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DECISION OF INTEREST

Kings County Supreme Court

Landlord Cannot Collect Rent Until It Complies With Loft Law, Obtains  
 Certificate of Occupancy

Justice Lewis

**Lucy B. Realty Corp. v. Jaramillo** - The plaintiff has requested that this court determine it to be the owner and rightful possessor of the property presently inhabited by the defendants. It also seeks an injunction terminating the "free gas and electric utilities to the defendants or in the alternative, payment by defendant for their use of its premises, the utilities, and other items...and damages...not less than \$100,000;" The plaintiff also seeks to bar the defendant from entering the premises and a judgment allowing it to change the locks to the premise.

For their part, the **Jaramillos**, proffer four affirmative defenses and three counterclaims. The first affirmative defense: they contend that service was improper, depriving the court of jurisdiction and requiring the case to be dismissed. Secondly, they contend that they are tenants "by virtue of rental agreements which provided as substitute consideration for the payment of rent the provision of physical training to plaintiff's principal, Martin Baumrind..." As tenants, they say the ten day notices to quit would be ineffective to terminate their tenancies.

Thirdly, the **Jaramillos** contend that they have rights under the Loft Law, in that "Plaintiffs (sic) have failed to comply with the requirements for legalization of the property...[and] Plaintiff's application to have the premises exempted from the application of the Loft Law has been denied." As their final affirmative defense and first counterclaim, the **Jaramillos** claim that the plaintiff must secure a certificate of occupancy and that they are entitled "to an injunction directing Plaintiff to comply with its obligation to legalize the subject premises under the Loft Law." The defendants' second counterclaim is that they have spent about sev-

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enty thousand dollars (\$70,000) for improvements to the premises and that the plaintiff should be liable for the fair market value of those improvements and reasonable moving costs. Finally, the **Jaramillos** counter for the right to return to the premises when the non-compliant conditions are corrected, as well as for all the protections of the Loft Law.

The facts, alleged by plaintiff's principal, Martin Baumrind, suggest that the adversaries were at one time close and personal friends and that he allowed his friend to stay at his premises free of charge. Walter **Jaramillo** countered and said that though friendly, the arrangement was financial i.e., he gave fitness training to Baumrind in exchange for rent. Training he says was valued at \$300 a week for 5 (five) 1 (one) hour sessions at \$60 each.

During the course of this litigation, the parties have been able to come to some agreement with regard to the cost of heat and gas. The papers make clear the fact that the gas and heat were always paid by the plaintiff; the electricity was paid by the plaintiff with partial reimbursements, for their share, by the defendants. In June or July of 2004, the plaintiff arranged for separate meter installation for the defendants' quarters. There remains an approximate five month period for which the plaintiff was not reimbursed. The evidence suggests that the defendants should pay for that portion of the bills which would represent their share of the electrical use during the period, as they did before the institution of this law suit.

As for changing the locks and barring the defendants from the premises, that seems a result impossible to attain. In situations where a commercial building space is "let" to a residential occupant one must determine whether the loft law applies. In August 1987, the Loft Board determined, in its order # 636, that the premises at 286A Warren was "an interim multiple dwelling." On November 29, 1994, the Loft Board, got plaintiff's initial registration and discontinued the proceeding against it for failing to register the premises. On June 7, 1996, the Loft Board denied the plaintiff's application for exemption from the loft law because the plaintiff had not taken all steps necessary to formulate a plan to legalize the building. In August, 2000, the loft board denied plaintiff's request for an extension of time to meet the earlier missed building permit deadline. On July 31, 2002 the premises were re-registered by the Loft Board pursuant to a registration by Martin Baumrind. It is noted also, that the plaintiff admitted to being an interim multiple dwelling in documents confirming the sale of fixtures and rights to the second floor of the premises. Hence, the Loft Law unambiguously, applies to this case.

Section 284 of the Multiple Dwelling Law sets out the "Owner obligations" for an interim multiple dwelling." The owner has specified time in which to comply with the requirements set out therein; if he does not and "if there is a finding by the

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loft board that an owner has failed to satisfy any requirement specified in paragraphs (i), (ii), (iii), (iv) and (v) of this subdivision such owner shall be subject to all penalties set forth in article eight of this chapter. §284(vii) of the Multiple Dwelling Law. Article eight, at §301(1), states that "' [n]o multiple dwelling shall be occupied in whole or in part until the issuance of a certificate by the department that said dwelling conforms in all respects to the requirements of this chapter...." At §302(1)(a) and(b) the law states: "[i]f any dwelling...be occupied in whole or in part for human habitation in violation of section three hundred one, during unlawful occupation...(b) [n]o rent shall be recovered by the owner of such premises for said period and no action or special proceeding shall be maintained therefor, or for possession of said premises for nonpayment of such rent." Simply put, the landlord cannot collect rent if there is no certificate of compliance. There is no such certificate in evidence before this court.

Since the plaintiff's building has been declared to be an interim multiple dwelling and plaintiff has failed to get a certificate of compliance, this court has no option but to determine that **Lucy B. Realty Corp** cannot collect rent until such time as it complies with the requirements of the loft law. In addition, the defendants are entitled to the fair market value of their expenditure to improve the premises and would be entitled to moving expenses should there be reason to move while the building is brought into compliance with the loft law. Furthermore, the defendants have a right to continued occupancy of the premises pursuant to §286 of Multiple Dwelling Law. This constitutes the decision and order of this court.

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