

**Eter Inc v Nowik**

2020 NY Slip Op 34500(U)

September 10, 2020

Civil Court of the City of New York Queens County

Docket Number: L&T 58527/19

Judge: Clinton J. Guthrie

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This opinion is uncorrected and not selected for official publication.

CIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF QUEENS: HOUSING PART A

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ETER INC,

Petitioner,

Index No. L&T 58527/19

-against-

**DECISION/ORDER**

KAZIMIERZ NOWIK,

Respondent.

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Present:

Hon. CLINTON J. GUTHRIE  
Judge, Housing Court

Recitation, as required by CPLR § 2219(a), of the papers considered in the review of Respondent’s motion for leave to reargue pursuant to CPLR § 2221(d):

<b>Papers</b>	<b>Numbered</b>
Notice of Motion & Memorandum of Law/Affirmation/Exhibits Annexed.....	<u>1</u>
Affirmation in Opposition.....	<u>2</u>
Affirmation in Reply & Exhibits Annexed.....	<u>3</u>

Upon the foregoing cited papers, the decision and order on Respondent’s motion for leave to reargue is as follows.

PROCEDURAL HISTORY

This nonpayment proceeding was commenced in April 2019. Respondent, through counsel, made a motion to amend his answer and for discovery on June 10, 2019. Following extensive briefing and settlement negotiations by counsel, the Court heard argument on Respondent’s motion on January 22, 2020. By Decision/Order dated April 29, 2020, the court granted Respondent’s

motion to amend the answer but struck three affirmative defenses and a counterclaim, and denied Respondent's motion for discovery. Respondent now moves to reargue the court's April 29, 2020 Decision/Order, specifically the striking of Respondent's rent overcharge affirmative defense and counterclaim and the denial of Respondent's motion for discovery. Petitioner submitted opposition papers and Respondent submitted a reply.<sup>1</sup> The court heard argument on the motion to reargue via Skype on September 9, 2020 and reserved decision.

### ANALYSIS

Pursuant to CPLR § 2221(d)(2), a motion for leave to reargue "shall be based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion, but shall not include any matters of fact not offered on the prior motion." Upon a review of the papers submitted upon Respondent's motion, the court grants the motion to the extent of restoring the proceeding for reargument. However, upon reargument, the court holds that it did not overlook or misapprehend any matters of fact or law in determining the prior motion by Decision/Order dated April 29, 2020. To the extent that Respondent argues that the court's reliance on the Appellate Term, First Department's opinion in *West 88A LLC v. Doe*, 64 Misc 3d 73 [App Term, 1st Dept 2019] was misplaced, insofar as the opinion was not "binding" in the Second Judicial Department, the court disagrees. Even if not binding, the opinion is entitled to "great deference," especially when the facts in *West 88A LLC* are substantially similar to those at bar. *See People v. Pestana*, 195 Misc 2d 833, 839 [Crim Ct, NY County 2003]. Moreover, as the court indicated on Page 10 of the April 29, 2020 Decision/Order, Respondent is not precluded from pursuing a fair

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<sup>1</sup> All pleadings relevant to the instant motion were filed on the Electronic Document Delivery System (EDDS).

market rent appeal, which multiple appellate courts have endorsed as the appropriate mechanism used by DHCR for challenging an initial rent-stabilized rent. *See Tzifil Realty Corp. v. N.Y. State Div. of Hous. & Cmty. Renewal*, 295 AD2d 353 [2d Dept 2002]; *Matter of 1781 Riverside, L.L.C. v. N.Y. State Div. of Hous. & Cmty. Renewal*, 287 AD2d 255 [1st Dept 2001]; *Matter of Jemrock Realty Co. v. State Div. of Hous. & Cmty. Renewal*, 169 AD2d 679 [1st Dept 1991], *lv denied* 78 NY2d 852 [1991].

Accordingly, the court adheres to its prior determinations contained in the April 29, 2020 Decision/Order and Respondent’s request, upon reargument, to modify any portions of that Decision/Order is denied. The proceeding will be restored for a conference pursuant to Administrative Order 160A/20 in Part A. Counsel for the parties will receive a notification of the conference from Part A.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

Dated: Queens, New York  
September 10, 2020

  
HON. CLINTON J. GUTHRIE, J.H.C.

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**SO ORDERED - HON. CLINTON J. GUTHRIE**

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