

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK : PART R

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COLUMBUS AVENUE REALTY, LLC

Petitioner,

Index

No. L&T 85726/06

-against-
DECISION and ORDER

DEBORAH WAN LIEW,

Respondent,

-and-

“JOHN and/OR “JANE DOE”,

Respondents.

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SHELDON J. HALPRIN, J

This is a holdover proceeding in which petitioner seeks possession of the subject premises known as 370 Columbus Avenue #4D. The grounds claimed are that the premises are not occupied by the respondent, Deborah Wan Liew, as her primary residence. The only issue before this court is the primary residence of the respondent, Deborah Wan Liew, in this particular apartment. The court did not consider the residence of the respondent's husband, Henry Galiano, in the determination of this

proceeding.

It is well settled that in a non-primary residence matter, the petitioner has the burden of proof to show that the respondent maintains his or her primary residence other than at the subject premises. To establish this, the petitioner must show, by a preponderance of the evidence, that respondent does not maintain a substantial ongoing nexus with the subject premises. *Sharp v Melendez*, 139 AD2d 262 (1st Dept 1988), *app. den.*, 73 NY2d 707 (1989); *Katz v Gelman*, 177 Misc2d 83 (App Term, 1st Dept 1988). *Sommer v Turkel*, 137 Misc2d 7 (App Term, 1st Dept 1987); *Emay Properties Corp. v Norton*, 136 Misc2d 127 (App Term, 1st Dept 1987). Once petitioner establishes its *prima facie* case, the burden of proof shifts to respondent to establish that the subject apartment, is her primary residence. The respondent must show by clear and convincing evidence and testimony that she utilizes the premises as, and considers it as her primary residence.

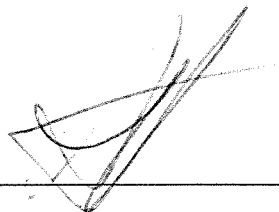
After a three day trial and after careful consideration of all the evidence and testimony adduced at trial, and for the reasons stated on the record, this court finds that petitioner has failed to establish by a preponderance of the evidence that respondent has not occupied the

instant premises as her primary residence. Accordingly, the instant proceeding is dismissed with prejudice.

This constitutes the decision and order of the Court.

Dated: New York, New York

April 7, 2011



SHELDON J. HALPRIN, J.H.C.

**SHELDON J. HALPRIN
JUDGE, HOUSING COURT**