

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

Index No. HP 307504/2025

-----X  
THOMAS DUKLETH, ZACHARY HALL,  
SHIRAS PATTERSON BECKWITH, JUDY  
SABIN, AND REMIGIUSZ CHLAPEK,

Petitioners,

-against-

109E9 LLC, MICHAEL GEYLIK, MGNY  
CONSULTING CORP., YURI GEYLIK,

Respondents

-and-

NYC DEPARTMENT OF HOUSING PRESERVATION AND  
DEVELOPMENT OF THE CITY OF NEW YORK, and  
NYC DEPARTMENT OF BUILDINGS,

Co-Respondents.

-----X  
**M. DAVID FONSECA**, an attorney duly admitted to the practice before the Courts of the

State of New York, hereby affirms the following to be true under the penalties of perjury:

1. I am a Partner with the law firm of **KUCKER, MARINO, WINIARSKY & BITTENS, LLP**, attorneys for the Respondents, 109E9 LLC, MICHAEL GEYLIK, MGNY CONSULTING CORP., and YURY GEYLIK (the "Respondents") in this Housing Part proceeding and as such, I am fully familiar with the facts and circumstances concerning this action as further set forth below.

2. This Affirmation is submitted in opposition to Petitioners' motion seeking an order permitting Petitioners' engineer access for inspection as well as the production of numerous documents relating to the work which Respondent-Landlord seeks to effectuate at the subject building, as well as to dismiss Respondents defenses herein. Petitioners seek relief to which they are not entitled, and accordingly the motion must be denied in its entirety. This Affirmation is

further submitted in support of Respondents' cross-motion seeking to dismiss the proceeding as against Respondents MGNV CONSULTING CORP., and YURI GEYLIK.

3. Petitioners' application to allow its own engineer access for an inspection are wholly inappropriate. Petitioners provide absolutely no legal basis for being granted such relief. In fact, Petitioners request for an inspection is nothing more than an effort to attempt to dictate how the work at the building will be undertaken. Petitioners have absolutely no discretion as to how the work will be undertaken. Respondents must comply with building codes and regulations as set forth by the Department of Buildings, obtain permits and use licensed professionals for the work. Petitioners do not have a legal basis for being permitted to have their own expert weigh in on the scope of the work. Any efforts to interfere in this manner will only lead to additional delays.

4. Furthermore, Respondents MGNV CONSULTING CORP., and YURI GEYLIK are improperly named herein as they are not Owners as defined in §27-2004(a)(45) of the Housing Maintenance Code. Accordingly, the matter should be dismissed as against them.

**PROCEDURAL HISTORY**

5. Petitioners brought the instant matter pursuant to an Order to Show Cause seeking an Order finding that Respondents have harassed Petitioners, and seeking an Order to Correct on complaints made regarding the condition of the building. See NYCEF Doc. No. #7.

6. Upon the commencement of this action, there were no HPD violations issued at the building. Petitioners occupy apartments 2D, 2E, 3C, 3D and 4D. The case was first on the Court's calendar on May 29, 2025.

7. On May 29, 2025, the parties conferenced the case with the Court, and over Respondent-Landlord's objection, the Court ordered that an inspection of the vacant units at the building. In arguing against the inspection, Respondent-Landlord specifically acknowledged that

there would be violations issued in the vacant units because the Department of Buildings has required that certain work be done in preparation for extensive work at the building. Petitioners argued that they believed that there were conditions present in the vacant units that endangered the health and safety of the occupied units. The court, in explaining its reasoning for allowing the inspection of the vacant units, indicated on the record, that any Order to Correct would not include violations that did not endanger health and safety of the occupied units. The Decision/Order from May 29, 2025 however, contained no such language. See NYSCEF Doc. No. 11. The matter was subsequently adjourned to July 14, 2025 for the result of the inspections.

8. On or about June 25, 2025, HPD issued seventeen (17) violations – one “A” violation and sixteen “B” violations. None of the violations issued were in any of Petitioners’ apartments.

9. On July 14, 2025, over Respondents’ objection, and contrary to the discussions and arguments before the Court on May 29, 2025, the Court nevertheless issued an Order to Correct for all violations issued, including for ones involving painting and plaster for vacant apartments. See NYSCEF Doc. No. 25.

10. Accordingly, at this juncture, the only claim remaining is Petitioners’ harassment claim. Yet, Petitioners’ have now moved for an Order dismissing Respondents’ defenses and seeking discovery.

### **IN OPPOSITION TO PETITIONERS’ MOTION TO DISMISS DEFENSES**

11. Petitioners’ motion should be denied because Petitioners have failed to meet the heavy burden of showing that the Affirmative Defenses asserted in Respondents’ Answer are without merit as a matter of law.

12. It is axiomatic that “in moving to dismiss an affirmative defense pursuant to CPLR 3211(b), the petitioner bears the heavy burden of showing that the defense is without merit as a matter of law. The allegations set forth in the answer must be viewed in the light most favorable to the respondent and the respondent “is entitled to the benefit of every reasonable intendment of the pleading, which is to be liberally construed.” Further, the court should not dismiss a defense where there remain questions of fact requiring a trial. [citations omitted]” *Granite State Ins. Co. v. Transatlantic Reins. Co.*, 132 A.D.3d 479, 19 N.Y.S.3d 13 (1<sup>st</sup> Dep’t 2015). As demonstrated below, judged by these strict standards, Petitioners have failed to meet their burden.

13. Under CPLR §3211(b) a party may move for judgment dismissing one or more defenses, on the ground that a defense is not stated or has no merit. Petitioner has the burden of demonstrating that the affirmative defense is “without merit as a matter of law”. *See Bank of New York v. Penalver*, 125 A.D.3d 796,797 (2<sup>nd</sup> Dep’t 2015).

14. In considering a motion to dismiss/strike affirmative defenses the court must accept the facts as alleged in the complaint as true, accord the Respondents the benefit of every possible favorable inference, and determine whether the facts as alleged fit within any cognizable legal theory. *Sarva v. Self-Help Community Services, Inc.* 73 A.D.3d 1155, 903 N.Y.S.2d 77 (App. Div. 2<sup>nd</sup> Dept. 2010); *Goshen v. Mutual Life Ins. Co. of NY*, 98 N.Y.2d 314, 326 (Court of Appeals, 2002).

15. In applying such a strict standard, the affirmative defenses fully comprise this Court of the basis of each defense.

16. Petitioners’ motion should be denied because Petitioners have failed to meet the heavy burden of showing that the Affirmative Defenses asserted in Respondents’ Answer are without merit as a matter of law.

17. Under CPLR §3211(b) a party may move for judgment dismissing one or more defenses, on the ground that a defense is not stated or has no merit. Petitioner has the burden of demonstrating that the affirmative defense is “without merit as a matter of law”. See *Bank of New York v. Penalver*, 125 A.D.3d 796,797 (2<sup>nd</sup> Dep’t 2015).

18. Petitioners’ motion argues that Respondent’s defense for failure to state a cause of action should be stricken. However, New York courts routinely permit this defense to be raised in the answer, especially in Housing Court matters.

19. CPLR 3211(a)(7) explicitly allows a party to move for dismissal on the ground that the pleading fails to state a cause of action. The corollary is that a respondent may raise it affirmatively as a defense in the answer.

20. Courts have repeatedly held that “failure to state a cause of action” may be raised as an affirmative defense without being stricken as redundant or improper. See: *Butler v Catinella*, 58 AD3d 145, 148 (2d Dept 2008) – “Even if redundant, it is not prejudicial to allow the defense to stand.”; *Mawere v Landau*, 130 AD3d 986 (2d Dept 2015).

21. In HP proceedings, where allegations often include technical and statutory compliance issues, this defense is particularly appropriate.

22. Furthermore, Respondents’ first and eleventh affirmative defenses set forth that Petitioners have failed to state a cause of action under Section 27-2005(d) of the Administrative Code of the City of New York against Respondents and deny all of Petitioners’ baseless and unsubstantiated claims of harassment.

23. Contrary to Petitioner’s argument, the defenses clearly set forth that Petitioners have not stated a claim sufficient to meet the high standards for a finding of harassment under Section 27-2005(d) of the Administrative Code of the City of New York and deny the allegations

made by Petitioners. Important to note is that Respondents need not prove the elements of their defenses in their answer, but simply

24. Respondent's third affirmative defense also is very clear and forms the basis of the instant Cross-Motion by Respondents.

25. Important to note is that Respondents' additional defenses as asserted in the Answer have been determined by the issuance of the Order to Correct by the Court. However, said defenses should be permitted to be asserted as defenses Respondents may have to any future motion for civil penalties and/or contempt, and without prejudice to any cause of action or motion Respondents may seek to bring against Petitioners. *See Vargas v. 112 Suffolk St. Apt. Corp.*, 66 Misc.3d 1214[A](Civ. Ct. New York County 2020).

#### **IN OPPOSITION TO PETITIONERS' MOTION FOR DISCOVERY**

26. Petitioners further seek leave of the Court to conduct discovery in the form of an Order requiring Respondent-Landlord to permit access for Petitioners' engineer to inspect the building and in the form of document production. Petitioners herein offer no legal basis for their application and in fact, there is none.

27. Petitioners' motion seeking discovery in this proceeding, at this point is also in question since the Court has already issued an Order to Correct for the subject building.

28. The remaining portion of Petitioners' case at this point is its claim for harassment, yet Petitioners fail to address how the ample need standard has been met when it is the harassment claim that solely remains before the Court.

29. Discovery is not available as a matter of right in housing court proceedings, as discovery is directly adverse to the principles of a summary proceeding. There is a presumption against discovery in a summary proceeding. *See CPLR § 408; Smilow v. Ulrich*, 11 Misc.3d 179,

806 N.Y.S.2d 392 (Civ. Ct. N.Y. Cty., 2005); *New York University v. Farkas*, 121 Misc.2d 643, 468 N.Y.S.2d 808 (Civ. Ct. N.Y. Cty., 1983).

30. The Farkas Court formulated a six-pronged test to determine whether “ample need” to conduct discovery has been established:

- a. Whether, in the first instance, the petitioner has raised facts to establish a cause of action...
- b. Whether there is a need to determine information directly related to the cause of action
- c. Whether the requested disclosure is carefully tailored and is likely to clarify the disputed facts
- d. Whether prejudice will result from the granting of an application for disclosure
- e. Whether the prejudice can be diminished or alleviated by an order fashioned by the court for this purpose...
- f. Whether the Court, in its supervisory role can structure discovery so that pro se tenants, in particular, will be protected and not adversely affected by a landlord’s discovery requests.”

*Farkas*, 468 N.Y.S.2d at 811-812

31. The discovery requests must be narrowly tailored, and must not be for the purpose of a tenant first establishing a defense. *Museum of Modern Art v. Duncan*, N.Y.L.J. April 23, 1997, p.27, col. 2 (Civ. N.Y., Shulman). *Farkas* cautions that discovery should not be used as a “fishing expedition.”

32. Petitioners’ motion for discovery must be denied as Petitioners do not meet their burden.

33. Petitioners brought the instant action pursuant to an Order to Show Cause seeking “an Order a) finding that Respondents have harassed Petitioners in violation of HMC §27-2115(m)(1); b) finding that a class C violation existed at the premises due to the harassment; c) enjoining Respondents from further harassment; d) imposing civil penalties for harassment; e) awarding compensatory damages for harassment; f) awarding punitive damages for harassment; g) finding violations for complaints; h) entering of an Order to Correct; and i) “recommending any other remedy, program, procedure or sanction authorized by law for the enforcement of the housing standards at issue that would be more effective to accomplish compliance or protect and promote the public interest, pursuant to CCA § 110.”

34. Nothing in the relief that Petitioners seek would be aided from an inspection of the subject building by their own expert. In fact, Petitioners efforts are nothing more than an attempt to dictate how Respondent-Landlord carries out the work at the subject building. Such an effort goes beyond the jurisdiction of the Court and is a right that Petitioners simply do not have.

35. The Court has issued an Order to Correct. Respondents will have a defense to any motion seeking the imposition of civil penalties simply because certain violations issued involving the slopping wood floor require permits to be obtained, permits that were temporarily revoked by the DOB due to claims of harassment by Petitioners which mirror the ones asserted herein; claims that have to be determined pursuant to an OATH hearing.

36. Petitioners simply do not meet the ample need standard so as to allow them to have discovery in this proceeding.

37. Petitioners apparently cite to three cases in support of the portion of their motion seeking discovery in their Memo of Law – a document that is replete with specious arguments and extremely light on supporting caselaw – and yet all cases cited are inapplicable to the case herein.

38. In *601 Seneca LLC v. Karczewski*, 2024 NY Slip Op 51579(U)(Civ. Ct. Queens Co. 2024) involves a respondent's application for discovery where the respondent contests the regulatory status of an apartment claiming that the apartment is part of horizontal multiple dwelling. Contrary to Petitioner's assertion that the case does not hold that ample need was established simply when a party has "taken issue" with an opposing party's assertion.

39. Similarly, Petitioners cite to *Mannino v. Fielder*, 629 N.Y.S.2d 651 (Civ. Ct. Kings Co. 1995) which has nothing to do with discovery and instead involves a holdover matter where the premises was not registered as a multiple dwelling.

40. The only case that Petitioners cite which is a tenant brought action for repairs is *153-155 Essex St. Tenants Assn., v. Kahan*, 4 Misc.3d 1008(A)(Civ. Ct. N.Y. Co. 2004), yet that case is wholly distinguishable from the case at bar in that the Civil Court therein held that "in Housing Part proceedings where the owner successfully asserts the affirmative defense of economic infeasibility, a presumption in favor of limited discovery should be made by a court entertaining an application under CPLR §408." Such is not the case here. The defense of economic infeasibility is not an issue herein. In fact, Respondent-Landlord is ready and willing to perform the work necessary at the subject building, and is working with the Department of Buildings to effectuate the work and delays for the work are wholly attributable to Petitioners.

41. Important to note is that in the *Kahan* matter, the court granted the tenants' motion for discovery but specifically limited the discovery by stating that "disclosure shall be limited to access to the building for the purpose of allowing petitioner's expert to inspect the building and develop their own estimate as to the cost of restoring the building to habitable condition". *Id.* at \*3. The *Kahan* court did not allow inspection of the building for the tenants' expert to opine or dictate how repairs would be done, or the scope of the work needed.

42. Petitioners argue that the inspection and documents sought are important as discovery “would help to resolve facts in dispute regarding the conditions of the building and the repairs required, including their impacts on tenants in occupancy.” See page 10 of Petitioners’ Memorandum of Law. The fact of the matter however is that the remaining portion of Petitioners’ claim is a claim of harassment and discovery is therefore inappropriate and the relief sought must be denied. Petitioners clearly are on a fishing expedition which cannot be permitted by the court.

43. Not only do Petitioners fail to meet the ample need threshold, but Petitioners’ discovery demands are overbroad and not narrowly tailored.

44. Petitioner’s discovery requests, which broadly seek “any and all” documentation, have been consistently rejected by the courts as overly vague and unduly burdensome. Petitioners’ seek broad categories of contracts for repairs or modifications at the premises, any communications between the landlord and third party contractors, copies of any reports, recommendations, plans, and/or “other documentation by any other contractor and/or third party professional”. The requests are not narrowly tailored to specific facts but are instead impermissibly generalized. “The burden of serving a proper demand is upon counsel and not for the courts to correct a palpably bad one.” (*Itzkoff v. Allstate Ins. Co.*, 59 A.D.2d 854 [1st Dept. 1977]; *Heimowitz v. Handler, Kleiman, Suzenik & Segal, P.C.*, 51 A.D.2d 702 [1st Dept. 1976].) Accordingly, Petitioners’ request for discovery must be denied in its entirety.

45. Discovery requests should be denied when disclosure is based on “mere suspicion” and “unsatisfactory surmises.” See *Simry Realty v. Kotch*, NYLJ 7/20/89, p.23 col.2 (Civ. Ct. N.Y. Co.). In *Kotch*, Petitioner asserted a cause of action based on hearsay and the court denied the motion for discovery. Discovery requests must be narrowly tailored to elicit information relevant

to the primary issues in the action. See *525 West 175th Street LLC v. Vincente*, 19 Misc.3d 1110(a); 859 N.Y.S.2d 902 (Civ Ct. N.Y. Co. 2008).

46. Here, Petitioners attempt to cast suspicion on the landlord's engineer as a basis for their demand for discovery. The aspersions of impropriety is based upon mere conjecture and blatant unsubstantiated assumptions that have no basis in fact, but are dangerously close to libelous as these accusations involve licensed professionals and unfounded allegations of malfeasance should not be tolerated.

47. Discovery is not available as a matter of right in housing court proceedings, as discovery is directly adverse to the principles of a summary proceeding. There is a presumption against discovery in a summary proceeding. See, CPLR § 408; *Smilow v. Ulrich*, 11 Misc.3d 179 (Civ. Ct. N.Y. City 2001); *New York University v. Farkas*, 121 Misc.2d 643 (Civ. Ct. N.Y. City 1983).

48. The discovery requests must also be narrowly tailored, and must not be for the purpose of a tenant first establishing a defense. *Museum of Modern Art v. Duncan*, N.Y.L.J. April 23, 1997, p.27, col. 2 (Civ. N.Y., Shulman). *New York University v. Farkas* cautions that discovery should not be used as a "fishing expedition."

49. Petitioners' motion for discovery is clearly a "fishing expedition" to help formulate their claim that Petitioners are the ones that will dictate how the landlord will effectuate repairs. The fact of the matter is that Petitioners have access to plans submitted to the DOB and any additional documentation is documentation that Petitioners are not entitled to obtain.

50. Accordingly, Petitioners' motion for discovery must be denied in its entirety.

**IN SUPPORT OF CROSS-MOTION TO DISMISS AS AGAINST NON-OWNERS**

51. Respondents MGNY CONSULTING CORP., and YURI GEYLIK are improper parties to this action as neither is an “Owner” of the subject premises, as defined in §27-2004(a)(45) of the Housing Maintenance Code and are otherwise not liable because they do not exercise control over the subject premises.

52. Section 27-2004(a)(45) states, “[t]he term ‘owner’ shall mean and include the owner or owners of the freehold of the premises or lesser estate therein, a mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee, agent, or any other person, firm or corporation, directly or indirectly in control of a dwelling...”

53. The owner of the subject building is Respondent 109E9 LLC; the registered managing agent of the subject building is Respondent Michael Geylik; and the head officer of the subject building is also Respondent Michael Geylik. A copy of the HPD overview is annexed hereto as Exhibit “A” and the Court is respectfully requested to take judicial notice of the HPD information/registrations for the building.

54. MGNY Consulting Corp., is a Real Estate Consulting firm with an address on the ground floor of the subject building. While Respondent Michael Geylik is the founder and President of MGNY Consulting Corp., the corporation has no connection with the premises other than as a place of business. See Geylik Affirmation.

55. Similarly, Respondent Yuri Geylik, the CEO of MGNY Consulting Corp., is not an Owner as defined in Section 27-2004(a)(45) of the Housing Maintenance Code.

56. Petitioners’ unsubstantiated allegations that Respondents MGNY Consulting Corp., and Yuri Geylik exercise or exercised direct or indirect control over the residential portion of the building are not sufficient to have them deemed to be Owners under the statute. Petitioners’

Verified Petition would have Respondents MGNY Consulting Corp., and Yuri Geylik be included in this action based upon allegations that they “engaged in conversations and day-to-day interactions with tenants” does not rise to the level of inclusion of these Respondents in this action.

57. Respondents MGNY Consulting Corp., and Respondent Yuri Geylik have absolutely no control—direct or indirect—over the subject building. Mr. Yuri Geylik has absolutely no involvement regarding the day-to-day management of the subject building such that would make him personally liable in this proceeding. See Geylik Affirmation.

58. There is absolutely no nexus between “engaging in conversations” and “interactions with tenants” and having control over the subject building.

59. Respondents MGNY Consulting Corp. nor Yuri Geylik are the owner, the registered managing agent, or the head officer of the subject building.

60. Accordingly, the Respondents MGNY Consulting Corp., and Yuri Geylik are all improper parties in this proceeding.

**WHEREFORE**, the Respondents respectfully request that Petitioners’ motion be denied in its entirety, together with such other and further relief as this court deems just and proper under the circumstances.

Dated: New York, New York  
August 11, 2025

Yours etc.,

**KUCKER, MARINO, WINIARSKY &  
BITTENS, LLP**

*Attorneys for the Respondents*  
747 Third Avenue, 12<sup>th</sup> floor  
New York, New York 10017  
212-869-5030

*M. David Fonseca*  
M. DAVID FONSECA