

**Harlem Congregations for Community Improvement,
Inc. v Quackenbush**

2023 NY Slip Op 31434(U)

April 28, 2023

Civil Court of the City of New York, New York County

Docket Number: Index No. L&T 72585/2018

Judge: Frances Ortiz

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

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HARLEM CONGREGATIONS FOR
COMMUNITY IMPROVEMENT, INC.

Index No. 72585/2018

Petitioner, Landlord

DECISION AND ORDER

-against-

KRISTEN QUACKENBUSH, ERIC HALO,
JOHN DOE, JANE DOE

Respondents

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FRANCES A. ORTIZ, JUDGE

Recitation as required by CPLR 2219(a), of the papers considered in the review of Respondent’s,
Kristen Quackenbush’s, motion for directed verdict.

Papers	Numbered
Notice of Motion, Affirmation, Affidavit in Support & Exhibits.....	1/ NYSCEF 15-29
Respondent’s Affirmation, Affidavit in Opposition & Exhibits.....	2/ NYSCEF 30-32
Reply Affirmation.....	3/ NYSCEF 34

Upon the foregoing cited papers, the Decision/Order of this Court on this motion is as follows:

This is a holdover proceeding brought by Harlem Congregation for Community Improvement, Inc., (“Petitioner”) against Kristen Quackenbush, Eric Halo, John Doe and Jane Doe, (“Respondents”) seeking possession of 2890 Frederick Douglas Boulevard, apt. 4G, New York, NY 10039 (“subject premises”).

According to the Petition, Respondents are occupants of the subject premises.

Specifically, paragraph five (5) of the Petition states:

Respondents' right of possession, and the term for which the subject premises were rent, terminated, pursuant to a Ten (10) Day Notice to Quit, effective August 31, 2018, for reasons stated therein, namely that the respondents' right to possession as a licensee was subject to Kristen Quackenbush's participation in the HARLEM CONGREGATIONS FOR COMMUNITY IMPROVEMENT, INC. scatter site housing program. Kristen Quackenbush is no longer a participant in that program.

Additionally, the Petition plead in paragraph ten (10) the following:

HCCI has an agreement with the New York Human Resources Administration for housing participants in the HCCI Scatter Site Program. HCCI followed the HR procedure for terminating Kristen Quackenbush from the Scatter Site Housing Program.

Respondents, Kristen Quackenbush and Eric Halo, each appeared with separate counsel who filed written answers on their behalf. Also, Kristen Quackenbush and Eric Halo were appointed an Article 12 CPLR Guardian Ad Litem in this proceeding. The matter was referred to the trial part and the trial began on January 17, 2023. Petitioner offered several ¹ documents into evidence and the testimony of one witness.

Nuri Ansari testified on behalf of the Petitioner and through his testimony *Petitioner's 1* was admitted into evidence. *Petitioner's 1* is a Renewal Lease dated December 15, 2016 between the tenant "HCCI Scattered Sites" and owner "Hurston Place Equities LLC" signed by HCCI ("Ms. James") on August 15, 2017 and owner's agent (Lakesha Baker) on August 16, 2017 for a two year lease commencing September 1, 2016 and ending August 31, 2018. Mr. Ansari testified that he is employed by HCCI as a community based organizer for Scattered Site Housing as Program Director; that HCCI has a relationship with New York City's, Human

¹ However, only one document was admitted into evidence over the objection of Respondents.

Resources Administration (“HRA”) to provide independent living to program participants; that he is familiar with the subject premises and the Respondents; that he has been employed at the subject premises since 2018; that the “consumer” was absent from the subject premises for more than thirty (30) days so they had to notify HRA and then HRA sends notice to the consumer indicating it is removed from the program; that despite the notice, Ms. Quackenbush and Mr. Halo are currently still in possession; that Petitioner has not received any government agency payments of use and occupancy for the Respondents since 2018; and that Ms. Quackenbush is currently not a Scatter Site Program participant, that Mr. Halo was allowed into the subject premises due to an error and does not qualify as a consumer of the premises.

After the testimony of Nuri Ansari, the Petitioner rested. Immediately, thereafter, Respondents moved by oral motion for a directed verdict in their favor arguing that Petitioner had not sustained its *prima facie* burden in this proceeding. This Court per Decision and Order dated January 17, 2023 (*NYSCEF Doc. 14*) requested that Respondents file a written motion and provided for a briefing schedule, and once all papers were fully submitted the motion would be decided.

Respondents move pursuant to *CPLR 4401* arguing that Petitioner failed to meet its burden to prove a cause of action for termination of a license agreement between the parties. Specifically, they argue that Petitioner failed to show it is entitled to maintain this proceeding, as lessor of the premises entitled to possession, that it did not introduce the deed into evidence, that there is a lack of showing of privity of estate, that the lease from 2017 claims that Hurston Place Equities LLC is the owner with no such evidence in the record, that there is no proof that the Petitioner has a current lease for the subject premises in effect as of the date of the trial, that there is no proof that Hurston Place Equities LLC is the current owner of the subject premises

nor is there evidence that HCCI is the current tenant of record of the subject premises.

Respondents further argue that Kristen Quackenbush’s right to possession of the subject premises was subject to her participation in the HCCI scatter site housing program, that HCCI and HRA had an agreement to provide services for housing participants and that the Notice to Quit claims HCCI/Petitioner followed the HRA procedure for terminating the Respondents from the program but that the documentary and testimonial evidence at trial did not establish such a claim.

Specifically, Respondents argue that missing from Petitioner’s case was any evidence of the purported agreement between HCCI and HRA. Also, Respondents argue that Petitioner failed to provide in evidence the service agreement between HCCI and Kristen Quackenbush. Lastly, Respondents argue that the Petition claims the subject premises are rent stabilized but failed to offer into evidence a certified copy of the Division of Housing and Community Renewal (“DHCR”) rent history for the premises, that the lease entered into evidence list the tenant as “HCCI Scattered Sites” but that the Petitioner herein is Harlem Congregation for Community Improvement, Inc., and that there is no proof that Respondent – Eric Halo – was not a recipient of HCCI services as alleged.

Petitioner in opposition argues that it has maintained its burden at trial. Petitioner argues that the renewal lease (*Petitioner’s 1 in evidence*) established that Hurston Place, LLC and HCCI were the only parties to the lease; that the request by Respondents to produce the deed for the subject building is inappropriate because there is neither privity of estate or contract between Respondents and Petitioner and that there is no need to produce the deed; that Respondents were given a right of possession for a specific term subject to Kristen Quackenbush’s participation in the HCCI Scatter-Site Housing Program; that HCCI as a tenant allowed participants from

designated programs to use and occupy apartments subject to documented rules and regulation guidelines making Ms. Quackenbush a licensee; that Ms. Quackenbush lost her right to possession as a request of her failure to adhere to the rules and regulations of the program. As such, Petitioner argues that Respondents claim and motion for a directed verdict under *CPLR 4401* should be denied.

Under *CPLR § 4401*, a trial court may grant a judgment as a matter of law where it finds that, upon the evidence presented, there is no rational process by which the fact trier could base a finding in favor of the nonmoving party. *Szczerbiak v. Pilat*, 90 N.Y.2d 553 (1997). The moving party is permitted to move for a directed verdict with respect to such cause of action or issue, after the close of the evidence presented by the opposing party. *Cromedy v. City of New York*, 176 A.D.3d 545 (1st Dep't 2019); *Endothelix, Inc. v. Vasomedical, Inc.*, 202 A.D.3d 620 (1st Dep't 2022).

Here, based upon the evidence presented by the Petitioner at trial and after the close of Petitioner's case, there is no rational process by which this Court as the fact trier can find in favor of Petitioner. *Szczerbiak v. Pilat*, *supra*. Specifically, Petitioner failed to present adequate testimonial and documentary evidence that Kristen Quackenbush's right to possession of the subject premises was subject to her participation in the HCCI scatter site housing program, that HCCI and HRA had an agreement to provide services for housing participants, that HCCI/Petitioner followed the HR procedure for terminating the Respondents from the program, and that Ms. Quackenbush failed to adhere to the rules and regulations of the program. These were all claims asserted in the Notice to Quit and the Petition as a basis to terminate Ms. Quackenbush's license. Moreover, Petitioner did not produce at trial the agreement between HCCI and HRA that was alluded in the Notice to Quit and Petition nor the service agreement

between HCCI and Kristen Quackenbush. As such, Petitioner has failed to sustain the *prima facie* elements of the Petition and Respondents are awarded a directed judgment in their favor dismissing the Petition. *CPLR § 4401; Szczerbiak v. Pilat, supra.; Cromedy v. City of New York, supra.; Endothelix, Inc. v. Vasomedical, Inc., supra.*

Accordingly, Respondents' motion for a directed verdict is granted.

ORDERED: the Respondents' motion is granted and the Petition is dismissed.

This is the decision and order of this court. Copies of this decision will be uploaded to NYSCEF.

Date: April 28, 2023

New York, NY


Frances A. Ortiz
Judge, Housing Court

Judge, Civil/Housing Court

Frances Ortiz