

**Fordham University School of Law**

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**From the Selected Works of Hon. Gerald Lebovits**

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# The Illegal Multiple Dwelling in New York City

Gerald Lebovits



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# N.Y. Real Property Law Journal

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## A Message from the Outgoing Section Chair



**Matthew Leeds**

As the Bar Association celebrates the beginning of its next administrative year this June, new officers are installed and members of the Section are entitled to an update. So here it is:

The state of the Section is good.

- Our membership has been increasing and looks like it can approach 5,000. We remain one of the three largest Sections in the Association.
- More engines for communication with members have been established. In particular, the Computerization and Technology Committee's Chair, Michael Berey, has created Internet capacity for rapid communication of new developments to members and for members to interact. You should be hearing more about this soon.
- Although we do not have statistics on diversity, the Section's efforts are poised to bear fruit, as Membership Committee Chairs Richard Fries and Karen DiNardo lead various initiatives for recruitment.

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## A Message from the Incoming Section Chair

I am honored to serve as this year's Chair of our Section, and grateful to many. First, the leadership of our immediate past Chair, Matthew Leeds, has been exemplary. The well-being of the Section was the driving force behind all of Matthew's decisions and actions as Chair. I thank him for keeping us on track—and for doing it with flair.



**Dorothy Ferguson**

I'm also grateful to my fellow officers, Joshua Stein, Harry Meyer and Karl Holtzschue, for their outstanding service and dedication to the Section over the years. Each has distinguished himself as a real estate practitioner, and we are fortunate to have them as leaders. I look forward to working with this great team.

The members of the Section's Executive Committee continue to impress and inspire me. Their expertise and their efforts to advance the practice of real estate law deserve recognition. They spend many hours preparing for CLE seminars, writing legislative reports, traveling to meetings and producing articles for this publication and

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# The Illegal Multiple Dwelling in New York City

By Gerald Lebovits and Daniel J. Curtin, Jr.

The issue of additional occupancy of legal one- and two-family buildings is a constant happening . . . evidence of the City's reluctance to crack down on this practice which for decades has provided additional, albeit illegal, housing in a tight housing market, as well as a silent recognition of the likely need by many owners for additional rental income to maintain these structures.<sup>1</sup>

There are a number of reported decisions in this area. After extensive research, the Court has found that many of the decisions are conflicting . . . .<sup>2</sup>

## Introduction

Common are the proceedings involving the use and occupation of illegal multiple dwellings, including efforts to collect rental arrears from or to remove occupants of illegal units. Uncommon is the disparity with which the courts resolve the issues surrounding illegal dwellings, commonly called "illegal threes" or de facto multiple dwellings. This article explores the uncertainty that the courts' splits have engendered in summary nonpayment and holdover proceedings involving de facto multiple dwellings.

## The Basics

This much is certain: A multiple dwelling, according to the Multiple Dwelling Law (MDL), is a "dwelling which is rented, leased, let or hired out, to be occupied, or is occupied, as the residence or home of three or more families living independently of each other."<sup>3</sup> The MDL requires landlords and owners to register all multiple dwellings located in New York City.<sup>4</sup> Failure to register these dwellings results in barring the landlord from collecting rent.<sup>5</sup> A multiple dwelling may not be occupied absent a duly issued certificate of occupancy (c/o) attesting to MDL compliance.<sup>6</sup> Landlords that rent an illegal apartment—premises not covered by an existing c/o, either with no c/o or with a c/o but nonconforming use—violate the MDL and are subject to penalties.<sup>7</sup> Penalties include that "[n]o rent shall be recovered by the owner of such premises for said period, and no action or special proceeding shall be maintained therefor, or for possession of said premises for

nonpayment of such rent."<sup>8</sup> Tenants may not, however, recoup money voluntarily paid as rent for the illegal premises or to obtain a stay.<sup>9</sup>

The certainty ends here. Everything else is uncertain.

Illegal dwellings are illegal threes when a c/o allows two units but the building contains three. The illegal unit is the third apartment. Other illegal apartments come up: illegal twos, nicknamed "mother-daughters." When a premises has a c/o that permits one-family use, creating or adding a separate unit in the premises not covered by the c/o results in an illegal two. When seeking rent arrears from or the removal of an occupant of an illegal two, questions about the MDL do not come into play. A one-unit building converted to a two-unit building is not a multiple dwelling.<sup>10</sup> Thus, for mother-daughters, summary proceedings in the Civil Court's Housing Part are permitted—holdovers<sup>11</sup> and nonpayment proceedings.<sup>12</sup> Significant questions arise, however, when the dwelling is a two-family home and someone adds an illegal unit. The addition of the problematic unit—the "illegal three"—brings the building within the MDL's purview. The same holds true when the building is a multiple dwelling and an additional, illegal unit is added, creating an illegal four. Once three or more units exist in a building, the MDL and attendant inquiries and issues surface.

A New York City Civil Court rule requires a landlord to plead compliance with the MDL and the New

York City Housing Maintenance Code (HMC) in a summary proceeding seeking rent arrears in New York City.<sup>13</sup> The court rule provides that

[i]n every summary proceeding brought to recover possession of real property pursuant to section 711 of the Real Property Actions and Proceedings Law, the petitioner shall allege either: (1) that the premises are not a multiple dwelling; or (2) that the premises are a multiple dwelling and, pursuant to the Administrative Code, sections 27-2097 et seq., there is a currently effective registration statement on file with the office of code enforcement in which the owner has designated a managing agent, a natural person over 21 years of age, to be in control of and responsible for the maintenance and operation of the dwelling. The petitioner shall also allege the following information: the multiple dwelling registration number, the registered managing agent's name, and either the residence or business address of said managing agent. The petitioner may (optionally) list a telephone number which may be used to call for repair and service.<sup>14</sup>

Pleading MDL compliance is unnecessary in a holdover proceeding when no use and occupancy is sought<sup>15</sup> or when no landlord-tenant relationship exists.<sup>16</sup>

When MDL compliance must be pleaded, a landlord must also prove MDL compliance.<sup>17</sup> Recital errors in the petition regarding multiple-dwelling registration (MDR) are amendable if the landlord can demonstrate that a valid MDR existed when the proceeding began and if the tenant was not prejudiced.<sup>18</sup> For example, inadvertently omitting the name and telephone number of the building's manager may be corrected by amendment.<sup>19</sup> The complete failure to register as the MDL requires will, however, allow a tenant to stay all proceedings or to assert the failure as a defense to a proceeding for rent.<sup>20</sup>

Failure, therefore, to comply with the MDL results in a landlord's being unable to collect rent.<sup>21</sup> Slightly different, but just as damaging to a landlord's demand to collect rent, is a c/o violation. That failure might result in the landlord's being unable to win a summary nonpayment proceeding to collect arrears.<sup>22</sup> In practical terms, there might be no real difference between not being able to collect rent and not being able to sue for rent. As one court stated, if "pleading and proving" the existence of a valid multiple dwelling registration insulated landlords from other illegalities in a premises—like occupancy in violation of a c/o—"then the larger public policy issue . . . would be subverted."<sup>23</sup> Landlords might then find themselves "in a legal conundrum where they are unable to evict a tenant in a summary proceeding or collect use and occupancy in a Civil Court action."<sup>24</sup>

Although some courts view an MDR lapse as correctable,<sup>25</sup> the proceeding might be dismissed if the landlord commits a significant error in pleading MDL compliance.<sup>26</sup> Many courts hold that when commencing a nonpayment proceeding, "a landlord . . . must allege either that the building is not a multiple dwelling or that it is a multiple dwelling and that there is a currently effective registration statement con-

forming to [MDL] § 325 on file with the New York City Department of Housing Preservation and Development. To omit these allegations from the petition is to state facts insufficient to constitute a cause of action."<sup>27</sup> Although the HMC requires that a copy of the MDR receipt be annexed to all petitions, omitting to do so is *de minimis*.<sup>28</sup>

Landlords must plead MDL compliance, but the failure to do so does not implicate the court's subject-matter jurisdiction. In *Chan v. Adossa*,<sup>29</sup> an owner sought to recover possession of a premises predicated on owner's use. After interposing an answer, the tenant moved to dismiss on the ground that the landlord had an invalid MDR; the managing agent's address on file was a post-office box. Civil Court had held that MDRs are jurisdictional in nature and that the failure to have a valid registration on file at the proceeding's commencement deprived the court of jurisdiction. The Appellate Term, First Department, disagreed. The Appellate Term held that the court rule requiring pleading MDL compliance "neither creates nor extirpates, neither increases nor diminishes the jurisdiction accorded to this court as prescribed by the Constitution of the State of New York and as is particularly outlined in the New York City Civil Court Act and other legislative enactments. Court rules are promulgated to regulate and facilitate practice and have nothing whatever to do with a court's jurisdiction."<sup>30</sup>

One problem is that in illegal-three cases, landlords often lie in Housing Part petitions. Because landlords can secure a judgment only if they plead MDL compliance, they or their attorneys must verify that the unit is or is not located in a multiple dwelling and then state that a valid MDR is on file, concede that no MDR is on file, or invent an MDR number and hope that the fraud will go uncovered. Alternatively, if a landlord verifies that the building is not a

multiple dwelling because only two legal units are in a three-unit building, the pleading is improper because three units turn a building into a multiple dwelling. Either way, MDL compliance has not been, or will not be, pleaded as required. The question is whether it is a lie to verify that a three-unit building is not a multiple dwelling, given that an illegal conversion prevents valid registration. And assuming falsity, should not the case be dismissed solely on the ground that it is wrong to lie in a Housing Part proceeding to mask an illegal conversion in order to seek rent or use and occupancy that might not be collectable in a proceeding that might not be sustainable?

It is unsurprising that courts have rendered conflicting decisions on the topic of the illegal three. In few areas of the law will a court grapple all at once with issues of pleadings, forums for adjudication, the public's need for affordable housing, and a landlord's right to receive rent versus a tenant's right to live in a safe home.

## Proceedings for Arrears

In light of the MDL's language, tenants inhabiting illegal units and sued for not paying rent defend against these proceedings by arguing that the landlord has failed to comply with the MDL's c/o requirement.<sup>31</sup> Whether the argument will be viable depends on where the proceeding is maintained and against whom it is maintained.

## The First Department

Illegal-three cases in the First Department are less common than in the Second Department.<sup>32</sup> But First Department jurisprudence offers insight into whether rent arrears may be recovered when a landlord fails to comply with the MDL. When a landlord seeks to collect arrears from a tenant residing in an illegal unit, First Department courts do not always apply MDL § 302's bar to collections.<sup>33</sup> Applying the MDL's rent-forfeiture provision is usually



based on the existence of certain circumstances. In applying the penalty, courts generally find that the subject illegal unit—often located in a basement, where health and safety issues are heightened—endangers the occupants and that because of those conditions, the landlord is forbidden to collect the rent sought in the petition.<sup>34</sup> As the Appellate Term, First Department, has noted, “assuming that the rent forfeiture provisions of the [MDL] apply in [a] case . . . it must be shown that [conditions] in the building adversely affected the structure’s integrity and threatened tenant’s health and safety before a complete abatement of the rent is imposed.”<sup>35</sup>

The groundwork for the First Department caselaw is that MDL § 302’s rent-forfeiture provisions derogate the common law and are penal in nature. In the First Department, MDL § 302 must be construed strictly, not liberally to effect their remedial and beneficial goals.<sup>36</sup>

In other words, First Department courts will not enforce the rent penalty when the noncompliance has no negative impact on the subject unit.<sup>37</sup> The key aspect is that in the First Department, the irregularity over the c/o must directly impact or relate to the unit for which rent arrears are sought.<sup>38</sup> Otherwise, the landlord might be permitted to recover arrears.

Sometimes a landlord will not be subject to rent forfeiture despite a c/o or MDR violation. Assume that the c/o permits residential occupation of a unit and that the landlord commences a nonpayment proceeding against that unit’s tenant, although illegal apartments are elsewhere in the building. When the landlord is pursuing the “legal” tenant, the courts of the First Department do not always impose the MDL’s rent-forfeiture provision, and arrears may be sought despite the c/o defect.<sup>39</sup> For example, the Appellate Term, First Department, has held that if an illegal basement apartment

does not affect a tenant’s sixth-floor occupancy, the landlord’s petition for arrears against the legal apartment need not suffer dismissal based on the illegal unit.<sup>40</sup>

The basis of this rule is that some question whether the legal tenants are within the class of persons the MDL is meant to protect. As one author has observed, “tenants who assert an MDL 302 defense to nonpayment proceedings are in essence raising contradictory claims. On the one hand they claim their occupancy is dangerous or illegal; on the other, they claim that they should be permitted to remain in occupancy, rent free . . . when there is nothing wrong with their own premises.”<sup>41</sup>

But the reasoning behind allowing landlords to seek arrears from tenants not in an illegal apartment, or legal tenants, has been questioned, particularly in the Second Department, where one court has observed that the “heightened risks and fire, health and safety issues are not limited only to the so-called illegal apartment.”<sup>42</sup> Additionally, permitting tenants in legal apartments successfully to defend nonpayment proceedings on the basis of MDL defects might work a windfall for them. Thus, “the tenants of these [legal] apartments are unjustly enriched by not being within the court’s jurisdiction in a nonpayment suit.”<sup>43</sup> Whether nonpayment proceedings may be maintained against legal tenants is more hotly contested in the Second Department.<sup>44</sup> In the First Department, they are often allowed.

There are other instances when the courts of the First Department allow a landlord to recover rent from a tenant who occupies premises in violation of the building’s c/o. First, a landlord can maintain a cause of action for arrears when a tenant is complicit in converting a portion of a building into an illegal unit or when the tenant enters into occupancy of premises the tenant knows is illegal.<sup>45</sup> If so, it will not matter whether the premises has conditions that

threaten the occupants’ health, welfare, and safety or whether the unit at issue is legal or illegal in light of the c/o.

Second, the tenant might be required to pay the rent sought if the landlord can quickly obtain a proper c/o. Pay to the court, that is. In one case, the Appellate Division, First Department, conditioned the tenant’s payment of rent into court “while stimulating plaintiff’s expeditious completion of the actions necessary to legalize the premises.”<sup>46</sup> The court noted that the tenant did “not claim the premises pose[d] a threat to his health and safety” or that the premises’ condition adversely affected the tenant’s occupation.<sup>47</sup>

Third, according to the First Department’s Appellate Term, “[t]he rent withholding sanction is not available to tenants who are themselves impeding the compliance with the [c/o] requirements,”<sup>48</sup> and that is the law statewide, for the Court of Appeals held in *Chatsworth 72nd St. Assocs. v. Ragai*, ultimately affirming the order of Civil Court, New York County, that rent may not be forfeited when the tenants’ refusal to vacate thwarts the landlord’s attempt to secure a permanent c/o.<sup>49</sup>

In the First Department, therefore, a landlord not in compliance with the MDL and against whose building a c/o or MDR violation exists will be barred from collecting rent. But for the forfeiture to apply, the conditions must warrant punishing the landlord for allowing the conditions to exist, arrears must be sought only for the illegal unit, and the tenant must not be complicit in the existence and maintenance of the illegal apartment.

## The Second Department

In the Second Department, courts hold fairly consistently that no rent may be recovered when the MDL is violated and when the nonconforming use relates to the c/o. One court has gone so far as to note that “a

review of the Second Department caselaw shows that the literal meaning of MDL [section] 325 is still the proper standard to be applied.”<sup>50</sup> In so noting, that court rejected the landlord’s contention that “there is a trend to ‘liberalize’ the requirements of the [MDL],”<sup>51</sup> despite the landlord’s arguing that cases like *B.S.L. One Corp. v. Rubenstein*<sup>52</sup> support that view.

In *B.S.L.*, a cooperative tenant entered into possession of an illegal apartment knowing about the improper c/o. The landlord was awarded arrears because the tenant prevented the landlord from obtaining a proper c/o. Although this decision seems to bring the Second Department in line with the First, *B.S.L.*’s extenuating circumstances take the case outside not only the MDL’s rent-forfeiture provision but also outside the First Department’s occasional deviations from the “no rent” rule. Specifically, the *B.S.L.* court was worried that “[r]espondent’s attempt to recover eight years back rent paid from the time she purchased the shares [would place] an unnecessary burden upon petitioner, [and] may cripple the co-operative or threaten its viability to the detriment of all shareholders including respondent herself.”<sup>53</sup> The *B.S.L.* court was primarily interested in preserving the cooperative. As noted in *Shahid v. Doe*,<sup>54</sup> the *B.S.L.* court stated that “[i]n the absence of certain circumstances described earlier, which may excuse a landlord from a strict mechanical reading of MDL § 302 to avoid a tenant’s unjust enrichment, equitable construction of the statute’s rent forfeiture penalties generally requires a literal application of the statute.”<sup>55</sup> Without these extenuating circumstances and considerations—such as proof “that the failure of the landlord to have a Certificate of Occupancy was the result of an error by the Department of Buildings”<sup>56</sup>—the rule in the Second Department is strict compliance with MDL § 325 with respect to illegal apartments. Absent strict compliance, all rents are

forfeited under MDL § 302 in the Second Department.

Courts in the Second Department are at odds, not only with the courts in the First Department, but also with themselves over whether rent arrears may be sought from tenants in legal apartments when illegal units are elsewhere in the building. Some Second Department courts hold that rent arrears may be sought in those situations while others hold that all rents—from legal or illegal units—are forfeited when a c/o or MDR violation exists.

In *Mannino v. Fielder*, the court determined that literally applying the MDL was called for in all nonpayment proceedings, not only those in which rents were sought from tenants in illegal units.<sup>57</sup> The court rejected the landlord’s contention that other cases from courts in the Second Department suggest that rent might be sought from tenants occupying legal apartments. The landlord had relied upon *Chan v. Kormendi*, a Queens County case that holds that the MDL’s purposes of protecting tenants from unsafe conditions and identifying the owner are met with respect to legal units and thus that the MDL’s rent-forfeiture provision was inapplicable.<sup>58</sup> The *Mannino* court instead adopted the reasoning of *Manabhal v. Talavera*, in which a holdover proceeding was dismissed against a tenant who resided in a legal apartment in premises also containing an illegal unit.<sup>59</sup> In *Manabhal*, the court discounted the landlord’s arguments, analogous to those the landlord made in *Mannino*, and in dismissing the holdover found that any changes to the MDL and its requirements should come not from the courts but from the legislature.<sup>60</sup> The *Mannino* court determined that the same result is warranted in nonpayment proceedings.

Although *Totaram v. Cordero*<sup>61</sup> and *Marrocco v. Lugero*<sup>62</sup> cited *Mannino* with approval, another court split the difference. In *Skala v. Edlich*, the court held that because the tenant

lived in the legal unit, the tenant was responsible for the arrears—after the landlord corrected the MDL violation.<sup>63</sup> But illegality is often incapable of cure, or is curable only at significant expense.

Finally, stipulations of settlement with monetary judgments are unenforceable—at least in the Second Department, where there is authority on the subject. In two cases, tenants residing in illegal apartments consented to monetary judgments for rental arrears that accrued while the premises in which they were residing did not conform to the c/o. When the Appellate Term, Second Department, addressed these cases, it vacated the monetary aspects of the stipulations. The Appellate Term reasoned that the “proscription provided for in [MDL] § 302, deemed penal in nature and strictly applied, constitutes a regulatory restraint on landlord[s] that may not be ‘waived’ by stipulation.”<sup>64</sup> In a third Second Department case, the Appellate Term refused to vacate the possessory aspect of a stipulation that converted a nonpayment proceeding into a holdover proceeding even though the petition did not allege a proper MDR.<sup>65</sup> The First Department has yet to speak on this issue.

What all this means is that courts in the Second Department have yet to determine with finality whether rent may be collected from a tenant in a legal unit when illegal units exist elsewhere in the subject multiple dwelling. This, although “the Second Department caselaw shows that the literal meaning of MDL [section] 325 is still the proper standard to be applied.”<sup>66</sup>

## **Actions and Proceedings for Possession**

As if uncertainty with respect to nonpayment proceedings were not enough, the existence of an illegal unit in a multiple dwelling also impacts possessory proceedings. A question exists whether a possessory proceeding may be brought by a

summary holdover proceeding or whether an ejectment action is the appropriate mechanism to remove a tenant who resides in an illegal apartment. If ejectment is elected or appropriate, there are two forums for these cases: Supreme Court and Civil Court. A landlord should bring an ejectment action in Civil Court when the amount of the dispute—the tax-assessed value of the premises at issue—is \$25,000 or less,<sup>67</sup> the Civil Court's jurisdictional limit. In all other instances, landlords should bring their cases in Supreme Court, which has original, general jurisdiction and thus no jurisdictional limit on the action's monetary value.<sup>68</sup> The MDL itself makes no mention of possessory proceedings, aside from providing that "no action or special proceeding shall be maintained . . . for possession of said premises for non-payment of such rent."<sup>69</sup> It therefore seems from the governing statutory language that a defect in MDL compliance would not impact actions or proceedings seeking possession alone. But exceptions and distinctions abound.

Judges—though not all, and not in all cases, as explained below—often find that summary holdover proceedings may not be maintained absent compliance with the MDL's registration requirements.<sup>70</sup> As one court put it, "in the world of summary proceedings in New York City, the housing court refuses to entertain 'holdover' proceedings in regard to tenants in illegal apartments."<sup>71</sup> It is not the MDL noncompliance that prohibits a holdover proceeding. Rather, when creating the illegal apartment results in

a "de facto" multiple dwelling (one which in fact contains three or more dwelling units, but has a certificate of occupancy only as a one- or two-family dwelling) . . . the remedy of a holdover under Real Property Actions and Proceedings Law [RPAPL] § 711 becomes

unavailable. This is not because the [MDL] bars a proceeding in this situation, but because the petition fails to allege multiple dwelling registration as required pursuant to 22 NYCRR 208.42 (g) and, thus, fails to state a cause of action.<sup>72</sup>

Accordingly, adding an illegal apartment to a building that otherwise constitutes a duly registered multiple dwelling will not defeat the landlord's prior, proper registration or any future holdover proceeding.<sup>73</sup>

A policy argument supports disallowing holdovers when an MDL violation exists. If an expeditious summary proceeding were available and the landlord successfully removes the tenant, the landlord could re-let the illegal premises before anyone reports the unlawful space, "and the cycle of illegality [would] continue."<sup>74</sup>

Yet some courts have found that landlords may maintain holdover proceedings to recover premises occupied in violation of a c/o.<sup>75</sup> This might be a logical conclusion. Because the MDL's purpose is to ensure safe housing,<sup>76</sup> permitting a tenant to remain in an illegal apartment would defeat not only that goal but might also work an unjust enrichment to the tenant because the landlord might be precluded from collecting rent or use and occupancy.<sup>77</sup> One court that held that holdover proceedings may be maintained despite an MDL violation reasoned that when there is an otherwise valid c/o and the requisite pleadings appear in the petition, the court is powerless to strike the c/o or deem the MDR invalid.<sup>78</sup> Thus, with the requisite pleadings made, and without specific statutory authority prohibiting a holdover proceeding, the proceeding might be maintained.

For example, in *Meaders v. Jones*, a co-author of this article, sitting in Richmond County, denied a tenant's motion to vacate a stipulation in

which the tenant consented to a judgment of possession and some future payment of use and occupancy.<sup>79</sup> On appeal, the Appellate Term, Second Department, modified in part. While vacating that portion of the stipulation relating to use and occupancy, the Appellate Term upheld the possessory judgment.<sup>80</sup> The litigants had fought over the possessory judgment; if the Civil Court's Housing Part had no jurisdiction to hear the dispute, the stipulation might have been vacated, and if so the landlord would have been forced to bring a slower ejectment action, thus affording the tenant more time to reside in his apartment, or well past six months.

The Appellate Term, finding that the Housing Part had jurisdiction all along, wrote that "it is well settled that a landlord may maintain a holdover proceeding to recover premises occupied in violation of the certificate of occupancy requirements."<sup>81</sup>

The Appellate Division, Second Department, granted leave to appeal in *Meaders* on December 23, 2003. As of June 17, 2004—the date this article was completed—oral argument is scheduled for September 2004.

*Nii v. Quinn*<sup>82</sup> presents a scenario similar to the one in *Meaders*. The landlord in *Nii* registered the premises and had a c/o. The tenant, however, occupied the premises in violation of the c/o. After the landlord began a holdover proceeding for arrears, use and occupancy, and possession, the parties entered into a stipulation in which the tenant consented to monetary and possessory judgments. On appeal, the Appellate Term, Second Department, found that the landlord had made no effort to obtain a conforming c/o and that as a result, the landlord could not collect any arrears sought in the petition.<sup>83</sup> But the court also found that "inasmuch as landlord is entitled to maintain a holdover proceeding to recover possession of premises occupied in violation of a certificate of occupancy and the remaining terms of the settle-



ment stipulation are severable from the unenforceable terms and constitute a proper disposition of the parties' rights and interests, we find no basis to strike the portion of the stipulation which awards landlord possession."<sup>84</sup> With that, the court found, at least implicitly, that holdover proceedings may be maintained to recover illegal units.

The Appellate Term's decision in *Meaders*, despite affirming the Housing Part's central ruling, has been the subject of debate. One authority has written that "[i]t is difficult to reconcile the holding in *Meaders v. Jones* with the holdings in *Santos v. Aquas-vivas* and in *Blackgold Realty Corp. v. Milne*."<sup>85</sup> The Appellate Term had held in *Santos* held that "[a]s a condition precedent to maintaining a holdover proceeding, the landlord must allege the registration requirements pursuant to Multiple Dwelling Law § 325 . . . ."<sup>86</sup>

Moreover, without in any way suggesting that the Appellate Term decided *Meaders* incorrectly (or even correctly, because a discussion of *Meaders*'s merits is not the authors' goal<sup>87</sup>), a tenant's attorney might argue that three cases the Appellate Term cited in *Meaders* do not support the proposition that landlords may maintain summary holdover proceedings in the Housing Part to remove tenants from illegal apartments. *Hornfeld v. Gaare*, for example, did not uphold a landlord's right to bring a holdover proceeding against a tenant. Rather, the *Hornfeld* court awarded the landlord a declaration that the tenant had to vacate illegally occupied premises.<sup>88</sup> That was akin to an order for ejectment, a plenary mechanism to remove tenants from illegal premises.<sup>89</sup> Additionally, 99 *Commercial St. v. Ulewellen* confirms a landlord's right to bring an ejectment action, not a holdover proceeding against tenants occupying illegal units.<sup>90</sup> And *Nii v. Quinn*, which allows a landlord to maintain a holdover, itself cites *Hornfeld*,<sup>91</sup> which, as noted above, does not say that the Housing Part may hear

holdover proceedings to evict tenants who live in illegal dwellings.

*Meaders* has already begun to have offspring. In June 2004, the Appellate Term, Second Department, decided two cases, *Esposito v. Ango*<sup>92</sup> and *Furman v. DeGeorge*<sup>93</sup>—both resolved below by a co-author sitting in Richmond County—that raise questions about illegal dwellings.

In reviewing *Esposito*, the Appellate Term, citing *Meaders* with approval, declined to vacate the possessory aspect of a stipulation concerning what it termed an illegal multiple dwelling (and which the landlord argued was a lawful two-family house)—but only because the tenant had already vacated the premises. The court did, however, vacate the monetary provisions of the settlement, consistent with *Meaders*. The same day *Esposito* was published, *Furman* was published. *Furman*, another dwelling the landlord argued was a two-family house, followed *Meaders* in allowing for a possessory judgment in stipulations involving illegal multiple dwellings. But unlike *Esposito*, *Furman* upheld the possessory judgment, not because the tenant had vacated, but because, under *Meaders*, a landlord may maintain a holdover for an illegal dwelling. The *Furman* court, as opposed to the *Esposito* court, never reached whether the dwelling was legal.

*Furman* raises a second issue. The Appellate Term declined to order money returned because the court found that the tenant paid the monies voluntarily under the terms of a stipulation by which the tenant obtained a stay. Given *Furman*, one can ask why a court would vacate the monetary aspect of a stipulation in which a tenant agrees to remit rent or use and occupancy in the first place.<sup>94</sup>

If the Housing Part has no jurisdiction over these proceedings, landlords still have remedies, and tenants still have protections. For example, a landlord may request that the Department of Buildings (DOB)

inspect the premises. The New York City Administrative Code provides that the DOB may "order and immediately cause any building, structure, place or premises (i) to be vacated; and, also, if the commissioner determines such action is necessary to the preservation of life and safety, (ii) to be sealed, secured and closed."<sup>95</sup> A DOB determination is difficult to overrule or change. Absent "a clear showing . . . that the administrative determination . . . to issue [a] Vacate Order[] is arbitrary and capricious or in any way irrational, such determination should not be disturbed."<sup>96</sup> Once made, the order is self-executing, and the tenant will be required to vacate forthwith.

If the DOB does not enforce its order, the court may order the agency to allow the landlord the opportunity to cure the illegality or keep the premises vacant.<sup>97</sup> This is good for landlords, if the illegality can be cured without great cost, because it might be faster than a summary proceeding and cheaper than an ejectment action, even with any fines assessed for the illegal premises. But purposely seeking a vacate order places the landlord in the position of contacting a regulatory agency to report wrongdoing—its own wrongdoing. Some may find this result undesirable. Tenants, however, are in a weak position to defend that action.

Ejectment actions present a seeming middle ground between Housing Part summary proceedings for possession and vacate orders. Landlords may still obtain speedy resolutions by way of summary-judgment motions filed shortly after the issue is joined, although additional costs are associated with these actions, including various filing fees, particularly in Supreme Court. Tenants, whether or not they receive a stay of the ultimate judgment for ejectment in the landlord's favor,<sup>98</sup> may still seek to renew, reargue, or appeal any adverse determination and thereby obtain a stay, and in the meantime no rent is col-



lectable from them, at least in the Second Department.

But what matters, according to the Appellate Term, Second Department, in *Nii v. Quinn*, *Meaders v. Jones*, and *Furman v. DeGeorge*, is that landlords may maintain holdover proceedings in the Civil Court's Housing Part to recover possession of illegal apartments,<sup>99</sup> given that MDL registration and pleading requirements do not implicate the court's jurisdiction. Landlords, although in one sense not punished for having an illegal apartment, benefit from an expeditious adjudication with fewer costs. Together, these three cases recognize that tenants, although forced to vacate their homes without awaiting a lengthy ejectment action, will leave dangerous premises, and the Housing Part might have the power to award the tenant a stay of up to six months to effect a peaceful vacatur from the illegal unit even if the tenant pays no use and occupancy.<sup>100</sup> And under *Nii*, *Meaders*, and *Furman*, the Housing Part, charged with enforcing laws affecting the housing stock to protect that inventory, will comply with that mandate.

## Conclusion

A hodgepodge of decisions has wreaked havoc on landlord-tenant proceedings involving illegal threes. Until the Appellate Division in each department in which the MDL is at issue releases a series of definitive rulings, or until the legislature redrafts and clarifies the MDL, practitioners, landlords, and tenants alike will continue to muddle through the refractory and conflicting issues surrounding illegal multiple dwelling in New York City.

## Endnotes

- Hall v. Burroughs*, 159 Misc. 2d 481, 485, 604 N.Y.S.2d 684, 687 (Hous. Part Civ. Ct., Kings County 1993).
- Mannino v. Fielder*, 165 Misc. 2d 605, 608, 629 N.Y.S.2d 651, 653 (Hous. Part. Civ. Ct., Kings County 1995).
- N.Y. Mult. Dwelling L. § 4(7); *see also Jalinov v. Ramkalup*, 255 A.D.2d 293, 294, 679 N.Y.S.2d 419, 419 (2d Dep't 1998) (mem.) ("[P]laintiff is the owner of a two-family home which contains three separate apartments, one of which was occupied by the defendants. The premises therefore constitute a multiple dwelling as defined by Multiple Dwelling Law § 4(1) and (7)."). A "family" includes a single-person household. N.Y. Mult. Dwelling L. § 4(7).
- N.Y. Mult. Dwelling L. § 325(2).
- Id.*
- Id.* § 301(1).
- See generally id.* § 302 (providing penalties for violating registration requirements).
- Id.* § 302(1)(b).
- Id.* § 325(2); *e.g., Furman v. DeGeorge*, N.Y.L.J., June 10, 2004, at 29, col. 1 (App. Term. 2d Dep't, 2d & 11th Jud. Dists., mem.); *Baer v. Gotham Craftsman Ltd.*, 154 Misc. 2d 490, 493, 595 N.Y.S.2d 604, 606 (App. Term 1st Dep't 1992) (per curiam) (dismissing counterclaim to return back rent voluntarily paid); *but cf. Carcione v. Rizzo*, 154 Misc. 2d 13, 593 N.Y.S.2d 152 (App. Term 2d Dep't, 2d & 11th Jud. Dists. 1992) (mem.) (holding summary judgment improper when issues of fact arise whether payments were voluntary or tenant alleges fraud and misrepresentation).
- See supra* at note 3 (defining multiple dwellings).
- E.g., Wokal v. Sequin*, 167 Misc. 463, 465, 4 N.Y.S.2d 86, 88 (Mun. Ct., Queens County 1938).
- E.g., Corsini v. Gottschalk*, N.Y.L.J., Dec. 20, 1999, at 32, col. 2 (App. Term 2d Dep't, 9th & 10th Jud. Dists.) ("The fact that landlord had a certificate of occupancy for a one-family dwelling rather than a two-family did not bar recovery of rent in the instant case.") (internal citations omitted); *Rose v. Leverich*, N.Y.L.J., June 9, 1997, at 32, col. 1 (App. Term 2d Dep't, 9th & 10th Jud. Dists.) (mem.) ("The absence of a certificate of occupancy is not a bar to seeking the recovery of rent.") (mem.); *Tuzel v. Reilert*, N.Y.L.J., Dec. 3, 1996, at 26, col. 3 (App. Term 2d Dep't, 10th & 11th Jud. Dists.) (mem.) ("The statutory bar to recovery of rent . . . is no bar where a one-family home is used as a two-family.") (internal citations omitted) (awarding judgment of possession and money); *Herzog v. Thompson*, 50 Misc. 2d 488, 490, 270 N.Y.S.2d 469, 471 (Civ. Ct., N.Y. County 1966); *but see Fantuzzi v. Todras*, N.Y.L.J., Feb. 27, 2002, at 24, col. 5 (Civ. Ct., Richmond County) (barring rent collection for illegal twos, but citing no authority for its holding).
- See* 22 N.Y.C.R.R. § 208.42(g).
- Id.*
- See, e.g., Chan v. Adossa*, 195 Misc. 2d 590, 592, 760 N.Y.S.2d 609, 611 (App. Term 1st Dep't 2003) (mem.) ("[I]t is clear that the requirement that a petition . . . include the MDR allegation was not intended to and cannot affect the jurisdiction of the Civil Court, particularly with respect to holdover proceedings."); *Citibank, N.A. v. Garcia*, N.Y.L.J., Nov. 6, 1998, at 23, col. 2 (App. Term 2d Dep't, 2d & 11th Jud. Dists.) (mem.) ("The instant proceeding was brought pursuant to RPAPL § 713. Thus, the requirement that petitioner allege that the premises were not a multiple dwelling or the multiple dwelling registration number is not applicable"); *Freedman v. Hahn*, N.Y.L.J., Mar. 31, 1989, at 21, col. 3 (App. Term 1st Dep't) (per curiam) ("The absence from landlord's proof of a rent registration statement . . . was not fatal to this holdover proceeding seeking possession on the basis of tenant's alleged nonprimary residence."); *see generally* Andrew Scherer, Residential Landlord-Tenant Law in New York § 7:138, at 7-56 (2004 ed.); Daniel Finkelstein & Lucas Ferrara, Landlord and Tenant Practice in New York § 15:467, at 15-216 (2003 ed.).
- Scherer, *supra* note 15, at § 12:40, at 12-16, 12-17.
- Id.* at § 7:139, at 7-57.
- Lin v. Rivas*, N.Y.L.J., May 26, 1998, at 30, col. 5 (App. Term 2d Dep't, 2d & 11th Jud. Dists.) (mem.) (finding "pleading infirmities" relating to MDRs amendable absent "prejudice to the respondent"); *Whitehall Apts. Co. v. Zeigler*, N.Y.L.J., Jan. 26, 1993, at 22, col. 1 (App. Term 1st Dep't) (per curiam) (finding variance due to transcription error in petitioner's name between MDR and petition not fatal to proceeding).
- 390 W. End Assocs. v. Raiff*, 166 Misc. 2d 730, 733, 636 N.Y.S.2d 965, 966 (App. Term 1st Dep't 1995) (per curiam).
- N.Y.C. Admin. Code § 27-2107(b).
- N.Y. Mult. Dwelling L. § 325(2).
- Id.* § 302(1)(b).
- Frank Pizza Irrevocable Trust v. Burns*, N.Y.L.J., Oct. 7, 1998, at 29, col. 1 (Civ. Ct., Kings County).
- Aponte v. Santiago*, N.Y.L.J., June 7, 1995, at 26, col. 6 (Civ. Ct., Bronx County).
- Beacway Operating Corp. v. Hult*, N.Y.L.J., Mar. 13, 1992, at 21, col. 1 (App. Term 1st Dep't) (mem.); *Borglum v. Rich*, N.Y.L.J., Jan. 18, 1990, at 23, col. 3 (App. Term 1st Dep't) (per curiam); 128 E. 83rd St. v. Kagan, N.Y.L.J., Oct. 6, 1987, at 14, col. 1 (App. Term 1st Dep't) (per curiam).
- Little v. Steginsky*, N.Y.L.J., Oct. 22, 1998, at 28, col. 5 (App. Term 1st Dep't) (per

- curiam) ("In a summary proceeding brought under RPAPL § 711, the petitioner must plead and prove . . . that a currently effective registration statement is on file . . .").
27. *Jocar Realty Co. v. Rukavina*, 130 Misc. 2d 1009, 1010, 498 N.Y.S.2d 244, 245 (Hous. Part Civ. Ct., N.Y. County 1985), *aff'd per curiam*, 137 Misc. 2d 1045, 526 N.Y.S.2d 49 (App. Term 1st Dep't 1987).
  28. N.Y.C. Admin. Code § 27-2107(b); *Oceana Apts. v. Spielman*, 164 Misc. 2d 98, 100, 623 N.Y.S.2d 724, 726 (Hous. Part Civ. Ct., N.Y. County 1995) ("This court found no cases that hold that the failure to annex the registration receipt as is required under the law constitutes a substantial defect that is sufficiently prejudicial to merit or mandate a dismissal of the petition. Rather, this court believes it represents the kind of error that the appellate courts would find to be minor, nonprejudicial and therefore correctable.") (citations omitted).
  29. 195 Misc. 2d at 592, 760 N.Y.S.2d at 611.
  30. *Id.* 195 Misc. 2d at 595, 760 N.Y.S.2d at 612.
  31. *See, e.g., Hornfeld v. Gaare*, 130 A.D.2d 398, 400, 515 N.Y.S.2d 258, 260 (1st Dep't 1987) (mem.) (noting tenant's argument that landlord was "not entitled to collect rent or use and occupancy because the [c/o] prohibits the residential use"); *Misrsky v. Ehlich*, 1 Misc. 3d 723, 723, 765 N.Y.S.2d 176, 177 (Civ. Ct., N.Y. County 2003) ("Respondent . . . moved for summary judgment dismissing this commercial nonpayment proceeding . . . Respondent alleges that the premises are an interim multiple dwelling (IMD) lacking a [c/o] for residential use . . .").
  32. These cases arise regularly in the Bronx but only occasionally in Manhattan.
  33. *E.g., Hakim v. Von Walstrom*, 198 A.D.2d 139, 604 N.Y.S.2d 733 (1st Dep't 1993) (mem.), which affirmed the order of the Housing Part, which had held that MDL rent forfeiture "will not be enforced under all circumstances" regarding a building occupied without a c/o.
  34. *See, e.g., Mathurin v. Jackson*, N.Y.L.J., Dec. 12, 1990, at 23, col. 2 (Hous. Part Civ. Ct., N.Y. County) (holding MDL § 302 sanctions warranted when c/o was absent and building conditions were grossly substandard.); *40 Clinton St. Assocs. v. Dolgin*, 126 Misc. 2d 373, 375, 481 N.Y.S.2d 960, 962 (Civ. Ct., N.Y. County 1984) (holding MDL § 302 sanctions applicable when no c/o existed but dangerous conditions did).
  35. *Gottlieb v. Marco*, N.Y.L.J., Apr. 28, 1995, at 28, col. 3 (App. Term 1st Dep't) (per curiam) (citations omitted).
  36. *See, e.g., Goho Equities v. Weiss*, 149 Misc. 2d 628, 572 N.Y.S.2d 836 (App. Term 1st Dep't 1991) (per curiam) (disagreeing with McCoee, J., dissenting, who argued for a liberal, not strict, interpretation of MDL § 302, *id.* at 632, 572 N.Y.S.2d at 838).
  37. *50 E. 78th Corp. v. Jire*, N.Y.L.J., Dec. 2, 1991, at 25, col. 1 (App. Term 1st Dep't) (per curiam) ("Such a violation does not . . . provide these tenants with a complete defense against landlord's rent claim, since it neither adversely affected the structural integrity of the building nor rendered tenant's residential occupancy unlawful.").
  38. Bruce M. Solomon, *Multiple Dwelling Law: The Matter of the Misplaced Decision*, 1 Landlord-Tenant Prac. Rep. 4, 14 (2000).
  39. *Little v. Joseph*, N.Y.L.J., May 4, 1992, at 27, col. 4 (App. Term 1st Dep't) (per curiam) ("Any alleged nonconforming use on the second and third floors does not warrant a complete rent forfeiture, and dismissal of the nonpayment proceeding under Sections 301 and 302 of the [MDL] was in error.").
  40. *Shoretown Realty Corp. v. Kahill*, N.Y.L.J., Oct. 28, 1993, at 27, col. 3 (App. Term 1st Dep't) (per curiam).
  41. Warren A. Estis, Real Estate Update: Landlord/Tenant Law, *The Rent Forfeiture Statute—Courts Take Conservative Approach to Applying MDL 302*, N.Y.L.J., Dec. 8, 1993, at 5, col. 2.
  42. *Mannino*, 165 Misc. 2d at 610, 629 N.Y.S.2d at 654.
  43. *Id.* at 611, 629 N.Y.S.2d at 654.
  44. *See* discussion of that issue, *infra*.
  45. *Zafra v. Sawhuck*, N.Y.L.J., Jan 9, 1995, at 27, col. 2 (App. Term 1st Dep't) (per curiam); *Lipkis v. Pikus*, 96 Misc. 2d 581, 409 N.Y.S.2d 598 (Civ. Ct., N.Y. County 1978), *modified per curiam*, 99 Misc. 2d 518, 520, 416 N.Y.S.2d 694, 696 (App. Term 1st Dep't), *aff'd mem.*, 72 A.D.2d 697, 421 N.Y.S.2d 825 (1st Dep't 1979), *lv. dismissed*, 51 N.Y.2d 874, 414 N.E.2d 399, 433 N.Y.S.2d 1019 (1980).
  46. *Zane v. Kellner*, 240 A.D.2d 208, 209, 658 N.Y.S.2d 289, 290 (1st Dep't 1997) (mem.).
  47. *Id.* at 209, 658 N.Y.S.2d at 290.
  48. *Amdar Co. v. Armenti*, N.Y.L.J., June 23, 1994, at 28, col. 4 (App. Term 1st Dep't) (per curiam).
  49. 35 N.Y.2d 984, 324 N.E.2d 888, 336 N.Y.S.2d 531 (1975), *aff'g*, 71 Misc. 2d, 336 N.Y.S.2d 604 (Civ. Ct., N.Y. County 1972).
  50. *Shahid v. Doe*, N.Y.L.J., Dec. 24, 1997, at 24, col. 6 (Hous. Part Civ. Ct., Kings County).
  51. *Id.*
  52. *B.S.L. One Corp. v. Rubenstein*, 159 Misc. 2d 903, 606 N.Y.S.2d 979 (Civ. Ct., Richmond County 1994).
  53. *Id.* at 910, 606 N.Y.S.2d 984–85.
  54. *Shahid*, N.Y.L.J., Dec. 24, 1997, at 24, col. 6.
  55. *B.S.L. One Corp.*, 159 Misc. 2d at 910, 606 N.Y.S.2d at 985.
  56. *St. George Hotel Assocs. v. Jaye*, N.Y.L.J., Aug. 11, 1993, at 24, col. 2 (Hous. Part Civ. Ct., Kings County).
  57. *Mannino*, 165 Misc. 2d at 609, 629 N.Y.S.2d at 654.
  58. 118 Misc. 2d 1026, 1032–33, 462 N.Y.S.2d 943, 947–48 (Civ. Ct., Queens County 1983).
  59. N.Y.L.J., Aug. 18, 1993, at 24, col. 3 (Civ. Ct., Kings County).
  60. *Maninno*, 165 Misc. 2d at 609, 629 N.Y.S.2d at 654–55 (discussing *Manabhal*).
  61. 2003 N.Y. Slip Op. 50663(U), 2003 N.Y. Misc. LEXIS 315 (Civ. Ct., Kings County 2003).
  62. N.Y.L.J., Oct. 6, 1999, at 31, col. 2 (Civ. Ct., Richmond County).
  63. 2002 N.Y. Slip Op. 50129(U), 2002 N.Y. Misc. LEXIS 577 (Civ. Ct., Richmond County 2002); *see also Christos v. Papastefanou*, N.Y.L.J., Apr. 4, 2000, at 31, col. 4 (Hous. Part Civ. Ct., Bronx County).
  64. *Nii v. Quinn*, 195 Misc. 2d 821, 759 N.Y.S.2d 841 (App. Term 2d Dep't, 2d & 11th Jud. Dists. 2003) (mem.) (citations omitted) (disapproving of *Holder v. Williams*, 188 Misc. 2d 73, 725 N.Y.S.2d 793 (Hous. Part Civ. Ct., Kings County 2001) (using balancing test to decide whether to vacate stipulation concerning de facto multiple dwelling); *accord Meaders v. Jones*, 2003 N.Y. Slip Op. 51123(U), 2003 N.Y. Misc. LEXIS 933 (App. Term 2d Dep't, 2d & 11th Jud. Dists.) (mem.) ("While not implicating the court's jurisdiction, such violations bar the recovery of rent or use and occupancy, and these proscriptions may not be 'waived' by stipulation. Thus, the stipulation's terms awarding landlord rent and use and occupancy, as well as the money judgment entered thereon, are stricken, and the cause of action seeking a money judgment is dismissed.") (citations omitted); *see also Finkelstein & Ferrara, supra* note 15, at §§ 14:275, 15:259, at 15-130.
  65. *Willoughby v. Dance-Lonesome*, 2003 N.Y. Slip Op. 51058(U), at 2, 2003 N.Y. Misc. LEXIS 822, at 2 (App. Term 2d Dep't, 2d & 11th Jud. Dists.) (mem.).
  66. *Shahid*, N.Y.L.J., Dec. 24, 1997, at 24, col. 6.
  67. *Fazio v. Kelly*, N.Y.L.J., Sept. 24, 2003, at 20, col. 5; *Cippollone v. Torres*, N.Y.L.J., June 16, 1999, at 33, col. 6 (Civ. Ct., Queens County); *Frank Pizza*, N.Y.L.J., Oct. 7, 1998, at 29, col. 1; *Aponte*, N.Y.L.J., June 7, 1995, at 26, col. 6.

68. David D. Siegel, New York Practice § 12, at 15 (3d ed. 1999).
69. N.Y. Mult. Dwelling L. § 302(1)(b) (emphasis added).
70. E.g., *Tan Holding Corp. v. Weber*, N.Y.L.J., May, 15, 2002, at 19, col. 2 (Civ. Ct., N.Y. County).
71. *Fazio*, N.Y.L.J., Sept. 24, 2003, at 20, col. 5.
72. *Khelawan v. Corneil*, 190 Misc. 2d 621, 623, 739 N.Y.S.2d 557, 559 (Hous. Part Civ. Ct., Queens County 2002).
73. *Id.* at 622, 739 N.Y.S.2d at 557.
74. *Fazio*, N.Y.L.J., Sept. 24, 2003, at 20, col. 5.
75. *Nii*, 195 Misc. 2d at 822, 759 N.Y.S.2d at 842 (citing *Hornfeld*, 130 A.D.2d 398, 515 N.Y.S.2d 258).
76. *Wash. Square Prof'l Bldg, Inc. v. Leader*, 68 Misc. 2d 72, 74, 326 N.Y.S.2d 716, 719 (Civ. Ct., N.Y. County 1971).
77. See nonpayment discussion, *supra*.
78. *Khelawan*, 190 Misc. 2d at 624, 739 N.Y.S.2d at 559–60.
79. For a discussion of *Meaders*, see *Clinton Hill Lofts 1, LLC v. Reid*, N.Y.L.J., Aug. 6, 2003, at 23, col. 1 (Hous. Part Civ. Ct., Kings County).
80. *Meaders*, 2003 N.Y. Slip Op. 51123(U), \*3, 2003 N.Y. Misc. LEXIS 933, at \*3.
81. *Id.* (citing 99 *Commercial St. v. Ullewellen*, 240 A.D.2d 481, 483, 658 N.Y.S.2d 130, 132 (2d Dep't) (mem.), *lv. denied*, 90 N.Y.2d 686 N.E.2d 1366, 664 N.Y.S.2d 271 (1977); *Hornfeld*, 130 A.D.2d at 400, 515 N.Y.S.2d at 260; *Nii*, 195 Misc. 2d at 822, 759 N.Y.S.2d at 842).
82. *Nii*, 195 Misc. 2d 821, 759 N.Y.S.2d 841.
83. *Id.* at 822, 759 N.Y.S.2d at 842.
84. *Id.*, 759 N.Y.S.2d at 842.
85. Scherer, *supra* note 15, at § 7:138, at 7-57 (View from the Bench, by Hon. Fern Fisher) (citing *Santos v. Aquasvivas*, N.Y.L.J., July 10, 1997, at 32, col. 5 (App. Term 2d Dep't, 2d & 11th Jud. Dists, mem.); *In re Blackgold Realty Corp. v. Milne*, 69 N.Y.2d 719, 504 N.E.2d 392, 512 N.Y.S.2d 25 (1987)).
86. *Santos*, N.Y.L.J., July 10, 1997, at 32, col. 5.
87. Mr. Curtin wrote the preceding five paragraphs, this paragraph, the following three paragraphs, and the last paragraph in this section, including the attached endnotes. Judge Lebovits, who decided *Meaders* in first instance, does not wish to express any views on the case.
88. *Hornfeld*, 130 A.D.2d at 400, 515 N.Y.S.2d at 260.
89. *Totaram*, 2003 N.Y. Slip Op. 50663(U), \*4–5, 2003 N.Y. Misc. LEXIS 315, at \*4–5.
90. 99 *Commercial St.*, 240 A.D.2d at 483, 658 N.Y.S.2d at 132.
91. *Nii*, 195 Misc. 2d at 822, 759 N.Y.S.2d at 842.
92. N.Y.L.J., June 10, 2004, at 29, col. 1 (App. Term 2d Dep't, 2d & 11th Jud. Dists., mem.).
93. N.Y.L.J., June 10, 2004, at 29, col. 1.
94. Mr. Curtin wrote this paragraph, the next two paragraphs, and the last paragraph in this section, including the attached endnotes. Judge Lebovits, who decided *Esposito* and *Furman* in first instance, does not wish to express any views on these cases.
95. N.Y.C. Admin. Code § 26-127(b).
96. *E. 13th St. Homesteaders' Coalition v. Wright*, 217 A.D.2d 31, 39, 635 N.Y.S.2d 958, 963 (1st Dep't 1995).
97. *Koroma v. Kempster*, 2001 N.Y. Slip Op. 50012(U), 2001 N.Y. Misc. LEXIS 1325 (Civ. Ct., Richmond County 2001).
98. See, e.g., *Totaram*, 2003 N.Y. Slip Op. 50663(U), 2003 N.Y. Misc. LEXIS 315. In *Totaram*, the Civil Court, Kings County, stayed the execution of a warrant of eviction in an ejectment action even though, under RPAPL 753 (1) & (2), a stay must be conditioned on the tenant's paying use and occupancy, and in the Second Department a tenant may not be ordered to pay use and occupancy for an illegal unit.
99. See *Fazio*, N.Y.L.J., Sept., 24, 2003, at 20, col. 5 ("[T]here is nothing in the statute to support the Housing Court rejection of jurisdiction and requiring institution of an [RPAPL] Article 6 [ejectment] proceeding.") (citing *Meaders*).
100. Cf. *Totaram*, 2003 N.Y. Slip Op. 50663(U), 2003 N.Y. Misc. LEXIS 315. If the Civil Court's plenary part may grant a stay, by analogy so may the Civil Court's Housing Part.

**Gerald Lebovits is a judge of New York City Civil Court, Housing Part, in New York County and an adjunct professor at New York Law School. Judge Lebovits decided in first instance three cases mentioned in this article: *Meaders v. Jones*, *Esposito v. Ango*, and *Furman v. DeGeorge*. He expresses no view about these cases and did not write the passages or endnotes about them. Daniel J. Curtin, Jr., is an associate at Finkelstein Newman LLP in Manhattan, the principal research and writing assistant for Finkelstein and Ferrara's *Landlord and Tenant Practice in New York (West)*, and an adjunct professor at New York Law School.**