

Westlaw.

774 N.Y.S.2d 487  
 4 A.D.3d 308, 774 N.Y.S.2d 487, 2004 N.Y. Slip Op. 01254  
 (Cite as: 4 A.D.3d 308, 774 N.Y.S.2d 487)

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Supreme Court, Appellate Division, First  
 Department, New York.  
 Pari DULAC, Petitioner-Respondent,  
 v.  
 Robert DABROWSKI, Respondent-Appellant.

Feb. 26, 2004.

**Background:** Landlord appealed from an order of the Civil Court, New York County, Bruce Scheckowitz, J., dismissing summary proceeding to recover possession for non-payment of rent. The Supreme Court, Appellate Term, reversed, and tenant appealed.

**Holding:** The Supreme Court, Appellate Division, held that landlord could bring summary proceeding to recover possession for nonpayment of rent, even though rent arrears had been discharged in bankruptcy  
 Affirmed.

West Headnotes

**Bankruptcy** 2369

51k2369 Most Cited Cases

Landlord could bring summary proceeding to recover possession for nonpayment of rent, even though rent arrears had been discharged in bankruptcy, as landlord could pursue any remedy to which it was entitled under state law for breach of tenant's obligation to pay rent, except a remedy against the tenant personally to collect the money due.

\*\*487 Meryl L. Wenig, for Petitioner-Respondent.

Robert Grimble, for Respondent-Appellant.

MAZZARELLI, J.P., ANDRIAS, SAXE, LERNER,  
 JJ.

\*309 Order of the Appellate Term of the Supreme Court, First Department, entered on or about February 14, 2003, which reversed the order of the Civil Court, New York County (Bruce Scheckowitz,

J.), entered May 14, 2001, and denied respondent tenant's motion to dismiss the petition and granted petitioner landlord's cross motion to restore the proceeding to the trial calendar, unanimously affirmed, without costs.

The Appellate Term correctly determined that its decision in *Stahl Broadway Co. v. Haskins* (180 Misc.2d 705, 693 N.Y.S.2d 398) should not be followed. Federal courts have rejected *Stahl's* reasoning and have held that a bankruptcy discharge shields debtors from actions to collect the debt, but not from other remedies (*see cases cited infra*). Although a debtor's debt for rental arrears may be personally discharged in bankruptcy, the underlying debt is not extinguished. Hence, the discharge in bankruptcy is not the equivalent of payment and does not, under federal bankruptcy law, prevent a landlord from evicting a tenant by reason of nonpayment. The landlord may pursue any remedy to which it is entitled under state law for breach of the tenant's obligation to pay rent, except a remedy against the debtor personally to collect the money due (*see e.g. In re Robert Dabrowski*, 257 B.R. 394 [S.D.N.Y.2001]; *United States v. Alfano*, 34 F.Supp.2d 827, 841 [E.D.N.Y.1999]; *In re Touloumis*, 170 B.R. 825 [S.D.N.Y.1994]; *In re Hepburn*, 27 B.R. 135 [E.D.N.Y.1983]).

Where, as here, the landlord is not responsible for DHCR's delay in determining that rent arrears existed, the landlord may not, based on the delay, be precluded from instituting a non-payment proceeding to recover possession.

We have considered respondent's other arguments and find them unavailing.

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