

Decided on December 19, 2008

1. APPELLATE TERM OF THE SUPREME COURT, FIRST DEPARTMENT
PRESENT: McKeon, P.J., Davis, Schoenfeld, JJ
570225/08.

Edna Felix, Petitioner-Landlord-Respondent,

against

Lisa Farber, Respondent-Tenant-Appellant.

Landlord appeals from a final judgment of the Civil Court of the City of New York, New York County (Laurie L. Lau, J.), entered on or about December 7, 2007, after a nonjury trial, in favor of tenant dismissing the petition in a holdover summary proceeding.

Per Curiam.

Final judgment (Laurie L. Lau, J.), entered on or about December 7, 2007, affirmed, with \$25 costs.

After a trial spanning six days, the trial court dismissed this owner use holdover proceeding upon its determination that landlord failed to demonstrate the requisite good faith intention to occupy the stabilized apartment as a primary residence. We find unavailing landlord's contention that the court's decision and underlying findings of fact are against the weight of the evidence. On an appeal from a judgment after a bench trial, this court is authorized to grant the judgment warranted by the facts, "taking into account in a close case the fact that the trial judge has the advantage of seeing the witnesses" (*Northern Westchester Professional Park Assoc. v Town of Bedford*, 60 NY2d 492, 499 [1983], quoting *York Mtge. Corp. v Clotar Constr. Corp.*, 254 NY 129, 133-134 [1930]). However, "the decision of the fact-finding court should not be disturbed upon appeal unless it is obvious that the court's conclusions could not be reached under any fair interpretation of the evidence, especially when the findings of fact rest in large measure on considerations relating to the credibility of witnesses" (*Claridge Gardens, Inc. v Menotti*, 160 AD2d 433, 544-545 [1990]). Based upon the record as a whole, and particularly considering the attempts made by the landlord and her husband experienced real estate investors to sell the building premises after purporting to terminate respondent's tenancy on owner occupancy grounds and their failure to adequately explain why the building continued to be listed for sale on the eve of trial, we conclude that the evidence did not so preponderate in favor of landlord that the verdict could not have been reached on any fair interpretation of the evidence (*see Lolik v Big V Supermarkets*, 86 NY2d 744, 746 [1995]).

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

Decision Date: December 19, 2008