Civil Court of the City of New York
County of New York
Part: F Room: 523
Date: August 19, 2025

Index #: **LT-306106-25/NY**
Motion Seq #: 1 & 2

Decision/Order

109E9 LLC,

Petitioner(s)

-against-

SHIRAS PATTERSON BECKWITH, "JOHN DOE" and/or "JANE DOE",

Respondent(s)

Present: Tracy E. Ferdinand
Judge

Recitation, as required by CPLR 2219(A), of the papers considered in the review of this Motion and Cross-Motion:

PAPERS	NUMBERED
Notice of Motion and Affidavits Annexed	1 (9-24)
Order to Show Cause and Affidavits Annexed	
Notice of Cross-Motion, Answering Affidavit/Affirmations	2 (26-45)
Answering Affidavits/Affirmation	3 (47-48)
Replying Affidavit/Affirmation	4 (49-53); 5 (55)
Stipulations	
Other	

Upon the foregoing cited papers, the Decision/Order in this Motion and Cross-Motion is as follows:

RELEVANT FACTS AND PROCEDURAL HISTORY

Petitioner commenced this non-primary residence holdover proceeding seeking possession of the premises known as 109 East 9th Street, New York, New York 10003 ("Building") Apt 2E ("Apartment") on or around April 4, 2025. (*NYSCEF Docs. Nos. 1–4*). In Petitioner's Notice of Intention to Discontinue a Hotel tenancy and to Commence an Action or Proceeding Based upon Non-Primary Residence ("Notice"), Petitioner alleges that the Respondent Shiras Patterson Beckwith does not primarily reside in the Apartment. (*NYSCEF Doc. No. 1* at pgs. 5-7).

Respondent, through counsel, interposed a Verified Answer to the Petition alleging, *inter alia*, that Petitioner failed to state a claim of non-primary residence because it "fails to establish that Mr. Beckwith maintains a primary residence at 401 West 130th Street or at any other location besides the subject premises…" (*NYSCEF Doc. No. 6*). Respondent thereafter filed a motion to dismiss pursuant to CPLR §§ 3211(a)(2) and (a)(7) and 3212 or in the alternative for leave to conduct discovery. (*NYSCEF Docs. Nos. 9-24*). Petitioner opposed and cross-moved for leave to conduct discovery. (*NYSCEF Docs. Nos. 26-46*).

This proceeding is brought pursuant to NYCRR 9 § 2524.4(c) which reads, in relevant part:

> "The owner shall not be required to offer a renewal lease to a tenant, or in hotels, to continue a hotel tenancy, and may commence an action or proceeding to recover possession in a court of competent jurisdiction, upon the expiration of the existing lease term, if any, after serving the

tenant with a notice as required pursuant to section 2524.2 of this Part, only on one or more of the following grounds:

(c) Primary residence. The housing accommodation is not occupied by the tenant, not including subtenants or occupants, as his or her primary residence, as determined by a court of competent jurisdiction;…"

In support, the Notice asserts:

PLEASE TAKE NOTICE, that 109E9 LLC ("Landlord"), the landlord of 109 East 9th Street, Apartment #2E, New York, New York 10003 (hereinafter "subject premises") elects to discontinue and terminate your hotel tenancy as same is defined in Sections 2520.6(b), 2520.6(j), and 2521.3(c) of the Rent Stabilization Code, on March 31, 2025, based upon your non-primary residence of the subject premises in that you do not maintain the subject premises as your primary residence. The facts supporting this conclusion include, but are not limited to the following:

1. Agents for the Landlords have not observed Tenant SHIRAS PATTERSON BECKWITH ("Tenant") occupying the subject premises as his primary residence for an extended period of time.

2. Upon information and belief, Tenant primarily resides at The Towers, located at 401 West 130th Street, New York, New York 10027 ("alternative address"), a residential hall on the South Campus of The City College of New York ("CCNY").

a. Upon information and belief, Tenant is currently employed full-time as a Lecturer at CCNY, located at 160 Convent Avenue, New York, New York 10031.

b. Upon information and belief, Tenant was provided with faculty housing at the alternative address.

3. Landlord's agents and security cameras installed by the Landlord have not observed Tenant residing at the subject premises. Instead, Tenant has been observed visiting the subject premises once or twice a month.

a. Upon information and belief, Tenant receives mail addressed to Amy Beth Gartrell ("Amy") at the subject premises, although Amy does not reside at the subject premises.

b. Upon information and belief, Tenant use these visits to check the mail and drop off rent check, with each visit lasting approximately fifteen minutes.

DISCUSSION

Motion to Dismiss

Respondent first challenges the court's subject matter jurisdiction pursuant to CPLR 3211(a)(2). Neither the affirmation or affidavit in support, nor the Memorandum of Law explain or establish a basis for dismissal on this ground. (see, *Kace Realty Co. v Levy*, 130 Misc 2d 858 [App Term 1986]).

Respondent next argues that the pleadings fail to state a cause of action for non-primary residence and must be dismissed. Respondent argues that the predicate notice fails to allege, with sufficient particularity, the basis for Petitioner's claims that the Respondent is not primarily residing in the Apartment.

"In general, on a CPLR 3211 motion to dismiss, the pleading should be construed liberally, and the facts as alleged in the complaint are presumed to be true and are accorded the benefit of every possible favorable inference." (CPLR 3026; *Rovello v Orofino Realty Co.,* 40 NY2d 633, 634). Where documentary evidence flatly contradicts the factual claims, the entitlement to the presumption of truth and the favorable inference is rebutted (*Ullmann v Norma Kamali, Inc.,* 207 AD2d 691, 692). The applicable standard for determining a CPLR § 3211(a)(7) motion is whether, within the four corners of the complaint, any cognizable cause of action has been stated (*Guggenheimer v Ginzburg,* 43 NY2d 268, 275; *Morone v Morone,* 50 NY2d 481).

The pleadings must be reasonable to comport with due process, including containing case-specific factual allegations rather than merely a resuscitation of the statute or lease provision. (*See Broderick v Lemkau-Kidd Corp*, 267 AD 91 [1st Dept 1943]). "Reasonableness" is a fact-specific determination based on the totality of the circumstances rather than a "bright-line rule." (*Riverbay Corp. v Frere*, 79 Misc 3d 1218[A], 2023 NY Slip Op 50655[U], at *3 [Civ Ct, BX County] [citing *Hughes v Lenox Hill Hosp.*, 226 AD2d 4, 18, 651 NYS2d 418 [1st Dept 1996]). In determining whether a predicate notice has met the minimum standard of reasonableness, the notice taken as a whole must "adequately apprise[] the tenant of the grounds upon which the case is based, thus permitting them to prepare a defense." (*Id.* citing *Jewish Theological Seminary of Am. V Fitzer*, 258 AD2d 337, 338, 685 NYS2d 215 [1st Dept 1999]).

Here, despite Respondent's arguments to the contrary, the Notice cites to the specific provisions of the Rent Stabilization Code ("RSC") which the proceeding is based. Petitioner alleges in factual support that Respondent has not been observed occupying the Apartment for an extended period. Further, and upon information and belief, that Respondent has been provided faculty housing through his employment at The City College of New York ("CCNY") and resides at an alternate address on West 130th Street. The Notice also states that Respondent receives mail at the Apartment addressed to a third party and that the Respondent has only been seen at the Building checking the mail and dropping off his rent checks. Within the four-corners of the Notice, Petitioner alleges that Respondent has not been seen occupying the Apartment and instead resides at specified alternate address. The Notice sufficiently sets forth the legal and factual basis to adequately apprise Respondent of the allegations against him based on illegal occupancy thus enabling Respondent to properly mount a defense.

Summary Judgment

Respondent next moves for summary judgment dismissing the Petition arguing that Respondent does not reside at 401 West 130th Street, New York, New York 10027 ("The Towers") as stated in the Notice, that the balance of the allegations in the Notice lack specificity to establish Petitioner's claim and finally that Respondent has provided evidence conclusively establishing that he primarily resides at the Apartment.

In support of his claim that he does not reside in The Towers Respondent annexes a letter from CCNY confirming Respondent's employment but stating that the university does not provide faculty housing. (*NYSCEF Doc 16*). Respondent also attaches a photocopy of an email from "The Towers Team" stating that they have no record of Respondent ever residing at The Towers. (*NYSCEF Doc. 20*).

In support of his defense that he maintains the Apartment as his primary residence Respondent annexes his affirmation in support, photocopies of the front of his NYS Driver's license, redacted US tax return forms for 2021-2023, W-2 statements for 2021-2024, a screenshot of his voter's registration information, a 2025 juror summons, and a letter verifying Respondent's employment and confirmation of his address on file with CCNY. (*NYSCEF Doc. 11 -16*).

It is well established that to obtain summary judgment, "the movant [must] establish his cause of action of defense 'sufficiently to warrant the court as a matter of law in directing judgment' in his favor, and he must do so by tender of evidentiary proof in admissible form." (*Zuckerman v New York*, 49 NY2d 557, 562 [1980][citing CPLR §

3212(b)]). "Failure to make such a *prima facie* showing requires a denial of the motion, regardless of the sufficiency

of the opposing papers." (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986][emphasis added]).

None of the proof offered by Respondent in support of his motion is in evidentiary form or facially dispositive of Respondent's primary residence claim. Further, Petitioner's opposition creates an issue of fact regarding the nature and extent of Respondent's usage of the Apartment sufficient to require a trial.

Discovery

Both Petitioner and Respondent move for discovery on the issue of Respondent's primary residence.

Discovery in a summary proceeding is only available by leave of court. (CPLR § 408). In determining whether a party is entitled to discovery, courts use the "ample need" test as set forth in *New York Univ. v Farkas*. The *Farkas* factors that the Court must consider are: 1) whether there are facts to establish a cause of action; 2) whether there is a need for information directly related to the cause of action; 3) whether disclosure is carefully tailored; and 4) whether prejudice to either party will result from granting disclosure. (*New York University v Farkas*, 468 NYS2d 808, 810 [Civ Ct NY County 1983]).

Generally, ample need is established where "it is clear that [the occupants] possess particular knowledge which could shed light on the occupancy issues raised . . . . [T]he use made of the premises are peculiarly within respondent's knowledge." (656 W Realty, LLC v Blanco, 932 NYS2d 763, 763 [1st Dept 2011] [internal citations omitted]). (*See also, Ludor Props. LLC v De Brito*, 48 Misc 3d 142[A], 2015 NY Slip Op 51261[U], at *1 [1st Dept 2015]).

Both parties here, to the extent that they are seeking documents within the custody and control of the other, have established ample need under the *Farkas* test. The court will prune Petitioner's Notice of Discovery and Inspection as some of the demand is overbroad, irrelevant or unduly burdensome.

Petitioner's demand numbers 27; 28; 36; 46; 59 and 61 are stricken.

Accordingly, it is

ORDERED, that Respondent's motion to dismiss is denied; and it is further

ORDERED, that Respondent's motion for summary judgment is denied; and it is further

ORDERED, that both Petitioner and Respondent's motion for discovery are granted. Respondent's Notice to Produce and Demand for Interrogatories are deemed served and filed; Petitioner's Notice of Discovery and Inspection as modified herein and Notice of Deposition are deemed served and filed. Documents/Responses are due to opposing counsels within 45 days of the date of this Order, Respondent's deposition to be scheduled within two weeks thereafter. Petitioner's request for judicial subpoenas is denied without prejudice.

The proceeding is marked off calendar pending completion of discovery and may be restored by two attorney stipulation or by notice of motion.

This constitutes the Decision and Order of this Court.

Date: September 16, 2025

HON. TRACY FERDINAND
JUDGE, HOUSING COURT

Judge, Civil/Housing Court