

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

X

In the Matter of the Application of the COMMISSIONER
OF THE DEPARTMENT OF HOUSING PRESERVATION
AND DEVELOPMENT OF THE CITY OF NEW YORK.

Petitioner,

L&T INDEX #HP33015/O1
DECISION

for a Judgment pursuant to Article 7A of the Real
Property Actions and Proceedings Law, appointing a
Court-designated administrator for the premises known as:
3569 DeKalb Avenue, Bronx, New York Block: 3329; Lot: 40
X

HON. EARDELL J. RASHFORD

This is respondent-owner's Quest Property Management V Corp. ("Quest") motion to set aside the appointment of the 7A Administrator ("7A"), to permit Quest to correct the violations, and for a court ordered inspection of the premises. Further. 3569 DeKalb Tenant Association ("tenants") moves for an order to be substituted as a party in place of the Department of Housing Preservation and Development ("DHPD"). DHPD opposes the branch of respondent's Quest motion for the removal of the 7A administration; but does not oppose the tenant's motion to be substituted as a party. Respondent Quest opposes the tenant's motion to be substituted as a party.

Since the appointment of the 7A on November 19, 2002, Quest alleges that it not only has substantially completed the electrical work, but corrected nearly all violations of record. Quest is willing to post a \$100,000.00 bond as security and it therefore reasons, that the 7A should

be removed. In support of its contention, Quest attaches a copy of a proposal from F&F Electrical Corporation (“F&F”). The proposal contains an estimate of the cost for completion of the electrical work. (i.e., \$75,000.00), a description of the work to be performed, and a time frame in which the work will be completed. Quest does not present any future plans to maintain the premises, nor any evidence that work has been commenced to correct the violations unrelated to the electrical work.

Although the appointment of the 7A was based primarily upon Quest’s failure to substantially complete the electrical work as required by the stipulations, there were other outstanding violations. Once the appointment is in place, the 7A is now responsible for ensuring that all of the outstanding violations are corrected, not just the electrical work.

In opposition, DHPD argues that the request to remove a 7A is granted when there is a prime facie showing that the reasons for the appointment no longer exist and that there is a plan for the continued maintenance of the building. See Swallow v Schnipper. NYLJ, 9/21/84, 14:4 (App. Term., 2nd Dept.); 940 St. Nicholas Ave. Tenants Assn. v. Dixon. NYLJ, 5/20/85, 13:5 (App. Term., 1st Dept.); and DHPD v 125-135W. 111th St., 8/31/94, 22:6 (Civ. Ct. NY Co.). Quest has not met the requirements for the removal of the 7A. It has not substantiated that all the violations have been corrected, nor has it presented a plan for the continued upkeep of the building once the repairs have been completed. As such, respondent’s motion for the removal of the 7A is denied.

The tenants move to be substituted as a party in lieu of DHPD. Quest in opposition, alleges that the tenants’ association has just been formed, and that the affidavits of the tenants are vague because they only refer to the list of violations for the entire building. Further, Quest questions whether the tenant’s association is a real organization. Pursuant to RPAPL §770 (2),

1/3 or more of the tenants may at any time petition to substitute themselves as a party in place of DHPD, unless good reason to the contrary will be shown. Here, Quest has not demonstrated any good reason why the tenants should not be substituted. The argument that the appointment is political is of no consequence. Quest has not provided enough evidence to support the removal of the 7A or presented any good cause to deny the substitution of the tenants as a party. Therefore, the tenant's motion to substitute their association as a party is granted.

Further, the electrical work under the conditions outlined in the December 20, 2002 interim order is to continue until completion. DHPD is to continue to inspect the subject premises at least three times a week. Quest may have access to observe the electrical work, but will not interfere with any of DHPD's and/or the 7A Administrator's operations. The 7A may also commence its other duties related to the removal of the violations in the premises forthwith. Either side may petition the court to inspect the premises at a later date. Presently, the court does not find it necessary to conduct an inspection.

This constitutes the decision and order of this court.

Dated: Bronx, New York

January 7, 2003

Hon. Eardell J. Rashford, J.H.C.