

Lottie Schmeidler et al., Respondents, v. Punia & Marx, Inc., Appellant

[NO NUMBER IN ORIGINAL]

Court of Appeals of New York

35 N.Y.2d 790; 320 N.E.2d 871; 362 N.Y.S.2d 157; 1974 N.Y. LEXIS 1221

October 7, 1974, Submitted

November 15, 1974, Decided

PRIOR HISTORY: [**1] Reported below, *45 A D 2d 823*.

Motion for leave to appeal from an order of the Appellate Division of the Supreme Court in the Second Judicial Department, entered June 24, 1974, which unanimously affirmed (1) an order of the Supreme Court at Special Term (Abraham J. Multer, J.), entered in Kings County in an action to enjoin defendant landlord from converting a manually operated elevator to self-service operation in a certain apartment building, granting a motion by the Commissioner of the Department of Rent and Housing Maintenance for leave to intervene as a party plaintiff, granting a cross motion by defendant to the extent of dismissing the complaint of plaintiffs tenants as a class action, and directing that the matter be set down for trial, (2) a subsequent order of said Supreme Court (John A. Monteleone, J.), denying a motion by defendant for change of venue and for a stay, and (3) a judgment of said Supreme Court in favor of plaintiffs, entered upon a decision of the court, *inter alia*, directing defendant to maintain certain elevator service and to furnish certain security services, and remanding the matter to the Commissioner of the Department of Rent and Housing Maintenance [**2] to hear and determine if the conversion from a manual to an automatic elevator had resulted in a diminution of essential services.

HEADNOTES

Appeal -- Court of Appeals -- nonfinal order -- order which unanimously affirmed orders of Supreme Court (1) granting leave to Commissioner of Department of Rent and Housing Maintenance to intervene as party plaintiff, dismissing complaint of plaintiff tenants as class action and directing matter to be set down for trial, and (2) denying defendant's motion for change of venue and for stay, and which also affirmed judgment of said Supreme Court in favor of plaintiffs, remanding matter to commissioner for hearing and determination on certain issue, is not final -- motion for leave to appeal therefrom dismissed.

COUNSEL: *Samuel Kirschenbaum* for motion.

Gilbert J. Fortgang and *Daniel W. Joy* opposed.

OPINION

[*791] Motion dismissed upon the ground that the order sought to be appealed from does not finally determine the action within the meaning of the Constitution.