities v. Abrams*, [143 Misc.2d 52, 54](#).

## VI. Conclusions

\*11 In light of the Attorney General's acceptance of the non-eviction plan for the subject residential building, respondents are protected from "no cause" holdover eviction proceedings by the Martin Act ([GBL § 352-eeee \[2\]\[c\]\[ii\]](#), [§ 352-eeee \[4\]](#)). Accordingly, the petitioner's holdover proceedings against respondents are dismissed.

This constitutes the decision and order of this court.

The clerk shall serve a copy of this decision and order upon all parties.

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