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

TAMEIKA MCLEAN,

Petitioner,

-against-

A&E MANAGEMENT,

Respondent,

-and-

NYC DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT,

City-Respondent.

Index No. LT-002260-24/QU

DECISION/ORDER

HON. JORDAN M. DRESSLER, J.H.C.

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

Papers	Numbered [NYSCEF Doc. No.]
VERIFIED PETITION FOR ORDER TO SHOW CAUSE	1
RESPONDENT'S NOTICE OF MOTION TO DISMISS, SUPPORTING AFFIRMATIONS, AND EXHIBITS	2 [4-6]
PETITIONER'S AFFIDAVIT IN OPPOSITION	3

Background

Petitioner Tameika McLean, appearing in this matter *pro se*, commenced this HP proceeding by Verified Petition filed on October 11, 2024, seeking an order to correct alleged violations of the Housing Maintenance Code and a finding of harassment under Sections 27-2005(d) and 27-2004(a)(48) of the New York City Housing Maintenance Code against Respondent A&E Management, Petitioner's landlord. Petitioner used the checkboxes and boilerplate form language of the petition form to allege that Respondent, with intent to cause Petitioner to move out of her apartment, "failed to timely comply with NYC Admin. Code §27-2140[c] by failing to correct the conditions which made the apartment(s)/room(s) unlivable or unfit for habitation, which are described in the Vacate Order issued by DHPD pursuant to

NYC Admin Code §27-2139[b], and a violation of record has been issued for at least one of those conditions" and "repeatedly caused or permitted acts or omissions that substantially interfered with or disturbed the comfort, repose, peace or quiet of" Petitioner. In her own words, Petitioner alleged:

[She] was placed in a first floor apartment which is directly above the maintenance workers. [She] tried to bring it to management's attention about the extreme and excessive noise which includes loud conversing between the workers, banging of the exit door which makes the apt [sic] *vibrate and wakes [her] up out of [her] sleep which affects [her] health because [she] suffers from epilepsy. The management sarcastically told [her] to call nypd to make a noise complaint, plus more which [she] will discuss further in court.*

At conference on November 7, 2024, Respondent and Petitioner agreed that all Housing Maintenance Code violations in the subject apartment had been corrected, and the only remaining cause of action was harassment arising from the noise experienced by Petitioner. Thereafter Respondent filed a motion to dismiss this proceeding pursuant to CPLR § 3211(a)(7) for failure to state a cause of action, or in the alternative on the ground that the doctrine of *res judicata* bars petitioner from obtaining relief in the instant case. Petitioner filed an affidavit in opposition to the motion, which states in pertinent part:

I am opposing the information on the notice of motion to dismiss because there is still significant disturbances on behalf of the management team's maintenance staff below my apartment and it is of significant risk to my health. I suffer from stress triggered seizures and I need to bring this to the Judge's/court's attention.

After argument, the Court marked the motion fully submitted and reserved decision on the motion.

Discussion

Dismissal Due to Failure to State Cause of Action – CPLR § 3211(a)(7)

Respondent moves under CPLR § 3211(a)(7) for dismissal of the claims in the instant petition on the ground that the petition fails to state a cause of action. On a motion to dismiss for a failure to state a cause of action pursuant to CPLR § 3211(a)(7), the Court must deem the allegations of the petition as true and construe them in Petitioner's favor, affording Petitioner the benefit of "every reasonable inference," *Cortlandt St Recovery Corp v. Bonderman*, 31 N.Y.3d 30, 38, 73 N.Y.S.3d 95 (2018), and determine whether the facts as alleged fit any cognizable legal theory. *Martinez v NYC Health and Hospitals Corporation*, 223 A.D.3d 731, 732, 203 N.Y.S.3d 653 (2nd Dept. 2024).

Pursuant to the Housing Maintenance Code, Administrative Code of the City of New York (NYC Admin Code) § 27-2005(d), "[t]he owner of a dwelling shall not harass any tenants or persons lawfully entitled to occupancy of such dwelling as set forth in paragraph 48 of subdivision a of section 27-2004 of this chapter." *NYC Admin Code § 27-2005(d)*. The harassment statute "protects residential tenants from harassment by building owners," and was created "to address a perceived effort by landlords to empty rent-regulated apartments by harassing tenants into giving up their occupancy rights ...." *See Dani Lake LLC v Torres*, 64 Misc.3d 1231(A), 117 N.Y.S.3d 805 (Civ. Ct. Bronx Cty. 2019), *quoting Aguaiza v Vantage Props*, 69 A.D.3d 422, 423, 893 N.Y.S.2d 19 (1st Dept. 2010). NYC Admin Code § 27-200(a)(48) defines harassment, in sections relevant to the instant proceeding, as "repeated acts or

omissions of such significance as to substantially interfere with or disturb the comfort, repose, peace or quiet of any person lawfully entitled to occupancy of such dwelling unit and that cause or are intended to cause such person to vacate such dwelling unit or to surrender or waive any rights in relation to such occupancy[.]" *NYC Admin Code § 27-2004(a)(48)*.

Affording to Petitioner's claims the benefit of every reasonable inference and construing the allegations liberally in Petitioner's favor, the Court finds that Petitioner fails to establish a claim of harassment under the Housing Maintenance Code. Petitioner's petition and its elaboration in Petitioner's opposition to the motion describe her experience and perceptions of noises from speaking and the closing of doors arising from her apartment's proximity to the building's maintenance office. These noises bothered and disturbed Petitioner. The allegations, without more, fail to establish a claim for harassment within the meaning of the Housing Maintenance Code. Petitioner does not allege that the noises she has experienced are excessive in volume. Nor does she describe the frequency of these noises or provide any detail on the time of day when these noises take place. Accordingly, the Court finds that the Petitioner has failed to adequately state a cause of action for harassment against Respondent under the Housing Maintenance Code, and grants Respondent's motion to dismiss the petition pursuant to CPLR § 3211(a)(7). The Court need not address Respondent's motion to dismiss on the ground of *res judicata*.

Therefore, it is

ORDERED that Respondent's motion to dismiss is granted; and it is

ORDERED that the instant proceeding is dismissed.

The Clerk is directed to mail copies of this decision to the parties and upload the decision to NYSCEF. This constitutes the decision and order of the Court.

Dated: July 7, 2025
Jamaica, NY

HON. JORDAN M. DRESSLER
Judge, Housing Court