



Cats' Presence Obvious; Court Rejects Eviction

BY DANIEL WISE

A 71-YEAR-old woman who kept a litter box and feeding bowl for her two cats in plain view cannot be evicted from her rent-controlled apartment in the West Village for violating the "no-pets" clause of her lease, a divided appeals court has ruled.

The Appellate Term, First Department, last week rebuffed the owner of an apartment building at 184 West 10th St. who had sought to evict Siori Marvits from her apartment of the past 43 years because she has lived with two cats, Athena and Apollo, for the last decade.

At the heart of the dispute between the majority and the dissent was the question of how to interpret a New York City law enacted in 1983 to protect pet owners from evictions for

The decision will be published Wednesday.

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reasons other than a "no-pet" lease provision such as retaliation or to obtain control of a rent-regulated apartment.

The 1983 law, Administrative Code §27-2009.1[b], bars landlords from evicting tenants who have kept pets in their apartments "openly and notoriously" for at least three months.

In three separate opinions, totaling 28 pages, the panel divided, 2-1 in concluding that the owner, 184 West 10th Street Corp., had adequate notice that Ms. Marvits had two cats but had failed to commence an eviction proceeding within the required three-month period.

The unsigned per curiam majority opinion found that on several occa-

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sions in 2000 and again in 2003 the building's superintendent and a contractor used by the owner to handle minor repairs had an opportunity to view Apollo and Athena's litter box in the bathroom and their feeding bowls in the kitchen while inside Ms. Marvits' apartment.

The landlord had argued that the cats were shy and hid whenever he entered the apartment.

In dissent, Justice William P. McCooe wrote that the landlord did not have "even constructive knowledge" that Ms. Marvits had two cats "since any claimed evidence of knowledge is purely speculative."

In an impassioned concurring opinion, Justice Douglas McKeon took issue with Justice McCooe's conclusions, asserting they placed "a judicial seal of approval on the cruel Hobson's choice offered to Ms. Marvits by her landlord: leave or give up the cats."

Justice McCooe's analysis, Justice McKeon further wrote, leads to a result that "transforms the 'Pet Law' into a worthless piece of paper, placing countless New Yorkers who own 'house pets,' from parakeets to cats, at the mercy of their landlords."

Justice William J. Davis was the panel's third member.

Paul N. Gruber, of Borah Goldstein Altschuler Nahins & Goidel, who represents the owner, said his client is reviewing its legal options.

The Appellate Term's ruling in *184 West 10th Street Corp. v. Marvits*, 570220/06, reversed the ruling of Housing Court Judge Ernest Cavallo, who had concluded that a 2005 ruling, *Gidina Partners v. Marco*, 11 Misc 3d 21, precluded a finding that the owner had waived its right to evict the tenant under a no-pet provision in the lease she had signed in 1964.

Judge Cavallo has since been named an interim judge of the Civil Court.

In *Gidina Partners*, the Appellate Term had rejected a tenant's claim that a landlord had waived its right to bring an eviction claim where a tenant had only walked his dog once a day during a five-day period, and had boarded the dog for the remainder of the three-month waiver period.

Justice McKeon faulted Judge Cavallo for writing that *Gidina* had set a precedent requiring owners

of smaller animals, such as cats, to "be more open and notorious than owners of larger animals" to invoke the waiver in the 1983 law to block their landlords from evicting them.

"Try as they might," Justice McKeon wrote, "the court below and the dissent cannot spin *Gidina Partners* as creating a new standard for small animals."

"The reality is," he added, "that it is all but impossible for a cat owner to comply with the standards sought to be imposed by the court below and the dissent, unless, of course, the litter box becomes a thing of the past and countless feline owners are forced to go the way of their canine friends, to be seen leash in hand, walking their cats."

Clash on Law of Agency

Justices McKeon and McCooe also clashed over whether the owner could be bound by any knowledge acquired by a contractor he had used in 2003 to perform repairs in Ms. Marvits apartment.

In Justice McCooe's analysis, the contractor was not the landlord's agent, and any knowledge acquired by him, constructively or otherwise, could not bind the owner.

The contractor, Justice McCooe wrote, only was in the apartment when called and only for a total of three days in October 2003.

Under applicable First Department precedent, Justice McCooe wrote, an independent contractor cannot be viewed as an agent who can bind his principal, unless he is on the premises "24 hours a day, seven days a week," citing *Seward Park Housing Corp. v. Cohen*, 287 AD2d 157 (First Dept., 2002).

Justice McKeon rejected Justice McCooe's reasoning, writing that *Seward Park* cannot be read as imposing a "'duration test' before an independent contractor can be considered an agent."

Besides, he added, the owner had used the contractor, All Town Construction, as the "exclusive entity to make routine repairs at the building."

Additionally, he noted, the owner had sent a written notice to all the tenants in the building that they should contact All Town to schedule repairs.

Ms. Marvits was represented by Steven M. DeCastro, of the DeCastro Firm in Manhattan.

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