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370 Columbus Realty LLLC v. Liew
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N.Y.Sup. 2013.

Slip Copy, 2013 WL 399344, 2013 N.Y. Slip Op.
50131(U)

This opinion is uncorrected and will not be published in the printed Official Reports.

370 Columbus Realty LLC, Petitioner-Landlord-Appellant,
v.

Deborah Wan Liew, Respondent-Tenant-Respondent, - and - "John Doe" and "Jane Doe," Respondents-Undertenants.
570446/12.

Supreme Court, Appellate Term, First Department

Decided on January 30, 2013

Digest-Index Classification:Landlord and Tenant-Rent Regulation--Primary Residence--Tenant's Occasional Use of Husband's Nearby Studio Apartment

PRESENT: Shulman, J.P., Hunter, Jr., Torres, JJ

Landlord appeals from a final judgment of the Civil Court of the City of New York, New York County (Sheldon J. Halprin, J.), entered on or about April 7, 2011, after a nonjury trial, in favor of tenant dismissing the petition in a holdover summary proceeding.

OPINION OF THE COURT

Per Curiam.

Final judgment (Sheldon J. Halprin, J.), entered on or about April 7, 2011, affirmed, with \$25 costs.

The evidence, fairly interpreted, supports the trial court's fact-laden determination, which rested in large measure on considerations relating to the credibility of the witnesses, that the long-term tenant did not abandon the subject Columbus Avenue stabilized apartment as her primary residence. Based on the record as a whole, and given the paucity of landlord's testimonial evidence, the court was warranted in finding that tenant maintained a substantial, physical nexus to the premises, where she spends a substantial amount of time and is seen on a regular basis. That certain documents relied upon by landlord list the address of tenant's husband's 12 by 18 foot, kitchenless, West 81st Street studio apartment does not, on this record, preponderate over the plausible and fully credited testimony offered by tenant and her witnesses (*see 23 Jones St. Assoc. v Keebler-Beretta*, 284 AD2d 109 [2001]). Giving due deference to the trial court's fully supported findings regarding the living and working arrangements between tenant and her husband, we agree that tenant's occasional use of the husband's nearby studio apartment does not mandate a finding of nonprimary residency with respect to the subject Columbus Avenue apartment.

We have considered landlord's remaining arguments and find them unavailing.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.*2

Decision Date: January 30, 2013

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N.Y.Sup. 2013.

370 Columbus Realty LLC v Liew
Slip Copy, 2013 WL 3993442013 WL 399344 (Table)(Table, Text in WESTLAW), Unreported Disposition9992013 N.Y. Slip Op. 50131(U)4603, 2013 WL 3993442013 WL 399344 (Table)(Table, Text in WESTLAW), Unreported Disposition9992013 N.Y. Slip Op. 50131(U)4603

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