CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF KINGS: HOUSING PART H

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JUDITH GRUNBAUM,

Petitioner-landlord,

-against-

JULES SKLOOT
Respondent-tenant,
70 South Elliot Place
Apt. Ground Floor Back
Brooklyn, NY 11217
-and-
"JOHN DOE" and/or "JANE DOE",
Respondents-undertenants.

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L&T Index No. 62648/16

NOTICE OF MOTION

PLEASE TAKE NOTICE, that upon the annexed affirmation of TAYLOR ANVID, dated February 12, 2018, the annexed exhibits, and upon all papers and proceedings heretofore had herein, the Respondent, by her attorney, will move this Court, in Part H thereof, Room 507 at 141 Livingston Street, Brooklyn, New York, February 14, 2018, at 9:30 a.m., or as soon thereafter as counsel can be heard, for an order:

(1) Pursuant to C.P.L.R. § 408, granting Respondent leave to conduct disclosure; and

(2) Granting such other and further relief as the Court deems just and proper.

Dated: February 14, 2018
Brooklyn, New York

BROOKLYN LEGAL SERVICES
Taylor Anvid
105 Court Street, 4th Floor
Brooklyn, NY 11201
(718) 237-5500
Attorneys for Respondent

TO:

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AFFIRMATION IN SUPPORT OF MOTION FOR DISCLOSURE

TAYLOR ANVID, an attorney duly licensed to practice law in the courts of this state, hereby swears to the following facts under penalty of perjury; and sets for the following facts and propositions of law:

1. I am of counsel to BROOKLYN LEGAL SERVICES, counsel to the Respondent JULES SKLOOT, and as such I am fully familiar with all the facts and circumstances of this case.

1. I make this affirmation in support of Respondent's motion for an order, pursuant to C.P.L.R. § 408, granting her leave to conduct disclosure in this holdover proceeding—including document requests annexed as Exhibit A and Examinations Before Trial—premised on the Petitioner's claim that it seeks possession of Respondent's apartment and the apartment building for her use or the use of her family.

PRELIMINARY STATEMENT

2. Petitioner brought an owner use holdover proceeding against each of the rent-stabilized tenants living at 70 South Elliot Place in the Fort Greene neighborhood of Brooklyn, New York by petition and notice of petition dated March 17, 2016, including Respondent Jules Skloot. Upon information and belief, the building at 70 South Elliot Place consists of at least six SRO units,[1] and these tenants have paid extremely affordable monthly rents, including rents as low as $150 to 300 per tenant.

3. Respondent Jules Skloot is a current tenant at the premises and resides in a unit on the first floor at the front of the building.

4. Petitioner alleges that she wishes to recover the building and evict all of the rent-stabilized tenants so that she and her family—consisting of four children and 30 grandchildren and great-grandchildren—can use this building as their home. In this owner's use case, Petitioner has the burden of establishing that it seeks the Respondent's apartment (and the other tenants' apartments) in good faith and that she has a good faith intention to occupy the apartment as her and her family's primary residence. Respondent moves for disclosure of essential information and documentation, as the facts related to the Respondent's defense—that Petitioner lacks a good faith basis of using the subject premises as the primary residence of herself, her four children, and her thirty grandchildren and great-grandchildren—are uniquely within the exclusive possession of Petitioner (and any adult relative that may be using the premises). The Court previously granted Respondents' first discovery request and Respondents now seek the documents or responses from the previous order that were not addressed and to depose the

[1] On HPD's website, the building is registered as having 9 B units. There are currently six tenants living in the building.

former owner of the building and a man who held himself out as the owner of the building prior to Petitioner's purchase.

PROCEDURAL HISTORY

5. By notice of petitions and petitions dated March 17, 2016, Petitioner brought individual holdover proceedings against the following tenants at 70 South Elliot Place in Brooklyn, New York: Respondent Jules Skloot, along with Heidi Chua, Jacob Hodes, Yashna Maya Padamsee, Lucas Shapiro, Sonny Singh, and David Suarez.

6. On the first court date, April 11, 2016, these holdover proceedings were adjourned for these tenants, including Respondent Jules Skloot, to obtain counsel. Your affiant's office was retained for each of the tenants, including Respondent, on or around May 25, 2016.

7. At the next court date, May 26, 2016, Respondent's counsel entered a notice of appearance on behalf of Respondent and all of the named tenants at 70 South Elliot Place. Respondent's motion to consolidate all of the individual holdover proceedings in front of the Honorable Howard Jacob Baum was granted on consent. On that same date in court, the parties by their respective counsel entered into a stipulation to schedule a motion briefing schedule.

8. On June 13, 2016, Respondent's counsel served an answer on Petitioner's counsel for each of the tenants and filed the same with this Court on June 14, 2016.

9. On July 18, 2016 the matter was adjourned until August 22, 2016 for Respondent's reply and on August 22, 2016 the court reserved decision on Respondent's discovery motion. Respondent's motion was granted on November 21, 2016 and the matter was marked off calendar for the parties to conduct discovery as directed by the court's order. See Exhibit A.

10. Respondent submitted its document request to Petitioner to which Petitioner provided two responses; the first on February 17, 2017 and the second on April 24, 2017.

11. Respondents deposed Petitioner on June 14, 2017 and July 19, 2017.

12. Petitioner provided its corrections to the official transcripts of those depositions on October 24, 2017.

13. Petitioner filed a Motion to Restore the proceeding to the calendar on October 20, 2017 and Respondents opposed the motion on November 1, 2017.

14. After argument the motion was granted to the extent of the matter was transferred to Judge Ortiz in Part H and Respondents were permitted to file another Motion for Discovery.

15. The parties discussed stipulating to the additional discovery but the agreement was not completed by the February 14, 2018 return date.

STATEMENT OF FACTS

16. Petitioner brought an owner use holdover proceeding against each of the rent-stabilized tenants living at 70 South Elliot Place in Brooklyn, New York, including Respondent Jules Skloot, by petition and notice of petition dated March 17, 2016. Upon information and belief, the building at 70 South Elliot Place was converted into a building containing Single Room Occupancy (SRO) units in the 1970s. Upon information and belief, since at least 1979, the building at 70 South Elliot Place has contained at least six SRO units[2] that have housed numerous tenants who have paid extremely affordable monthly rents ranging from $150 to 300 per tenant, and the building has served as a communal living and community center for the Fort Green community.

17. The current tenants at the premises are Respondent Jules Skloot, along with Heidi Chua, Jacob Hodes, Yashna Maya Padamsee, Lucas Shapiro, and Sonny Singh. Shruti Parekh is

[2] On HPD's website, the building is registered as having 9 B units. There are currently six tenants living in the building.

an under-tenant of Heidi Chua. David Suarez vacated the premises on December 31, 2014 and has signed a notarized affidavit of surrender to any tenancy rights at the premises.

18. Petitioner's Notice of Intention of Non-Renewal of Tenancy and Intent to Commence an Action or Proceeding Based on Owner's Personal Use and Occupancy ("Golub Notice") states that "the owner intends to use the subject premises for her own personal use and occupancy and primary residence and to accommodate her large family consisting of four (4) children and thirty (30) grandchildren and great-grandchildren." The Golub Notice continues, stating that the premises is "also conveniently located to her business dealings and is located close to her chosen temple, the Chabad Jewish Center of Fort Greene."

ARGUMENT

THE COURT SHOULD GRANT RESPONDENT LEAVE TO CONDUCT DISCLOSURE.

19. It is well-established that disclosure in summary proceedings is granted where ample need is shown. *See, e.g., Wei-Hua Wu v. Sanchez*, 32 Misc.3d 1205(A), 2011 WL 2556948, at *2 (Civ. Ct. Kings Co. May 20, 2011); *Smilow v. Ulrich*, 11 Misc.3d 179, 806 N.Y.S.2d 392(Civ. Ct. N.Y. Co. 2005); *Beretin v. Kuhlman*, N.Y.L.J. February 11, 1987, p.13 c.6 (Civ. Ct. Kings Co.); *Pamela Equities Corp. v. Louis Grey Co., Inc.*, 120 Misc.2d 281, 465 N.Y.S.2d 659 (Civ. Ct. N.Y. Co. 1983); *N.Y. Univ. v. Farkas*, 12 Misc.2d 643, 646, 468 N.Y.S.2d 08, 811 (Civ. Ct. N.Y. Co. 1983).

20. Although disclosure is unavailable as a matter of right in summary proceedings, "discovery is not '...inherently hostile to the nature of the summary proceeding.'" C.P.L.R. § 408; *N.Y. Univ. v. Farkas*, 121 Misc.2d 643, 645, 468 N.Y.S.2d 808, 811 (Civ. Ct. N.Y. Co.

1983) (citing *42 W. 15th St. Corp. v. Friedman*, 208 Misc. 123, 143 N.Y.S.2d 159 (App. Term 1st Dep't 1955).

21. While the purpose of the requirement is to make summary proceedings expedient and reduce costs, "no per se rule prohibits disclosure in summary proceedings, and 'a summary proceeding, despite its name, is nonetheless a judicial proceeding, and the ends of justice ought not be sacrificed to speed.'" *Smilow*, 11 Misc.3d at 182 (citing *42 W. 15th St. Corp.*, 208 Misc. at 125).

22. This is because, while "[t]he invention of the summary proceeding was designed to provide the landlord with a simple, expeditious and inexpensive means of regaining possession of his premises in cases where the tenant refused upon demand to pay rent, or where he wrongfully held over without permission after expiration of the term...[t]he fact of the matter is that summary proceedings, especially holdover cases, are rarely 'simple' cases of holding over after a term." *Farkas*, 12 Misc. 2d at 644-646.

23. As first set forth in the seminal case *N. Y. Univ. v. Farkas*, courts consider six factors when determining whether ample need has been met: whether (1) the movant has asserted facts to establish a cause of action or defense; (2) the movant has demonstrated a need to determine information directly related to the cause of action or defense; (3) the information requested is "carefully tailored and is likely to clarify the disputed facts"; (4) granting disclosure would lead to prejudice; (5) the court can alleviate prejudice; and (6) whether the court can structure discovery to protect pro se tenants against any adverse effects of a landlord's discovery request. *Farkas*, 12 Misc.2d at 647.

24. Courts have subsequently found that a showing of ample need does not always require the existence of all six *Farkas* factors. *See, e.g., IA2 Serv. LLC v. Quinapanta*, 51

Misc.3d 1222(A), 2016 WL 2905664, at *2 (Civ. Ct. Kings Co. May 3, 2016) ("Not all of the *Farkas* factors need to be met in order for the court to find ample need. Where the information sought is vital and within the knowledge of the other party or within the knowledge of a non-party witness ample need has been found.").

25. Here, the court granted Respondents' motion for discovery on November 21, 2016. See Exhibit A. Petitioner provided two sets of disclosures but did not address or give responsive documents pursuant to pages 4-7 of the order. Respondents also request to depose two persons whose relationship with the building was outlined in more detail during Petitioner's deposition.

Disclosure is Liberally Granted in Owner's Use Proceedings.

26. "Disclosure in owner-use proceedings is now routine." *Smilow*, 11 Misc.3d at 184.

27. This is so because the ground for eviction in an owner occupancy case is unique among the available grounds for eviction of a rent regulated tenant. Whereas most eviction proceedings are premised on the wrongful act or act of omission by the tenant, in an owner occupancy case the tenant has not been accused of any wrongdoing. Instead, it is the good faith intent and actions of the owner that are at issue—the owner has the burden of establishing that it is seeking the tenant's apartment in good faith and that it has a good faith intention to occupy the apartment as its primary residence. 9 N.Y.C.R.R. § 2524.4(a); *Prochner v. Pancerz*, 12 Misc.3d 139(A), 2006 WL 1892271, at *1 (App. Term 2d & 11th Jud. Dist. 2006) ("The burden was upon landlord to establish that he had a genuine intention to occupy the apartment as his primary residence."); *Chan v. Adossa*, 195 Misc.2d 590, 756 N.Y.2d 609 (App. Term 2d & 11th Jud. Dist. 2003); *Buffa v. Radoncic*, N.Y.L.J., June 27, 2001, p. 20, c. 6 (App. Term 2d & 11th Jud. Dist.).

28. Courts have widely held that "good faith" is a requirement of an owner's personal use application pursuant to Section 2524.4(a)(1) of the Rent Stabilization Code. *See, e.g., Nestor v. Britt*, 213 A.D.2d 255, 624 N.Y.S.2d 14 (1st Dep't 1995); *Crosby v. Hucko*, 189 Misc.2d 641, 643 (App. Term 1st Dep't) ("petitioners bear the burden of proof on the issue of their good-faith intent to occupy the apartment premises for personal use"); *Raffo v. McIntosh,* 3 Misc.3d 127(A), 2004 WL 906582, at *1 (App. Term 1st Dep't Apr. 12, 2004) ("landlord failed to establish by objective evidence the requisite good faith for recovery of tenants' stabilized apartment for the use and occupancy of her elderly parents."); *Wei-Hua Wu*, 32 Misc.3d 1205(A), 2011 WL 2556948, at *1; *Nealis v. Szpilowski*, 20 Misc.3d 1110(A), 867 N.Y.S.2d 18, 2008 WL 258 2468 (Civ. Ct. Kings Co. June 10, 2008); *Mozaffari v. Fisher*, 21 Misc.3d 2205(A) (Civ. Ct. NY Co. 2008); *Garner v. Berger* N.Y.L.J., July 15, 2002, p. 20, col. 3 (Civ. Ct. N.Y. Co.).

29. An owner satisfies the good faith requirement of 9 NYCRR 2524.4(a)(1) if "he or she seeks to gain possession with the honest or genuine intention to recover the tenant's premises for personal and/or family use." *Delavan v. Spirounias*, N.Y.L.J., Mar. 14, 2001, p. 19, c. 5 (Civ. Ct. NY Co.), citing *Delorenzo v. Famiglietti*, N.Y.L.J., May 1, 1996, p. 30, c. 3 (App. Term 1st Dep't); *Smilow*, 11 Misc.3d at 186; *Mozaffari v. Fisher*, 21 Misc.3d 1105(A), 2008 WL 4402749, at *5 (Civ. Ct. N.Y. Co. Sept. 5, 2008); *Pultz v. Economakis*, 8 Misc.3d 1022(A), 2005 WL 1845635, at *2 (Sup. Ct. N.Y. Co. June 20, 2005) (for there to be good faith, the landlord's "intent must be 'genuine' and not a subterfuge to remove tenants only to put the premises back on the market a short time thereafter.").

30. The owner carries a *prima facie* burden to establish by a preponderance of the evidence a good faith desire to recover the apartment for his or her own use. *Mozaffari*, 2008

WL at *5; *Nealis*, 20 Misc.3d 1110(A), at *3; 867 N.Y.S.2d 18 (Civ. Ct. Kings Co. 2008); *Minick v. Park*, N.Y.L.J., May 13, 1998, p. 31, c. 2 (Civ. Ct. Kings Co.).

31. In a holdover proceeding where the issue is the tenant's alleged wrongful conduct the tenant knows—without being given any detailed information—whether the owner's broad claims are true or not. By contrast, in an owner occupancy case, the tenant is ignorant of any of the underlying facts concerning the owner's alleged good faith or lack thereof.

32. Disclosure is crucial in owner occupancy cases because facts related to the tenant's central defense—namely, the owner's lack of good faith—are uniquely within the exclusive possession of the owner (and any adult relative that will also be using the apartment). As a result, the tenant must rely entirely upon the pleadings, the predicate notice, and the commonplace and prevailing practice of granting an examination before trial of the owner and his relatives, to be able to frame a defense.

33. Such exclusivity means that, in the absence of discovery, the tenant is in a position that so lacks the elements of a fair trial as to be almost unique in the law: the tenant is in the position of having to defend against a claim that depends entirely upon evidence under the landlord's control in a proceeding where the critical fact to be determined is the landlord's subjective good faith. *See Plaza Operating Partners, Ltd. v. IRM, Inc.*, 143 Misc.2d 22, 539 N.Y.S.2d 671 (Civ. Ct. N.Y. Co. 1989) (granting discovery on a non-party witness because without discovery, "respondent would be unable to adequately prepare for trial" and deposition).

34. For these reasons, courts regularly grant tenants' motions for disclosure so that the tenant has the opportunity to obtain information and facts related to the proposed use of the apartment in question, including the owners' good-faith intention to use the apartment for their personal use. *See e.g. Miller v. Vosooghi*, N.Y.L.J., Apr. 18, 2001, p.18, col.1 (App. Term 1st

Dep't) (discovery is appropriate in an owner occupancy holdover proceeding "since the operative facts as to Petitioner's intention to recover the apartment for his son's use are within Petitioner's exclusive knowledge"); *Bouton v. De Almo*, 12 Misc.3d 132(A), 2006 WL 1747493, at *1 (App. Term 1st Dep't June 26, 2006) (court's policy is to "favor[] disclosure in 'owner use' holdover proceedings"); *Teichman v. Ciapi,* 160 Misc.2d 182, 183 (App. Term 1st Dep't 1994) (holding that disclosure was necessary to determine whether landlords were acting in good faith); *Ohayon v. Rosenbloom,* N.Y.L.J., Feb. 8, 1991, p. 21, c. 3 (App. Term 1st Dep't) (granting tenant's motion for disclosure where tenant needs information to defend against landlord's claim of good faith); *Nestor v. Britt*, N.Y.L.J., Apr. 24, 1990 (App. Term 1st Dep't) (granting tenant leave to conduct discovery so that "factual circumstances alleged to exist by petitioners can be fleshed out"); *Smilow*, 11 Misc.3d at 184; *Perlman v. Martinez*, N.Y.L.J., Jan. 6, 1999, p. 27, c. 6 (Civ. Ct. Kings Co.) (holding that tenant demonstrated ample need because landlord and landlord's son had exclusive knowledge about who intended to occupy subject apartment); *Harris v. Bigelow*, 135 Misc.2d 331, 515 N.Y.S.2d 176 (Civ. Ct. N.Y. Co. 1987) (discovery granted in a owner-occupancy proceeding where "Respondent has provided evidence that Petitioner's primary residence may be elsewhere" than where Petitioner claimed); *Beretin v. Kuhlman*, N.Y.L.J., Feb. 11, 1997, p. 13, col. 6 (Civ. Ct. Kings Co.) (discovery granted in an owner-occupancy case, on the issue of whether the Landlord has harassed the Tenant).

35. "The scope of discovery in an owner's use proceeding is not limited to the named petitioner-landlord. The scope may also include nonparties who will aid in determining facts related to the cause of action." *Smilow,* 11 Misc.3d at 188-89 (granting deposition of petitioner's wife where petitioner wanted to recover the apartment for himself and his wife). *See also Wei-Hua Wu v. Sanchez*, 32 Misc.3d 1205(A), 2011 WL 2556948, at *1 (granting tenant's motion to

depose landlord's daughter as a non-party witness where the daughter had knowledge concerning the family's proposed use of the apartment); *IA2 Serv. LLC v. Quinapanta*, 51 Misc.3d 1222(A), 2016 WL 2905664, at *2 (Civ. Ct. Kings Co. May 3, 2016) ("Not all of the *Farkas* factors need to be met in order for the court to find ample need. Where the information sought is vital and within the knowledge of the other party or within the knowledge of a non-party witness ample need has been found.").

36. These repeated holdings establish the standard that a tenant seeking discovery must meet in an owner's use case. The tenant, who has been sued without having any knowledge of the landlord's plans or life circumstances, or the contents of the landlord's records, need not establish that the tenant already has any proof concerning the landlord's lack of good faith. Rather, the tenant need only show that he or she has no access to the evidence that would support or negate the landlord's claim of good faith, and that discovery would lead to the production of evidence from which the trier of fact could draw reasonable inferences about whether the landlord's claim is supported by objective evidence.

37. The rationale for granting tenants disclosure in owner occupancy proceedings extends to all summary proceedings where information is within the sole control of one party, and reflects the broader policy concerns inherent in the general rule permitting liberal disclosure in proceeding governed by the C.P.L.R., namely "to prevent litigation from becoming a game by requiring parties and witnesses to shed their light before the trial so as to prevent surprise at it." DAVID SIEGEL, NEW YORK PRACTICE § 343 (1991).

38. Courts thus routinely grant disclosure in other contexts when information related to the claim or defense is within the sole custody, control, or possession of the party opposing disclosure, such as in proceedings based on allegations of non-primary residence. *See, e.g. 85th*

Estates Co. v. Kalsched, N.Y.L.J., May 18, 1992, p. 27, c. 4 (App. Term 1st Dept., per curiam) (granting landlord's motion for leave to conduct disclosure to determine whether respondent used rent-stabilized apartment improperly); *YMCA v. Buhler*, N.Y.L.J., July 10, 1986, p. 6, c. 3 (App. Term 1st Dep't); *Jump Assocs. v. Bigelow*, N.Y.L.J., Mar. 26, 1986, p. 11, c. 5 (App. Term 1st Dep't) (granting landlord discovery request in non-primary residence proceeding); *Rubino v. Eberle*, N.Y.L.J. January 18, 1990 p.24 c.1 (Civ. Ct. N.Y. Co.) ("evidence pertaining to alleged [illusory tenancy] scheme by its very nature . . . would be within the exclusive knowledge and possession of petitioner"); *Plaza Operating Partners*, 143 Misc.2d at 24 (granting discovery on a non-party witness because without discovery, "respondent would be unable to adequately prepare for trial" and deposition); *Pamela Equities Corp.*, 120 Misc.2d at 283, (granting disclosure in nonpayment proceeding involving complex rent calculations).

39. Respondents have ample need for disclosure. Respondent, along with the other tenants at the premises, has asserted a lack of good faith defense in this proceeding, a defense that can be supported only by access to information that is in the exclusive possession of Petitioner. The information requested in Exhibit B is likely to clarify whether Petitioner has a good faith basis for recovering this apartment for her and her family's use. The information contained in the requested documents and depositions is central to the issues that will be raised at trial.

Respondent Should Be Granted All of the Discovery Sought in the Court's Order and Further Depositions.

40. Substantively, the landlord's case depends on actual evidence, and not simply the self-serving declarations the landlord may make in the termination notice or on the witness stand. The courts have repeatedly held that an owner must do more than simply assert his or her good

faith in order to establish a *prima facie* case in an owner-occupancy proceeding. *Nestor v. Britt*, 213 A.D.2d 255, 624 N.Y.S.2d 14 (1st Dep't 1995), aff'g N.Y. L. J. Apr. 18, 1994, p. 27 col. 3 (App. Term 1st Dep't) (requiring objective factors to support a finding of good faith and finding that the landlord lacked good faith because of her "inability to offer a clear and consistent account of the use contemplated for tenant's apartment . . . we do not think it safe to say on this record that Petitioner Peggy Nestor unquestionably maintains her primary residence in the fifth floor apartment"); *Raffo*, 2004 WL 906582, at *1(in owner's use case, "landlord failed to establish by objective evidence the requisite good faith for recovery of tenants' stabilized apartment").

41. The discovery Respondent seeks is routine and well within the boundaries of the discovery that is ordinarily granted in an owner-use holdover proceeding.

A. The Court should enforce its order directing Petitioner to provide the responsive documents Petitioner failed to address in its document production

42. Court granted Respondents' discovery requests to the extent outlined in its Order dated November 21, 2016. Petitioner failed to provide any responsive documents regarding: 1) The documents used to induce Petitioner into entering into a mortgage with Mel for the building. (From Paragraph 1(d)); 2) Copies of the contract of sale and closing documents. The contract of sale is dated 4/24/14 and the closing is dated 9/3/15. (From Paragraph 1(f)); 3) Any further cost estimate reports/contracts/inspection reports related to alteration of the building for Petitioner's use. (From Paragraph 3(b)); 4) Documents/tickets/receipts reflecting how often she goes between Montreal and NYC, and where she stays in each place and if she has any ownership interest in any of those places; 5) Any additional documents regarding her use of the Chabad as outlined in paragraph 6. See bolded paragraphs in Exhibit B.

43. If Petitioner is unable or unwilling to produce the documents she should provide detailed answers as to why the relevant documents will not be produced.

44. Again, the Court already granted Respondents' request for these documents but Petitioner failed to provide them prior to restoring the case and declaring that discovery was complete. The Court should instruct Petitioner to provide the documents or provide compelling reasons as to why they should not be produced. To date these documents have not been provided and are integral to determining Petitioner's intention to move into the building for her personal residence.

B: Depositions Of The Prior Owner Of The Building And Petitioner's Associate Who Previously Held Himself Out To Be The Owner Of The Building

45. The essential inquiry in an owner-use proceeding is whether the landlord can establish, with objective evidence, a good faith intention to move into the tenant's apartment. *Nestor,* 213 A.D.2d 255. Proof that tends to show that the landlord is operating from a different motivation, such as from a motivation to recover a higher rent or to realize a higher sale price for a building, is therefore relevant.

46. As the Appellate Division, Second Department long ago stated: "[p]roof that a landlord is motivated by an intention other than to gain a place in which to live negates good faith." *Matter of Volpicelli v. Leventhal*, 48 A.D.2d 660, 360 N.Y.S.2d 541 (2d Dept. 1975). An owner-use proceeding cannot be used as a "subterfuge" to deregulate regulated apartments for financial reasons. *Sobel v. Mauri*, N.Y.L.J., Dec. 12, 1984, p. 10, col. 4 (App. Term 1st Dep't) (illustrating landlord's good faith by saying "nor is it a fair interpretation of the evidence to say that Mrs. Sobel is seeking the tenant's ouster so that she may replace him with another tenant who will pay a higher rent"); *Schwartz v. Seidman,* n.o.r., 2003 WL 22231538, 2003 N.Y. Slip

Op. 51277 (Civ. Ct. N.Y. Co.) ("[t]he intent must be genuine and not a subterfuge to remove occupant tenants."); *Pultz*, 2005 WL 1845635, at *2 (for there to be good faith, the landlord's "intent must be 'genuine' and not a subterfuge to remove tenants only to put the premises back on the market a short time thereafter.").

47. Here, Petitioner's deposition and documents provided in the first round of discovery indicated that Petitioner and the previous owner of the building have a continued financial relationship in that the previous owner, Mel, granted Petitioner a mortgage for the property for approximately $250,000. The documentation provided also showed that Mel had previously discussed selling the building as part of a bundle of properties that were being disposed by the estate. The person who purchases the other properties was Eli Leifer, who was listed as the owner of the subject premises for water billing.

48. Petitioner described Eli Leifer as her "broker" in her deposition. Mr. Leifer has also assisted her in purchasing other commercial properties in Brooklyn. Mr. Leifer made multiple visits to the building and spoke with Respondents stating he was the new owner of the building before Petitioner purchased the building. He was also the purchaser of the other properties sold as part of the "bundle" offered by the previous owner.

49. It is imperative to depose the previous owner of the building and Mr. Leifer to get a full understanding of the relationships between Mel, Petitioner, and Eli Leifer to determine whether this proceeding is a subterfuge to remove Respondents from occupancy, motivated by Petitioner's desire to profit from the premises.

CONCLUSION

50. Under relevant case law, Respondent is entitled to discover the financial, business, familial, and social considerations that were present in Petitioner's life when she made

the decision to attempt to evict all of the tenants at 70 South Elliot Place. As the Appellate Division, First Department held over 50 years ago in *ASCO Equities*, "for the Landlord to merely assert 'I intend thus and you cannot prove that I do not' is not enough. Law is much too experienced to give such finality to the words of mortal men." 285 A.D. at 385. Rather, the landlord should be compelled to furnish the documents requested, and Respondent's motion should be granted in its entirety.

WHEREFORE the undersigned requests that the Court grant the relief requested herein in its entirety.

Dated: February 12, 2018
Brooklyn, New York

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