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Madison/Fifth Assoc., LLC v 1841-1843 Ocean
Parkway LLC
75 A.D.3d 403, 904 N.Y.S.2d 68
NY,2010.

75 A.D.3d 403, 904 N.Y.S.2d 68, 2010 WL 2605871,
2010 N.Y. Slip Op. 05860

Madison/Fifth Associates, LLC, Respondent-
Appellant

v

1841-1843 Ocean Parkway LLC et al., Appellants-
Respondents.

Supreme Court, Appellate Division, First Depart-
ment, New York

July 1, 2010

CITE TITLE AS: Madison/Fifth Assoc., LLC v
1841-1843 Ocean Parkway LLC

HEADNOTE

Contracts
Leases
Renewal

*404

Morrison Cohen LLP, New York (Y. David Scharf of
counsel), for appellants-respondents.
Stern Tannenbaum & Bell LLP, New York (David S.
Tannenbaum of counsel), for respondent-appellant.
Order, Supreme Court, New York County (Milton A.
Tingling, J.), entered January 26, 2010, which denied
defendants' motion for summary judgment dismissing
the complaint, and denied plaintiff's cross motion for
summary judgment awarding declaratory relief on its
third cause of action and dismissing defendants'
counterclaims, unanimously modified, on the law and
the facts, to grant plaintiff's cross motion for sum-
mary judgment, it is declared that plaintiff effectively
exercised its option to renew the subject lease
through September 19, 2015, defendants' counter-
claims are dismissed, and otherwise affirmed, with
costs.

The record establishes that plaintiff tenant renewed
its lease with defendant owners' predecessor before
defendants bought the building; accordingly, no is-
sues of fact exist regarding whether defendants are
bound by the renewal (see Matter of Carrano v Cas-
tro, 44 AD3d 1038, 1040 [2007]; Stasyszyn v Sutton
E. Assoc., 161 AD2d 269 [1990]). Defendants' con-
tention that plaintiff could not have renewed the lease
because it was in violation of the lease at the time
that defendants purchased the property is not sup-
ported by the record. Any violations that existed at
the time that defendants purchased the premises and
that were described in defendants' notice to cure were
remedied by plaintiff. We reject defendants' position
that the notice of renewal was contingent on the state
of the premises at the exact expiration of the renewal
period in 2005.

Finally, equitable considerations dictate that plaintiff
should not forfeit its leasehold, since, despite defen-
dants' contentions to the contrary, the record contains
no evidence of plaintiff's unclean hands (J. N. A. Re-
alty Corp. v Cross Bay Chelsea, 42 NY2d 392
[1977]; Sy Jack Realty Co. v Pergament Svosset
Corp., 27 NY2d 449, 452 [1971]). Therefore, sum-
mary judgment on plaintiff's third cause of action
should have been granted. For the same reasons, de-
fendants' counterclaims for, inter alia, ejectment
should have been dismissed. Concur—Gonzalez, P.J.,
Andrias, Catterson, Renwick and Manzanet-Daniels,
JJ.

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NY,2010.

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