

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF KINGS: HOUSING PART B

CHRISTIAN GRAY,

Petitioner-Tenants,

-against-

AMERICAN PACKAGE COMPANY, INC. and
DEPARTMENT OF HOUSING PRESERVATION
AND DEVELOPMENT,

Respondents.

Index No. L&T 6086/2020

NOTICE OF ENTRY

PLEASE TAKE NOTICE, that the within is a true copy of the Decision/Order of this Court (Hon. Remy Smith, J.H.C.), dated September 29, 2023, and electronically filed, and/or entered, in the Office of the Clerk of the County of Kings on September 29, 2023.

Dated: New York, New York
October 2, 2023

BELKIN BURDEN GOLDMAN, LLP
Attorneys for American Package Company, Inc.
60 East 42nd Street, 16th Floor
New York, New York 10165
(212) 867-4466
DPhillips@bbgllp.com

By: *Daniel P. Phillips*
Daniel P. Phillips, Esq.

TO:

All Appearing Parties (VIA NYSCEF)

CIVIL COURT OF THE CITY OF NEW YORK
KINGS COUNTY: HOUSING PART B

-----X
CHRISTIAN GRAY,

Petitioners-Tenants,

Index No. LT-6086-20

- against -

DECISION/ORDER

AMERICAN PACKAGE COMPANY, INC.
and DEPARTMENT OF HOUSING
PRESERVATION AND DEVELOPMENT,

Respondents.

-----X
Papers in consideration pursuant to CPLR §2219 of this motion for compliance:

Petitioner’s Notice of Motion and Affirmation in support	1
Respondent’s Opposition	2
Petitioner’s Reply Affirmation	3
Court File	<i>passim</i>

Petitioner’s motion to restore to the calendar to determine respondent landlord’s compliance with the June 29, 2021 stipulation is denied in its entirety. The stipulation provided that respondent landlord’s mold remediation company was to perform the scope of work items¹ at 97 Green Street, Apt. G21, Brooklyn, New York 11222 (“premises”) on July 20, 2021 and through completion, without a deadline except that once respondent submits a Post-Remediation Report, petitioner’s counsel must send its own mold inspection company to inspect and test the premises to confirm completion and, within 14 days of the date respondent delivers the Post-Remediation Report, provide its own report (Olmstead Post-Remediation Report) concerning the adequacy of the work. The stipulation provided that the proceeding may only be restored for

¹The scope of work sets forth the agreed-upon steps required to complete the work, including but not limited to demolition of rooms and removal of floors and walls prior to cleaning mold and performing probe tests on various parts of the walls and deck. Various safety measures were provided in the scope as well.

purposes of enforcing compliance with the obligations in the stipulation or to determine additional disputed work.

Petitioner moved for this relief based on its industrial engineer Edward Olmstead's report after inspection of the premises On August 16 and 17, 2021 based on his belief, contained in the report but not sworn, that respondent's mold remediator "cleared the work" but petitioner's motion is devoid of the respondent's remediator's Post Remediation Report that was to trigger the Olmstead Post-Remediation Report. Also, Olmstead's report annexed to the motion to restore (NYSCEF Doc. #16) is completely devoid of the date that respondent's remediator "cleared the work" so the court is unable to determine whether petitioner defaulted in its "Olmstead Inspection Deadline" and thus waived his right to inspect the premises and contest respondent's remediator's work. NYSCEF Doc. 15, paragraph 5. While respondent attaches the purported Post Remediation Report from its remediator, there is no proof that it was emailed in compliance with paragraph 5 of the parties stipulation and there is no proof that Olmstead conducted his inspection within 5 days of the email and that he emailed respondent's counsel a copy of the Olmstead Post Remediation Report within 14 days of his inspection. The ability to bring this motion was therefore never triggered and the motion must be denied.

This is the Decision/Order of the court.

Dated: Brooklyn, New York
September 29, 2023

BY: _____



Remy Smith, J.H.C.

Appellate Term: Second Department

Request for Appellate Term Action [RATA] (Pursuant to 22 NYCRR 731.2 [a]) - Civil

Case Title: Set forth the title of the case as it appears on the summons, notice of petition or order to show cause by which the matter was or is to be commenced, or as amended.

Christian Gray

-against-

American Package Co. Inc., et al

For Court of Original Instance

Date Notice of Appeal Filed

For Appellate Term

Case Type

- Small Claims, Landlord & Tenant, Civil, No Fault

Appeal

- Paper Appealed from: Judgment, Order, Decision

Table with 2 columns: Court, Dated, Judge, County, Entered, Index No., Trial status.

Prior Appeals and Related Case Information

Are any appeals arising from the same action or proceeding currently pending in this court? (Circle One) Yes No

Where appropriate, indicate whether there is related action or proceeding pending in any court of this or any other jurisdiction, and if so, the status of the case:

Original Proceeding

- Commenced by: Order to Show Cause, Notice of Petition and Petition, Summons and Complaint, Small Claims Complaint Form, Other

Description of Appeal

Description: Briefly describe the paper appealed from. If the appeal is from an order, specify the relief requested and whether the motion was granted or denied.

Order denying Petitioner's motion for restoration and to determine whether Respondent violated a so-ordered stipulation of settlement dated June 29, 2021.

Issues: Specify the issues proposed to be raised on the appeal, the grounds for reversal, or modification to be advanced and the specific relief sought on appeal.

The order improperly denied the motion based upon arguments that were never raised in opposition to Petitioner's motion, and which are unsupported by the law and the so-ordered stipulation of settlement.

Party Information

Instructions: Fill in the name of each party to the action or proceeding (one name per line). Indicate the status of the party in the court of original instance and the status of the party in this court, if applicable. For parties with an attorney, check the "Represented" box; for parties without an attorney, check the "Pro Se" box. You must provide the address and phone number for all parties. Attach additional parties and their information on a separate sheet of paper.

No.	Party Name	Original Status	Appellate Term Status
1	Christian Gray	Petitioner	Appellant

Represented Pro Se

Attorney/Firm Name: (if applicable) Ween & Kozek, PLLC

Address: 20 Jay Street, Suite 814

City: Brooklyn **State:** New York **Zip Code:** 11201 **Telephone:** (212) 964-1822

E-Mail Address: mkozek@weenkozek.com **Fax Number:** (212) 385-9827

No.	Party Name	Original Status	Appellate Term Status
2	American Package Co. Inc.	Respondent	Respondent

Represented Pro Se

Attorney/Firm Name: (if applicable) Belkin Burden Goldman LLP

Address: 60 East 42nd Street, 16th Floor

City: New York **State:** New York **Zip Code:** 10165 **Telephone:** (212) 867-4466

E-Mail Address: dskaller@bbgllp.com **Fax Number:** (212) 297-1859

No.	Party Name	Original Status	Appellate Term Status
3			

Represented Pro Se

Attorney/Firm Name: (if applicable)

Address:

City: **State:** **Zip Code:** **Telephone:**

E-Mail Address: **Fax Number:**

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF KINGS: HOUSING PART B

-----X
CHRISTIAN GRAY,

Petitioner-Tenant,

- against -

AMERICAN PACKAGE COMPANY, INC.,

Respondent-Owner,

- and -

THE DEPARTMENT OF HOUSING PRESERVATION
AND DEVELOPMENT,

Respondent.
-----X

Index No. 6086/2020

**AFFIRMATION
OF SERVICE**

MICHAEL P. KOZEK, an attorney duly admitted to practice law in the State of New York,
hereby affirms the following to be true under penalty of perjury:

On October 31, 2023, I served the within NOTICE OF APPEAL by simultaneous NYSCEF
delivery to Respondents.

Dated: Brooklyn, New York
October 31, 2023



MICHAEL P. KOZEK