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40 E. 68th St. Co. v Habbas
2014 NY Slip Op 50071(U)
Decided on January 28, 2014
Appellate Term, First Department
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*SUPREME COURT, APPELLATE TERM, FIRST DEPARTMENT*PRESENT: Schoenfeld, J.P., Shulman, Hunter, Jr., JJ
570535/13.**40 East 68th Street Co., Petitioner-Landlord-Respondent,--****against****Hani Jamil Saud Habbas, Respondent-Tenant-Appellant, -and- "John Doe" and/or "Jane Doe," Respondents-Undertenants.**

Tenant appeals from a final judgment of the Civil Court of the City of New York, New York County (Laurie L. Lau, **J.**), entered April 16, 2013, after a nonjury trial, awarding possession to landlord in a holdover summary proceeding.

Per Curiam.

Final judgment (Laurie L. Lau, J.), entered April 16, 2013, affirmed, with \$25 costs.

We find no cause to disturb the trial court's fact-laden determination that tenant did not maintain the subject East 68th Street, Manhattan apartment as his primary residence, a finding which rested in large measure on the court's negative assessment of tenant's credibility (*see Claridge Gardens v Menotti* (160 AD2d 544 [1990])), most notably, as the

court put it, his "capacity for prevarication and dissembling when faced with questions calling for specific answers." Based on the extensive testimonial and documentary evidence presented at trial, the court was warranted in finding that tenant "was at most a rarely seen presence at the [b]uilding," which he used as "a convenient, occasionally visited pied-a-terre," and that tenant spent a considerable amount of time living abroad in such far-flung locales as Qatar, the United Arab Emirates, and at a London home owned by his mother. While tenant offered various explanations for his acknowledged and extended absences, the trial court was in the best position to assess the veracity of his testimony, and ultimately to determine that his credibility in this regard was affected by a lack of documentary support.

Nor was landlord required to prove that tenant had a specific alternative primary residence elsewhere (*se*" *TOA Constr. Co., Inc. v Tsitsires*. 54 AD3d 109, 113 [2008]), particularly "where, as here, tenant is shown to spend considerable amounts of time at several (*2]different alternate addresses" (*see Emel Realty Corp. v Carey*, 188 Misc 2d 280, 282 [2001], *affd*288 AD2d 163 [2001]). In this regard, any misstatement in the court's written decision as to tenant's "regular[]" presence in California does not serve to undermine the court's fully supported findings regarding tenant's "sporadic" presence in New York and "extensive" presence overseas. Considering the record as a whole, it cannot be said that the trial court's finding of nonprimary residence could not have been reached under any fair interpretation of the evidence (*see Claridge Gardens v Menotti*, 160 AD2d at 544-545; *see also 409-411 Sixth St.. l LC v Magi*, 2? NY3d 875 [2013]).

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

Decision Date: January 28, 2014

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