

**Spencer Condominium v Hazen**

2012 NY Slip Op 33621(U)

September 25, 2012

Sup Ct, New York County

Docket Number: 111644/2009

Judge: Debra A. James

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK – NEW YORK COUNTY

PRESENT: DEBRA A. JAMES  
Justice

PART 59

THE SPENCER CONDOMINIUM,  
Plaintiff,

- v -

ELIZABETH HAZEN,  
Defendant.

Index No.: 111644/2009

Motion Date: 04/24/12

Motion Seq. No.: 007

Motion Cal. No.: \_\_\_\_\_

**FILED**

The following papers, numbered 1 to 5 were read on this motion to reargue/renew and cross motion to resettle order dated July 26, 2011.

SEP 28 2012

PAPERS NUMBERED

NEW YORK

COUNTY CLERKS OFFICE

Notice of Motion/Order to Show Cause -Affidavits -Exhibits \_\_\_\_\_

Notice of Cross Motion/Answering Affidavits - Exhibits \_\_\_\_\_

Replying Affidavits - Exhibits \_\_\_\_\_

2, 3

4, 5

Cross-Motion:  Yes  No

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Upon the foregoing papers, the defendant moves to renew and reargue this court's order entered on October 5, 2011, and plaintiff cross moves to resettle such order. The court grants defendant's motion for reargument, and upon reargument, recalls and vacates the Order of October 5, 2011, and grants plaintiff partial summary judgment on its first cause of action against defendant in the amount of \$37,744.34 in common charges, base rent, assessment and late fees for the period of September 2009 through September 2010, and an order directing defendant to pay common charges/use and occupation *pendent lite*. The court denies plaintiff's cross motion to resettle.

Defendant's counterclaims, sworn to on October 5, 2009, as well as her affidavit of October 4, 2010 submitted on her prior motion allege defamation, humiliation, harassment, abuse and even "torture" by the members of the board of managers, including the comedienne Joan Rivers. However, she raises no issue of fact that tends

Check One:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST  REFERENCE

SETTLE/SUBMIT ORDER/JUDG.

to refute that she "remained in full possession of the... premises at all times". Jerulee Co. v. Sanchez, 43 AD3d 328 (1<sup>st</sup> Dept 2007). In fact, upon renewal, plaintiff submits evidence not only that defendant did not abandon the premises but also that she signed a deed that purports to convey title to the premises to another individual in August 2011. In addition, plaintiff is entitled to receive common charges *pendent lite*, notwithstanding any counterclaims or defenses that defendant may have to the complaint. Frisch v Bellmarc Management, Inc., 190 AD2d 383 (1<sup>st</sup> Dept 1993). Defendant is correct, however, that she is entitled to a hearing to determine reasonable use and occupation, which has accrued since October 2010. Trump CPS LLP v Meyer, 249 AD2d 22 (1<sup>st</sup> Dept 1998).

Plaintiff's motion for resettlement of the Order entered on October 5, 2011 is denied as the court improvidently computed common charge use and occupation without an evidentiary hearing.

Based on the foregoing, it is hereby

ORDERED that plaintiff's motion seeking partial summary judgment on its first cause of action is granted and it is ordered that defendant is liable to plaintiff in the amount of \$37,744.34 in common charges, base rent, assessment and late fees for the period of September 2009 through September 2010; and it is further

ORDERED that plaintiff's motion seeking an order compelling defendant to pay use and occupation, i.e. common charges, base rent, and assessments *pendent lite* is granted and pursuant to CPLR 4317(b) the question of the amount of reasonable use and occupation/common charges, from October 2010 to date is referred to hear and determine to the Special Referee Clerk (Room 119M, 646-386-3028 or [spref@courts.state.ny.us](mailto:spref@courts.state.ny.us)) for placement at the earliest possible date upon the calendar of the Special Referees Part (Part SRP), which, in accordance with the Rules of the Part (which are posted on the website of this court at [www.nycourts.gov/supctmanh](http://www.nycourts.gov/supctmanh) at

the "References" link under "Courthouse Procedures), shall assign this matter to an available JHO/Special Referee to hear and report as specified above; and it is further

ORDERED that counsel shall immediately consult one another and counsel for defendant, within 15 days from the date of this order, serve upon defense counsel, and submit, a copy of this order with notice of entry, together with a completed Information Sheet<sup>1</sup> and proof of service, with the Special Referee Clerk in the Motion Support Office (Room 119M), and as soon as practicable thereafter, the Special Referee shall advise counsel for the parties of the date fixed for the appearance of the matter upon the calendar of the Special Referee Part, and it is further

ORDERED that the parties shall appear for the reference hearing, including with all witnesses and evidence they seek to present, and shall be ready to proceed, on the date fixed by the Special Referee Clerk subject to any adjournment that may be authorized by the Special Referee Part in accordance with the Rules of that part; and it is further

ORDERED that the hearing will be conducted in the same manner as a trial before a Justice without a jury [CPLR 4320(a)] and, except as otherwise directed by the

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<sup>1</sup>Copies are available in Rm. 119M at 60 Centre Street and on the Court's website at [www.nycourts.gov/supctmanh](http://www.nycourts.gov/supctmanh) under the "References" section of the "Courthouse Procedures" link.

assigned JHO/Special Referee for good cause shown, the trial of the issue(s) specified above shall proceed day to day until completion.

Dated: September 25, 2012

ENTER:

*Debra A. James*  
J.S.C.

**DEBRA A. JAMES**

**FILED**  
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COUNTY CLERK'S OFFICE