

# New York Law Journal



WWW.NYLJ.COM

VOLUME 242—NO. 89

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An ALM Publication

THURSDAY, NOVEMBER 5, 2009

Outside Counsel

Expert Analysis

## Local Law 7: Expanding 'Housing Standards' in the Civil Court

On March 13, 2008, the Tenant Protection Act (also known as Local Law 7 of 2008; hereinafter Local Law 7) took effect, giving tenants yet another avenue to pursue "landlord harassment" claims. The issues and inconsistencies raised by Local Law 7 are subtle, and could easily be overlooked by even the most careful of practitioners.

Practitioners should familiarize themselves with these issues, which provide fertile ground for advocacy on behalf of building owners. This article highlights and discusses four such issues: (i) conflicting and seemingly contradictory statutory language regarding the degree of discretion to be exercised in determining whether an alleged violation rises to the level of a Class C violation—"may" or "shall" the court determine whether a Class C violation exists; (ii) vagueness as to jurisdictional issues—whether or not it is the courts or Housing Preservation and Development (HPD) that has the power to enforce the rights and remedies provided for in Local Law 7; (iii) the challenges inherent in HPD inspectors' assessing violations under Local Law 7, violations which are not readily and objectively identifiable; and (iv) whether the housing court even has subject matter jurisdiction over such claims, which may not fall within the "housing standard" requisite of CCA §110(a).

This article then examines two recent cases which have dealt with Local Law 7: (i) *Prometheus Realty v. City of New York*,<sup>1</sup> where the Supreme Court, New York County (Rakower,



By  
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J.), upheld the constitutionality of Local Law 7, and (ii) *Aguaiza v. Vantage Properties*,<sup>2</sup> where the Supreme Court, New York County (Shulman, J.) addressed some jurisdictional concerns implicated by Local Law 7.

In the end, it is the opinion of the authors that Local Law 7 is inherently ambiguous, seemingly contradictory, impermissibly subjective and out of place within New York City's Administrative Code's enforcement scheme. It remains a fertile arena for litigation until the Appellate Courts speak on its meaning and intent.

On Feb. 27, 2008, the New York City Council and the Committee on Housing and Buildings released their findings on Local Law 7. For more information, see Report of the Infrastructure Division, Feb. 27, 2008, Robert Newman, Legislative Director, NYC Council; New York City Council member Erik Martin Dilan, Chair, Committee on Housing and Buildings, for more information.

### Harassment Defined

Harassment under Local Law 7 is generally defined as any action, or failure to act, by or on behalf of an owner that (i) causes any person lawfully entitled to occupancy of a dwelling to vacate such dwelling, or to surrender or waive any rights in relation to such occupancy; (ii) includes using force, or making threats of

force, against any person lawfully entitled to occupancy of the dwelling, and interruptions or discontinuances of essential services, which impair the habitability of such dwelling; (iii) commencing baseless or frivolous court proceedings against any person lawfully entitled to occupancy of such dwelling unit; (iv) removing, tampering with or changing the locks for the door (or even the door itself) of the subject dwelling; and (v) any other repeated acts that substantially interfere with or disturb the comfort, peace or quiet of any person lawfully entitled to occupancy of such dwelling.

### Practical Assessment

Local Law 7, §4, amends §27-2115 to include §§27-2115(m)(1) and (2). Puzzlingly, however, the specific language of §27-2115(m)(1) and §27-2115(m)(2) seem to contradict. On the one hand, §27-2115(m)(1) states that a "violation of subdivision d of §27-2005 of this code shall be a Class C immediately hazardous violation and a penalty shall be imposed in accordance with this section..." (emphasis added). On the other hand, §27-2115(m)(2) states that "[i]f a court of competent jurisdiction finds that conduct in violation of subdivision d of §27-2005 of this chapter has occurred, it may determine that a Class C violation existed at the time that such conduct occurred." (emphasis added). Thus, it is unclear how much discretion, if any, is to be exercised in determining whether violations of subdivision d of §27-2005 constitute Class C violations.

In addition, conspicuously absent from Local Law 7 is any language reserving jurisdiction for the placement of Class C violations for harassment solely with the housing court. Section 27-209(a) provides that HPD "shall have power to issue notices and orders to secure compliance with the requirements of

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this code....” Meanwhile, §27-2115(m)(2) states that “[i]f a court of competent jurisdiction finds that conduct in violation of subdivision d of §27-2005 of this chapter has occurred, it may determine that a Class C violation existed at the time that such conduct occurred.” In this regard, nothing appears to preclude HPD from issuing a violation for harassment. On the one hand, HPD has the power to determine whether or not a harassment has occurred and, on the other hand, a court also has the power to determine whether or not a harassment has occurred.

That notwithstanding, the nature of harassment claims is such that HPD Inspectors are likely not able to determine whether an owner’s conduct constitutes harassment per se, i.e., a factual analysis and the drawing of a legal conclusion is required in this regard, for which HPD inspectors (unlike judges) do not have the proper training and experience.

Further, and irrespective of whether it is HPD or the court that determines a violation, §27-2115(b) requires HPD to “serve a notice of violation upon the owner....” Section 27-2115(b) further requires HPD to “identify the condition constituting the violation, the provision of law applicable thereto, the department’s order number, the classification of the violation according to its degree of hazard, the time for certifying the correction of such violation and the amount of the possible penalty.”

To be sure, applying §27-2115(b) to harassment violations is, at best, challenging for the HPD inspector, and, at worst, impossible. The Administrative Code contains regulations based on sensory conditions existing within a dwelling unit (such as heat, paint, noise, etc). As such, Local Law 7 raises concerns of the subjectivity of statutory interpretation, since an HPD Inspector would be investigating, not overt and identifiable conditions, but rather the intentions and actions/omissions of a building owner that may or may not be plainly apparent (unlike peeling paint for example).

Moreover, it is unclear that harassment claims even fall within the purview of the housing part’s jurisdiction. Under the Civil Court Act §110 (a), the legislature created the housing part “for the establishment and maintenance of *housing standards*, including, but not limited to, the Multiple

Dwelling Law and the Housing Maintenance Code, Building Code and Health Code of the administrative code of the city of New York.” (emphasis added).

In that vein, the Civil Court Act, §110 (a) permits the court to issue injunctions and restraining orders, and impose monetary penalties, only where necessary to enforce “housing standards.” Meanwhile, Local Law 7 permits the court to issue injunctions and restraining orders, and impose monetary penalties, to stop a property owner from engaging in harassing conduct against a tenant.

However, does “harassment” really constitute a “housing standard?” Arguably, “harassment,” as defined by Local Law 7, involves conduct, either an action or omission, that leads to the violation of housing standards; the harassing conduct itself is not the housing standard per se. For example, it is the broken/defective plaster which violates the administrative code, and it is the landlord’s willful or grossly negligent failure to address the broken/defective plaster which is the “harassment.” While they are two separate peas, albeit in the same pod, the former is readily and objectively measurable, while the latter requires a factual hearing.

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Consequently, if harassment is not a housing standard, then the harassment claim is not properly adjudicated in the housing court. The Civil Court Act would trump Local Law 7, the former of which, by its very terms, limits the housing court’s jurisdiction to “housing standards.”

These issues, as well as others not raised herein, will have to be dealt with by courts, as they arise, on a case-by-case basis. The authors submit that the “housing standards” jurisdiction issue will be the first to be dealt with by the appellate courts. Notwithstanding, two recent cases, *Prometheus Realty*, supra and *Aguaiza*, supra, have addressed issues of constitutionality and jurisdiction with respect to Local Law 7.

## Law Withstands Challenges

### • *Prometheus Realty v. City of New York.*

Despite its inherent problems, the court in *Prometheus Realty* upheld Local Law 7 as constitutional and further held that a civil court judge of the housing part has the jurisdiction to impose a violation against a property owner for harassment.

The Rent Stabilization Association of New York City Inc., along with owners of various residential buildings in New York City, commenced an action against the city and the Association for Neighborhood and Housing Development and Theresa Perez, as president of the Queens Vantage Tenants Council, seeking a declaration that “Local Law 7 violates the New York State Constitution, that it violates plaintiffs’ substantive and procedural due process rights under the U.S. Constitution, and that it is unconstitutionally vague.” Plaintiffs moved for summary judgment and defendants opposed and, naturally, cross-moved for summary judgment.

Plaintiffs seized on the apparent subjectivity of Local Law 7. Plaintiffs argued that “compliance with traditional housing standards, such as failing to provide adequate heat or cutting off a tenant’s hot water, etc., are capable of objective assessment by an inspector...[but under] Local Law 7, [it is a] housing part judge [that] would be required to issue a violation instead of an inspector, thereby unconstitutionally expanding the housing part’s jurisdiction.”

In other words, what plaintiffs seemed to argue is that under Local Law 7, a housing part judge would have to step into the shoes of the HPD inspector to issue a violation which, as plaintiffs claimed, would be an unconstitutional exercise of the housing part’s jurisdiction.

Defendants argued that since “Plaintiffs are making a facial challenge to Local Law 7, they have the burden of demonstrating that there is no possible valid application of that law.” Further, defendants asserted that Local Law 7 is consistent with the scope of the HMC and the jurisdiction of the housing part because nothing in the contained code restricts housing standards to purely physical conditions “[and] [t]hus, ...there is no unlawful expansion of the Housing Part.”

The Supreme Court in New York County, relying upon §110 of the Civil Court Act and

the Housing Maintenance Code, found that there is "no dispute that the Housing Part was created...to enforce the HMC, which was intended to be a live document, flexible enough to incorporate housing issues as they arose." Additionally, the court relied upon Article IX of the New York State Constitution for the proposition that "...every local government shall have power to adopt and amend local laws not inconsistent with the provisions of this constitution or any general law...." Based on the foregoing, the court then held that "Local Law 7 is a valid exercise of the powers conferred upon municipalities pursuant to the Municipal Home Rule Law."

The court further found that Local Law 7 provides for the basic procedural protections required under the due process clause of the U.S. Constitution, and that its passage was a rational legislative response to what the City Council determined to be a potential problem (i.e., harassment) to be confronted by tenants in New York City. As such, the court held Local Law 7 to be constitutional.

• **Aguaiza v. Vantage Properties.** Likewise, the Supreme Court in New York County in *Aguaiza* addressed issues arising out of the housing court's and supreme court's powers to hear claims under Local Law 7.

By way of background, in *Aguaiza*, 10 plaintiff-tenants (residing in five different buildings) sued their landlord for, inter alia, harassment in violation of Local Law 7. Plaintiffs alleged that defendants engaged in such harassing activities as commencing baseless non-payment proceedings, arbitrarily refusing to accept timely tendered rent payments, prosecuting bogus non-primary residency and/or illegal sublet holdover proceedings, making baseless refusals to offer lease renewal and arbitrarily demanding proof of identity from plaintiffs.

In seeking to dismiss the underlying complaint, defendants contended, that they: (i) properly refused to accept rent payments from certain plaintiffs, (ii) properly commenced Real Property Actions and Proceedings Law (RPAPL) proceedings for untimely rent payments, (iii) properly and lawfully initiated RPAPL proceedings, and (iv) properly pursued other remedies for lease breaches. In addition, defendants alleged

that plaintiffs failed to sufficiently plead that defendants engaged in the "repeated" conduct proscribed by Local Law 7.

The question before the *Aguaiza* court with respect to Local Law 7 was whether or not the supreme court had jurisdiction to hear Local Law 7 harassment claims. In finding that the supreme court does indeed have jurisdiction, the *Aguaiza* court confirmed one of the concerns raised by this article, and found that there was no language in Local Law 7 "requiring adjudication of a tenant harassment claim by the Housing Court vesting that court with primary exclusive jurisdiction." Thus, even the Supreme Court acknowledged that, absent from Local Law 7 is any language reserving jurisdiction solely with the housing court.

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It is questionable, at best, whether or not Local Law 7 harassment claims can be classified as housing standards to confer upon the housing court jurisdiction to impose injunctions, restraining orders and monetary penalties.

Furthermore, with respect to the issue of whether or not "harassment" constitutes a "housing standard," *Aguaiza* seems to say that it does not: "[Local Law 7] now empowers the housing court to enjoin a landlord from engaging in tenant harassment notwithstanding the Civil Court Act's limitation on the housing court's power to issue injunctions or restraining orders solely to enforce 'housing standards.'"<sup>3</sup> The court's wording seems to indicate that since "harassment" does not qualify as a "housing standard," an exception must be made in order for the housing court to have the power to issue injunctions and restraining orders and impose monetary penalties.

The court then goes on to quote the language of 27-2115(m)(2)<sup>4</sup> as providing such an exception, failing to reconcile, however, the language of 27-2115(m)(2) with the language of the Civil Court Act, §110(a), the latter of which permits the court to issue injunctions and restraining orders, and impose monetary penalties, but only where necessary to enforce "housing standards."<sup>5</sup> Both laws are still on the books and both laws seem to conflict.

## Conclusion

Whether or not *Prometheus* and *Aguaiza* are appealed, remains to be seen.<sup>6</sup> That notwithstanding, both cases do not satisfactorily reconcile the apparent shortcomings and discrepancies on the face of Local Law 7: (i) §27-2115 states, on the one hand, that certain behavior by landlords *shall* be a Class C violation, and on the other hand *may* be a Class C violation; (ii) §27-209(a) provides, on the one hand, that *HPD* shall have power to issue notices and orders to secure compliance, and on the other hand §27-2115 gives *courts* that power; (iii) Local Law 7 is impermissibly subjective because, in theory, an *HPD* inspector would be investigating and issuing violations for the subjective actions and intentions of a building owner without holding a factual hearing (as would a court); and (iv) it is questionable, at best, whether or not Local Law 7 harassment claims can be classified as housing standards to confer upon the housing court jurisdiction to impose injunctions, restraining orders and monetary penalties.

These inconsistencies and ambiguities, as well as others, make Local Law 7 a difficult statute to implement, whether by *HPD* or the courts. Indeed, the statute's poor draftsmanship provides landlords with substantial defenses that, in the end, may carry them to victory against tenants claiming harassment.

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1. 2009 N.Y. Slip Op. 30273(U), 2009 WL 357500 (Sup. Ct. N.Y. County 2009).

2. 2009 N.Y. Slip Op. 31144(U), 2009 WL 1511791 (Sup. Ct. N.Y. County 2009).

3. *Id.* citing *Broom Realty Assocs. v. Sek Wing Eng*, 182 Misc.2d 917, 918 (App. Term 1st Dept. 1999). An appeal and cross-appeal in *Aguaiza v. Vantage Properties* were argued before the Appellate Division, First Department on Oct. 29, 2009.

4. Section 27-2115(m)(2) states that "[i]f a court of competent jurisdiction finds that conduct in violation of subdivision d of §27-2005 of this chapter has occurred, it may determine that a Class C violation existed at the time that such conduct occurred."

5. Under the Civil Court Act §110 (a), the legislature created the housing part "for the establishment and maintenance of housing standards..."

6. A Notice of Appeal has been filed in *Aguaiza*.

