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'Tourist' Jagger Loses Fight for Apartment

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A Manhattan appellate court has granted an eviction petition filed against Bianca Jagger by the landlord of her rent-stabilized apartment, holding that a foreign national on a tourist visa cannot claim a U.S. apartment as her primary residence.

By a 3-2 vote, the Appellate Division, 1st Department, reversed Supreme Court Justice Leland DeGrasse's denial of Katz Park Avenue Corp.'s motion for summary judgment on its ejectment petition.

"A B-2 visa holder cannot claim simultaneous compliance with the immigration statute's 'principal' residence requirement and the primary residence requirement under the rent regulation law," Justice Joseph Sullivan wrote for the majority in *Katz Park Avenue Corp. v. Jagger*, 9208.

"This is not, as the dissent contends, to equate domicile and primary residence, but merely to reach the obvious conclusion that one who maintains her 'principal, actual dwelling place in fact' in the United Kingdom cannot maintain a primary residence in New York."

The contentious dispute between the ex-wife of Rolling Stones frontman Mick Jagger and her landlord dates back to 2003, when she stopped paying the \$4,600 monthly rent on her two-bedroom apartment on Park Avenue, near 61st Street.

She claimed that water damage had created toxic levels of mold, wreaking havoc on her health as well as her possessions. She moved into a hotel and took at times to wearing a gas mask, even in public, according to press reports.

The building's owner filed two ejectment petitions against her, based in part on her failure to pay rent on an apartment with a purported market value of \$8,800 per month; Jagger countered with a \$20 million personal injury suit.

More than four years later, the Appellate Division has granted Katz Park Avenue's motion for summary judgment, remanding the case to DeGrasse for a hearing on attorney fees and, potentially, unpaid rent.

Jagger was held in contempt and fined \$500 in September 2006 for failure to pay rent. After years of bickering between the parties, the case turned on her visa status.

"We ... note that to deny relief to the landlord in this instance, thereby permitting the tenant to claim primary residency in the subject premises, would contravene federal policy," Sullivan wrote.

"Even were we to conclude, ipso facto, that the holder of a B-2 tourist visa is not precluded from maintaining a primary residence in a rent stabilized apartment, the record is devoid of any evidence supporting this tenant's primary residence claim or showing that she is in the United States as anything other than a temporary visitor."

The decision noted that Jagger, a citizen of the United Kingdom, has at least one other residence, a luxury apartment in the Belgravia section of London.

Justices George D. Marlow and James M. McGuire joined the majority.

Justices Peter Tom and Bernard J. Malone Jr. dissented in an opinion by Malone.

The dissent found that the majority erred in equating "domicile" with "primary residence."

"The flaw in this reasoning lies in part in the majority's borrowing the Immigration and Nationality Act's definition of 'residence,' which clearly denominates an affiliation with an entire nation, but was not intended by congress to denote a connection with a particular unit," Malone wrote. "Use of the term 'residence' in immigration law is analogous to the concept of domicile or citizenship; as applied domestically, it refers not to any particular dwelling but to the United States as a whole (hence the term 'resident alien')."

Todd E. Soloway and Joshua D. Bernstein of Pryor Cashman Sherman & Flynn represented Katz Park Avenue.

"The facts of this case show that Bianca Jagger wasn't occupying this apartment as a primary resident, nor could she as a matter of law," Soloway said.

Ryan S. Goldstein represents Jagger.

"This is clearly a retaliatory action and not based upon any merit," he said. "This decision does not affect or bear on the personal injury lawsuit, which continues to be an active case. We expect her to be able to get her proper redress in that action."