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<b>FS 41-45 Tiemann Place LLC v Estrella</b>
2012 NY Slip Op 22381
Decided on December 21, 2012
Appellate Term, First Department
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Decided on December 21, 2012

*SUPREME COURT, APPELLATE TERM, FIRST DEPARTMENT*

PRESENT: Lowe III, P.J., Shulman, Torres, JJ  
570539/11.

**FS 41-45 Tiemann Place LLC, Petitioner-Landlord-Appellant, - -**

**against**

**Teresa Estrella a/k/a Teresa Silverio, Respondent-Tenant-Respondent, - and - Jose M. Estrella,  
Ramon Estrella, "JOHN DOE" and/or "JANE DOE," Respondents-Undertenants.**

Landlord appeals from an order of the Civil Court of the City of New York, New York County (Arlene H. Hahn, J.), dated April 26, 2011, which granted tenant's motion for summary judgment dismissing the petition in a holdover summary proceeding.

Per Curiam.

Order (Arlene H. Hahn, J.), dated April 26, 2011, reversed, with \$10 costs, motion denied, and petition reinstated.

This holdover summary proceeding, premised upon the stabilized tenant's alleged nonprimary residence, is not ripe for summary dismissal. The limited record now before us raises several mixed

questions of law and fact, including whether the (unaccepted) renewal lease offer transmitted by a "back office" employee of the landlord's "large and complex" clerical operation was mistakenly or inadvertently mailed to tenant and, if so, the proper legal effect to be given to the landlord's prompt follow-up letter purporting to withdraw the offer and its subsequent, timely service of a combined notice of nonrenewal and termination detailing the facts underlying its nonprimary residence claim (*see generally Coleman v Dabrowski*, 163 Misc2d 763 [App Term, 1st Dept 1994]; *but compare Herman v Meryn*, NYLJ, July 29, 1994, at 21, col 1 [App Term, 1st Dept 1994])[lease renewal offer purposefully sent held binding upon landlord and "irrevocable for 60 days," citing Rent Stabilization Code [9 NYCRR] § 2523.5(a)]. While we have no occasion to determine the bona fides of these issues, we do note that the creation of a landlord-tenant relationship or, more precisely here, the renewal of a rent stabilized lease "should not be reduced to a matter of gamesmanship, seduction and artifice" (*Coleman v Dabrowski*, 163 Misc 2d at 765) or be made to hinge on "gotcha" litigation tactics. [\*2]

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

Decision Date: December 21, 2012