CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK: PART T

JASON REZNIK, JOSEPH REZNIK and SOPHIA REZNIK,

Petitioner,

INDEX No: 50845/04

-against-

DECISION AND ORDER

JANET MUIR and DAVID SUEHSDORF,

Respondent.

JASON REZNIK, JOSEPH REZNIK and SOPHIA REZNIK,

Petitioner,

INDEX No: 52331/04

-against-

DECISION AND ORDER

EDWARD LALLY,

Respondent.

Lansden, J.

In these two owner occupancy proceedings, Petitioners seek to recover the parlor and second floors of the subject building. Petitioners assert that Jason Reznick (hereinafter, "Reznick") will combine the apartments into a single unit for his own use.

Respondents Suehsdorf and Muir argue that Petitioners have failed to demonstrate a good faith intent to occupy the two apartments as their primary residence. Respondent, Lally who became a senior citizen during the pendency of these proceedings, joins in this argument but also argues that the units Petitioners offered him were not equivalent or superior alternate housing.

The two proceedings were consolidated and sent to this Part for trial. Trial commenced on May 12, 2006 and concluded on August 1, 2006. Thereafter, the Court reserved decision and

directed post-trial memorandum to be submitted.

TRIAL

Petitioner's Case

At trial, Petitioners demonstrated that they purchased the subject building in or about August 2002. The subject building, known as 349 West 87th Street, is a multiple dwelling properly registered with the Department of Housing and Preservation and Development as of the time of trial. Petitioners also demonstrated that Respondent, Lally is the rent stabilized tenant of the Parlor apartment and Respondents, Suehsdorf and Muir are the rent stabilized tenants of the second floor apartment of the subject building. At the appropriate time each Respondent was served with the required predicate notice prior to commencing the instant proceedings.

While there are three owners of the subject building, only Reznick is seeking possession of the subject apartments. It is uncontested that Joseph Reznick and Sophia Reznick are the parents of Jason Reznick and reside at 304 West 90th Street. Joseph and Sophia Reznick did not appear in the proceeding nor did they testify.

At the time the proceeding commenced, Reznick lived in Melville, Long Island with his wife and two children. However, after the commencement of this proceeding, the Melville house was sold and Reznick and his family moved into the third floor apartment of the subject building. After a fire in the subject building, Mrs. Reznick and the children relocated to a "summer home" in Florida. They remained in Florida while Reznick has remained at the subject building.

Reznick asserted that he and his wife have wanted to live in Manhattan for a long time. There had been prior attempts to take back apartments but they were unsuccessful. These unsuccessful attempts resulted in Reznick and his wife purchasing a Melville, Long Island

residence. At that time, Reznick operated businesses in Long Island, New Jersey and had business ventures in Brooklyn.

According to Reznick, shortly after purchasing the Melville home his business moved from Long Island to primarily New Jersey. Reznick asserted that the constant traveling began to become too much for him to continue to reside in Melville. Shortly thereafter, Reznick and the other Petitioners learned that the subject building was for sale. Reznick believed this might be an opportunity to move into Manhattan. Petitioners inspected the property and entered into negotiations which resulted in a purchase.

Reznick and his wife both asserted various reasons for why they wanted to reside in Manhattan, specifically the subject building. These reasons included that the subject building is convenient to Reznick's businesses in New York and New Jersey; the subject building would be close to the TriState College of Acupuncture which Mrs. Reznick attended and plans to re-enroll in; the subject apartments were close to Reznick's parents which would be beneficial to caring for the children and; the subject building is a short commute to Mrs. Reznick's family so that she could see them regularly.

Both Reznick and his wife stated that the subject building was located in an area perfect for raising children. It is near the Riverside Park where the children could play. Further, the upper west side of Manhattan was very family oriented with really good schools in the district.

Initially, Reznick wanted to convert the two apartments into a duplex for himself, his wife, their two children and the nanny. Rough plans were developed for the purpose of arranging the combined spaces for that family composition. However, during the course of the proceeding, Mrs. Reznick became pregnant with their third child and later gave birth to that child. Both

Reznick and his wife were vague at trial as to how the space would be used.

The parties agree that once the proceeding had commenced and Respondent, Lally became a senior citizen. Reznick offered Lally his choice of two, unregulated apartments in the subject building (basement and third floor) at Lally's rent stabilized rent. Reznick argues that either of the apartments are equivalent or superior to the subject apartment. It was unclear from Reznick's statements whether he was willing to grant Lally rent regulatory rights by agreement or was merely offering to charge an initial rent stabilized rent. During the course of the trial, the Court inspected all three apartments in order to address this issue.

Reznick was quite candid in his reasoning for wanting the two subject apartments. First, their location in the building was convenient for his young children as there would be a minimum number of steps to climb. If the need arose, Reznick could make a triplex by taking back the ground floor space at a later date. Also, there was a little more space gained by combining the parlor and second floor units than any other two units. Further, by not taking back the unregulated units, Reznick would derive greater income to assist him in operating the building.

Respondents' Case

Respondents argue that Petitioners failed to establish a good faith intent to occupy the subject premises. Respondents assert that these proceedings are merely a furtherance of a course of conduct by Petitioners designed to empty their buildings of rent regulated apartments. To support their position, Respondents pointed to prior owner occupancy proceedings commenced by Petitioners seeking to occupy rent stabilized apartments which, even though resulting in a vacancy, were not occupied by Petitioners.

In two proceedings, 54 W.89th Street Owners Corp. c/o Joseph Reznick v. Lafford and

O'Shea (Index No. 82768/01) and 54 W.89th Street Owners Corp. c/o Joseph Reznick v. Asher (Index No. 63282/01), both tenants agreed to vacate. In fact, as of June 2002, both adjacent units were vacant. However, despite their representations in the respective petitions, none of the Petitioners ever occupied those units. Rather, the two units were combined and have been rented for as much as $6,000.00 per month. At the time that those proceedings were commenced, Reznick was a fifty per cent owner of 54 W.89th Street Owners Corp.

Another proceeding in the same building was commenced by Petitioners seeking occupancy of a third apartment. In that proceeding, (54 W.89th Street Owners Corp. v. Bonnie Brown, Index No. 52012/02), Reznick asserted a desire to live in Manhattan, specifically 54 West 89th Street. However, that proceeding was discontinued, as a defense that the proceeding had been commenced by a corporation was asserted, and no resolution could be reached. Ownership was not transferred from the corporation nor was any other action taken by Reznick to occupy that building.

The time line of events in the proceeding is very important. Reznick commenced an owner's occupancy proceeding against Ms. Brown (the non-renewal notice was executed on August 21, 2001). Before proceeding to a petition, Reznick signed a contract to purchase the house in Melville in October 2001. The owner occupancy petition is dated January 17, 2002. The proceeding was discontinued in late January 2002 by which point, Reznick and his family had begun occupying the Melville home.Three months later, Petitioners signed a contract to purchase the subject building.

Respondents assert that there was a discrepancy in the testimony offered by Reznick and his wife and their actions. Both testified at their deposition that they have always wanted to

reside in Manhattan. Yet despite knowing that there were soon to be two vacant, adjacent apartments in a building on 89th Street in 2002, Reznick and his wife elected to purchase a home in Melville, Long Island rather than occupy the vacant apartments.

Respondents state that it was clear by their failure to occupy the units that Joseph and Sophia Reznick were no longer interested in living on 89th Street. If there was any question on that issue, it was resolved by those Petitioners commencing owner use holdovers against a rent stabilized tenant of two apartments in a building on 90th Street and occupying same within months of settling the proceedings with Asher and Lafford. As such, the door was open for Reznick and his wife to occupy the 89th Street apartments in 2002.

The subject building was purchased by Petitioners on August 18, 2002. Respondents point out that whenever Reznick and his wife were purchasing a residential space, both were on the deed (see Melville and Boca Raton deeds). However, when investment property was being purchased, Petitioners were on the deed (see, 304 W. 90th St.) or a corporation was used (see 54 W. 89th St.). According to Respondents, the nature of ownership reveals that the subject building is more like one of the aforementioned investment properties as opposed to a residential premises.

Respondents point to the fact that Petitioners only seek out rent regulated apartments to occupy as indicating a lack of good faith intent to occupy the subject apartments. Respondents assert that at 54 W. 89th street, Petitioners reduced the number of rent regulated tenants from 9 to 2 prior to selling the building in January 2005. Further, Petitioners reduced the number of rent stabilized units in 304 West 90th Street by three within two years of purchasing said building. Respondents herein are the only rent stabilized tenants in the subject building. Additionally,

Reznick has not sought to live in Manhattan other than by commencing owner occupancy proceedings. No broker was ever hired to find suitable space either in the form of a rental, cooperative apartment or condominium. This, according to Respondents was just another link in a chain of events designed to eliminate or reduce rent regulated apartments from buildings owned by Petitioners.

Respondents assert that Reznick is unable to distance himself from the behavior of the other Petitioners as said behavior relates to owner occupancy proceedings. Reznick was a fifty per cent owner of said corporation, had sought two apartments for his own use and was at least peripherally involved in resolving the Lafford proceeding. As such, Reznick must also be held accountable for what affect said actions have on the Court determining his good faith intent to occupy the subject apartments.

Respondent Lally

In addition to joining the other Respondents in asserting that Petitioners have failed to present proof of their good faith intent to occupy the subject apartments, Respondent Lally asserts that he was not offered superior or equivalent alternate housing by Reznick as required by the RSC when he became a senior citizen.

There is no dispute that Lally is the tenant of the parlor apartment. This is the first floor above ground level. There is also no dispute that Reznick offered Lally his choice of the apartment located in the basement or the third floor apartment. Reznick has further stated he would agree that Lally would be charged the current rent stabilized rent for the parlor floor.

Lally asserts the basement apartment is dark and dank. It receives little or no sunlight, as opposed to the subject apartment. Further, he asserts that the ceilings are much lower than the

subject apartment. Lally stated that the basement space is currently renovated for commercial use in that there are numerous "office" areas and a kitchenette as opposed to a kitchen. Due to the layout of the basement space, with its numerous walls and divisions, there would be far less usable space in the basement than in the subject area. Lally also asserts that the back yard area should not be considered as he would rarely if ever go into the back yard.

The third floor apartment, according to Lally, is smaller than subject apartment nor does the third floor apartment have the same high ceilings or fire places as the subject apartment. Lally asserts that even though the third apartment has a terrace, he would not use the terrace and therefore, it should not be included in the alternate space. Further, the third floor apartment would require Lally to climb three times the number of stairs needed to reach the parlor apartment. Currently Lally suffers with osteoarthritis in his lower back, hip and right knee. According to Lally, walking one flight of stairs is difficult enough, but to add two more flights of stairs would cause him great hardship.

Aside from the physical layout of each unit not rising to the level of the parlor apartment, Lally asserts that the proposed apartments could not be determined to be equivalent or superior as they are not rent regulated. Lally claims that as a matter of law, no unregulated apartment can be deemed equivalent or superior to a regulated apartment regardless of the concessions given by the landlord.

ANALYSIS

It is well settled that under the Rent Stabilization Code (hereinafter, "RSC"), an owner may recover possession of a rent stabilized unit for the landlord's personal use or for the personal use of a member's of the landlord's immediate family. Pultz v. Economakis, 8 Misc. 2d 1022

(A), 803 NYS 2d 20 2005 WL 1845634 quoting RSC §2524.4(a). The intent to occupy the subject premises must be genuine and not a subterfuge to remove regulated tenants from the premises. Pultz v. Economakis, supra. The purpose of the legislature in establishing the Rent Stabilization Code, as it relates to owner occupancy proceedings, was to prevent "manipulation" and "schemes" aimed at circumventing the balance between an owner's good faith intent to obtain living accommodations and the tenants' right to remain in their rent regulated apartments. Samuel v. Ortiz, NYLJ 6/7/95, 30:2 (Civ Kings, Callander) citing to Bedford v. DeRosa, 448 NYS 2d 959 (Civ. Queens, 1985).

In an owner occupancy proceeding, the primary issue is whether the landlord has an honest, good faith intent to use and occupy the subject apartment. Axelrod v. Duffin, 154 Misc. 2d 310, 594 NYS 2d 518 (AT 1st Dep't. 1992) The landlord must demonstrate to the Court, by a preponderance of the evidence, that he has a good faith intent to occupy the premises or that his family member will occupy the premises. Nestor v. Britt, 213 AD 2d 255, 624 NYS 2d 14 (1st Dep't. 1995) Nowhere in the RSC is "good faith" named as a requirement. However, the case law interpreting RSC §2524.(a)(1) has, and still requires, such a demonstration. Id. When determining this issue, the Court must review the totality of facts that weigh on the landlord's credibility. See Basic Holding Corp. v. Gabel, 21 Ad 2d 874, 875, 251 NYS 2d 367 (1st Dep't. 1964); Tauber v. Ruscica, NYLJ 10/14/87, 14:3 (Civ. Ct. NY Co.); Minick v. Park, NYLJ 2/25/99, 29:2 (AT 1st Dep't.) While Courts look at a number of factors, it is up to the landlord to establish his own credibility regarding the intended use of the subject premises in order to prevail in the proceeding. Garner v. Berger, 2002 WL 31015649 (NY Civ Ct.); Delavan v. Spirounias, NYLJ 3/14/01, 19:5 (Civ. Ct. NY Co.)

There is, with limited exceptions, no limit to the number of apartments or amount of space that can be recovered by a landlord. Naturally, this assumes the good faith intent to use the premises for living purposes can be established. See, Wong v. Rypass, NYLJ 12/2/98, 29:2 (Civ. Ct. NY Co.); Sobel v. Mauri, NYLJ 12/12/84, 10:4 (AT, 1st Dep't.); But see Pultz v. Economakis, supra.

However, there is one limitation on an owner's ability to regain a rent stabilized apartment for his own use. This is when the tenant of record is a senior citizen. RSC § 2524. 4(a)(2) provides in pertinent part:

> "...(2) the provisions of this subdivision (a) shall not apply where a tenant or the spouse of a tenant lawfully occupying the housing accommodation is a senior citizen or disabled person as previously defined herein, unless the owner offers to provide and, if requested provides an equivalent or superior housing accommodation at the same or lower regulated rent in a closely proximate area."

Where an owner seeks to regain the rent stabilized apartment of a senior citizen, it is the owner's burden to show that he has offered said senior citizen equivalent or superior alternate housing at the same or lower rent stabilized rent in a closely proximate area. Fidalgo v. Shumm , NYLJ 6/12/90, 25:1 (AT 2nd and 11th); Miller v. Jones, NYLJ 1/28/04, 19:1 (Civ NY, Wendt)

Edward Lally

Petitioners first argue that since Respondent became a senior citizen during the pendency of this proceeding, the Court should not require them to offer alternate housing to Respondent. This argument is without merit. Whether a tenant is a senior citizen prior to commencement of the proceeding or becomes a senior citizen after the proceeding is commenced is of no matter. Fidalgo v. Shumm, supra . The only difference is that in the latter circumstance, the landlord is

granted additional time to offer alternate housing whereas in the former circumstance, the offer of alternate housing must come before commencement of the proceeding and must be alleged with specificity in the pleadings. Croman v. Leighton, 12 Misc. 3d 73 (AT 1st Dep't. 2006). The Court finds Petitioners' arguments along this line to be unavailing.

The Court has inspected the subject apartment as well as the other two, alternate apartments. As all three units are in the same building, there is no doubt that Petitioner has complied with that portion of the statute which requires the alternate housing to be in "a closely proximate area". Additionally, Petitioner offered each of the alternate apartments at the same rent that Respondent, Lally currently is paying for the subject apartment. Therefore, that portion of the statute which requires the alternate housing to be at the "same or lower regulated rent".

However, Respondent still argues that the two apartments could not qualify under the statute as neither are rent stabilized or equivalent or superior to the subject apartment. It was unclear from the record, the testimony and the post trial briefs whether Petitioner agreed that only the initial rent would be at Respondent's current stabilized rent or if Petitioner was agreeing to provide rent stabilized rights, by contract, to Respondent. This is no small question.

Generally speaking, when comparing two apartments to determine if they are equivalent or one is superior, Courts look to the physical layout, amenities and location. Items such as square foot total, sunlight, elevator service, doorman service are the common factors to be reviewed. However, this analysis assumes that both units are rent regulated.

It is this Court's opinion that in a city where there has been and continues to be a housing emergency, rent regulation, or the lack thereof, affects the inherit nature of the housing. Rent regulated tenants have rights that do not exist in fair market housing. With rent stabilization, the

right to remain as a tenant exists. In a fair market apartment, such a right does not exist unless granted by contract. Additionally, rent regulated units have, with a few exceptions, insurances against drastic increases in rent. Such insurances do not exist in fair market apartments. This imbalance between the two forms of housing can not be easily remedied. Rather, the very nature of the protections created by rent regulation insures that a non-regulated unit, no matter the amenities, can not be deemed equivalent or superior to a regulated apartment.

However, Petitioners' intent need not be determined as, based on the Court's inspection of the two alternate apartments, the Court also concludes that neither is superior or equivalent. The subject apartment has two bedrooms (one large and a guest room) and is located on the parlor floor of the subject building. There is a large livingroom, small kitchen and bathroom and large wall to wall closets. The apartment has very high ceilings and windows (12') as well as two, very ornate fire places. While not large in floor area, it is clear that Respondent has taken steps over the years to get the most out of the space (i.e. the washer and dryer are wall-mounted or sit in a cabinet five feet off the floor). On the date that the Court inspected the premises, the view to the street was blocked by some kind of scaffold and diminished by inclement weather. Nonetheless, the Court could imagine the view on a sunny day and the amount of light that could come into the subject apartment.

The basement unit is currently being used commercially. The space has been divided into numerous offices and storage areas. Where the subject apartment appears more square, the basement unit is a classic railroad style, with each room in a row. The kitchen area appears to be more akin to a "kitchenette" that one would find in an office as opposed to a residential space. In addition to the interior space, the basement unit opens into a courtyard at the back of the

building. The courtyard extends back approximately thirty feet and runs the width of the building.

However, in comparing the two spaces the Court observed that the basement unit has no sunlight of any kind that reaches the interior of the space. The ceilings, as may be expected, are much lower than the parlor floor apartment. Further, the divisions of the interior space is inconvenient to residential use. Whether looking at cubic space, square footage or just usable space, it was clear to the Court that the basement apartment was smaller than the parlor floor apartment.

Cosmetic enhancements and fixtures were not the focus of the Court though other courts have considered them in making this type of determination. Items such as moldings or parquet floors would, by themselves, not be enough to determine the issue. However, the basement like most commercial space can be described as "characterless" while the parlor floor, though small, clearly had "character".

Further, the Court did not place great value in the courtyard. Whether or not an amenity has value is a subjective test. What would be a value to a young couple with children would not be a value to a senior citizen with no children. Respondent is a senior citizen with osteoarthritis. The courtyard, though large, is made up of uneven concrete. There is no view of anything other than the air conditioning units and the back of the surrounding buildings. It was clear from Respondent's credible testimony that outdoor space, of that nature, did not interest him.

As to the third floor apartment, the comparison was much harder. The overall layout was roughly the same though smaller than the parlor floor. The kitchen and bathroom were newly renovated and larger than those in the parlor floor. The third floor apartment only had one

bedroom. Instead of a second bedroom, there was a deck. Aside from Respondent's arguments about outdoor space, the deck is not the equivalent of a second bedroom since there will certainly be some months that the deck may not be used. While these facts may have led the Court to the conclusion that the third floor apartment was not equivalent or superior to the subject apartment, the fact that an additional forty steps have to be climbed to reach the third floor apartment from the parlor floor determined that the third floor apartment would not suffice under the statute.

Respondent's medical condition makes climbing stairs painful. Currently, Respondent only has to climb thirteen steps. If Respondent relocated to the third floor, he would have to climb fifty-three steps. This is a substantial difference especially in light of the fact that the condition could worsen. Courts have held that where a tenant has difficulty climbing stairs, an apartment on a higher floor can not be superior or equivalent. Tsororos v. Lauriello, NYLJ 4/8/98, 32:5 (Civ. Ct. Kings Co.)

Reznick argues that if the two alternate apartments are determined not be equivalent or superior, he should be given an opportunity to offer a qualifying apartment. Reznick relies on Gogu v. Ely, 152 Misc. 2d 169, 575 NYS 2d 238. Reznick's reliance is misplaced. Gogu v. Ely involved an issue of whether or not a person with low intellect could be considered disabled within the definition set forth in the RSC. After determining that such a person was "disabled" under the RSC's definition, the Court found it would be less prejudicial, since that landlord had established a good faith intent to occupy the premises, to grant a judgment to the landlord but condition execution of the warrant on offering alternate housing to the tenant. Prior to this determination, the landlord had no opportunity or obligation to offer an alternate apartment. This is not the situation herein. Reznick has had his opportunity to comply with the RSC. Either his

actions satisfied the RSC or they did not. It is this Court's determination, that the offers did not satisfy the requirement. As such, the proceeding is dismissed as to Respondent Edward Lally.

Respondents Muir and Suehsdorf

As noted earlier, whether or not a landlord is successful in obtaining a rent stabilized apartment for his own use is a matter of credibility and good faith intent. Some cases have held that a landlord's "credited testimony" was sufficient to meet the burden. Horsford v. Bacott, 32 AD 3d 1310 (1st Dep't. 2006). Other cases, have looked to the totality of the circumstances, including but not limited to prior actions of the owner. Garner v. Berger, supra.

In this proceeding, the totality of the circumstances lead the Court to believe that Petitioners have failed to meet their burden of proof. A number of issues troubled the Court. First, the timing of the purchase of the Melville home with the purchase of the subject building. The Court found it hard to believe that Reznick's desire to reside in Manhattan, as stated in the prior owner occupancy proceeding (Brown), ended in or about October 2001 when the Melville house was purchased and suddenly re-emerged in April 2002 when negotiations to purchase the subject building began.

Additionally, Reznick's attempts to distance himself from the two owner occupancy proceedings involving 54 W. 89th Street which were settled on behalf of his parents were not entirely successful. In those two proceedings, it is true that Reznick's parents alleged they wished to reside in the units. Reznick claimed he had nothing to do with the proceedings but the records revealed he participated in negotiating a vacate stipulation with one of the tenants of said apartments for one hundred thousand dollars. After the units were vacant, Reznick's parents did

not take occupancy despite their claims in the petitions. Also, Reznick did not take occupancy even though there were two adjacent units available in an area that Reznick and his family found desirable and Reznick was a fifty per cent owner of the landlord.

Further, after learning the other 54 W. 89th Street proceedings wherein Reznick asserted a desire to reside in Manhattan were defective due to a corporation owning the building, no action was taken to change the nature of ownership. While there would have been a wait, this was surely a simple enough step to take to insure residing where Reznick "always wanted to live". Instead, the opportunity was lost when Reznick moved to Melville.

The evidence suggests that Petitioners have only desired to live in apartments in Manhattan that are occupied by rent regulated tenants. It is true that there is no requirement that an owner occupy a non-regulated unit (Berlinrut v. Leventhal, 43 AD 2d 522, 349 NYS 2d 82 (1973) or that a landlord occupy a unit that has become vacant (Delavan v. Spirounias, supra.). Yet, while there is nothing mandating a finding of bad faith if the aforementioned facts are demonstrated, they are factors that the Court may consider.

Despite a desire to live in Manhattan and the financial means to purchase any form of residential space, said desire seems to be specifically coordinated with Reznick's purchase of buildings with rent regulated apartments. The Court feels that it is no coincidence that Reznick has never looked at a cooperative or condominium or even hired a broker despite having always "wanted to reside in Manhattan". One would think after the proceedings involving 54 W. 89th Street were unsuccessful, some attempt to find suitable housing in Manhattan would have been made. Reznick could show no such effort. Instead a suburban home was the chosen alternative until a building with rent stabilized tenants was purchased.

Of concern to the Court was Reznick's simple refusal to use any of the vacancies that have occurred in the subject building and other properties owned, at least partially by Reznick in the immediate area. There is no dispute that there have been vacancies during the pendency of this proceeding or at least since Reznick has owned 54W.89th Street. Respondents have pointed out that the number of rent regulated units in 54 W.89th Street, 304 West 90th Street and the subject building has been reduced by at least ten over the last five years. None of those units were occupied by Reznick and his family. Again, this does not mandate a finding of bad faith. Owners are entitled to make a profit, or at least a sound financial return on their property. At the same time, a pattern of behavior of this nature is a factor to be considered by the Court in determining if a good faith intent to occupy the premises exists.

It is also conceded that Mrs. Reznick, who testified that she desired to live in the subject apartments has never seen the second floor apartment. The Court inspection may have been the first time Mrs. Reznick saw the parlor floor apartment. At a minimum, neither space had been inspected by Mrs. Reznick prior to the purchase of the building. Had this proceeding only involved Reznick, the Court might not have found this unusual. Yet, Mrs. Reznick had two children and a third on the way when the proceedings were commenced. The Court found it unlikely that she would have a desire to reside with her children, in her pregnant state, in a premises she had never seen, no matter the location. This is especially so when the family had been residing in a spacious, upscale, suburban home.

The Court became concerned that the space sought may now be insufficient for Reznick and his family's current needs. As of trial, there were no plans for how the space will be used. The apartments were originally sought for Reznick, his wife, their two children and a nanny.

Plans were drawn up. Despite being a duplex, it certainly appeared that every inch of space was being used. Now, Reznick and his wife have a third child. Neither Reznick nor his wife were forthcoming with specifics as to how they will re-apportion the space at trial.

Ultimately, the Court had to look at Reznick's credibility in deciding the issue of good faith intent. The Court observed Reznick's reluctance to provide information regarding the prior owner occupancy proceedings except for Brown . There were pre-trial delays in providing information, some of which was never provided by Petitioners. At trial, Reznick denied any knowledge or memory of those other proceedings, even though he personally negotiated a one hundred thousand dollar buyout with one of those tenants. The Court finds it unlikely that such participation could easily be forgotten.

Further, the Court did not believe Reznick's representation that he was unaware a corporation could not maintain an owner occupancy proceeding. Reznick has been in the real estate business for a substantial period of time not only owning property but developing same. Reznick and his parents had hired experienced landlord-tenant attorneys to commence the prior owner occupancy proceedings who, undoubtedly would have warned Petitioners of the law.

Reznick's testimony regarding prior counsel and those proceedings, especially his role in settling one of those proceedings was entirely unbelievable. On the one hand, Reznick asserted that the attorneys were not knowledgeable and he "did not trust them" and then on the other hand, Reznick alleged that the attorneys drafted a stipulation where one of the tenants was paid $100,00.00 to vacate and he signed the stipulation without reading same.

Before commencing this proceeding, Reznick has alleged wanting to reside in Manhattan. Before commencing this proceeding, Reznick has had opportunities to reside in Manhattan.

Reznick never followed through on those opportunities. Reznick has commenced at least one other proceeding on his own behalf to regain space but was ready, willing and able to purchase a home in Long Island as soon as he learned that proceeding was commenced defectively and a settlement with that tenant could not be reached. Within a year of purchasing said Long Island home, Petitioners purchased the subject building and the desire to reside in Manhattan re-emerged. The Court could place no weight on the testimony regarding the WTC crisis as a reason for moving to Long Island for two reasons. First, no mention of this was made at any deposition and second, no explanation was given for why the family would not want to live in Manhattan in early or mid 2002, but would in late 2002.

Based on the foregoing, the court determines that Petitioners have failed to meet their burden of proof in demonstrating a good faith intent to occupy the subject premises as a residence. As such, the proceeding is dismissed. The parties may obtain their documents from the clerk's office.

This constitutes the decision and order of the Court.

Dated: New York, New York
December 5, 2006

John S. Lansden, J.H.C.