

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF THE BRONX

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ARDSLEY HOLDINGS, LLC,

Plaintiff,

- against -

Index No. **26958/20E**

Hon. **FIDEL E. GOMEZ**
Justice

**ESPERANZA HERNANDEZ AND CITY TIRE INC.
2123 JEROME AVENUE
BRONX, NY 10453,**

Defendant.


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The following papers numbered 1 to 4, Read on this motion and cross-motion noticed on 11/22/21, and duly submitted as no. 3 on the Motion Calendar of 1/31/22.

	<u>PAPERS NUMBERED</u>	
Notice of Motion - Order to Show Cause - Exhibits and Affidavits Annexed	1	
Answering Affidavit and Exhibits		
Replying Affidavit and Exhibits		
Notice of Cross-Motion - Affidavits and Exhibits		
Pleadings - Exhibit		
Stipulation(s) - Referee's Report - Minutes		
Filed Papers-Order of Reference		
Memorandum of Law		

Non-party PALMANA REALTY CORP's motion is decided in accordance with the Decision and Order annexed hereto.

Dated: 2/25/2022

Hon. 
FIDEL E. GOMEZ, AJSC

- 1. CHECK ONE CASE DISPOSED NON-FINAL DISPOSITION
- 2. MOTION/CROSS-MOTION IS GRANTED DENIED
- 3. CHECK IF APPROPRIATE. GRANTED IN PART OTHER
- SETTLE ORDER
- SUBMIT ORDER
- DO NOT POST
- FIDUCIARY APPOINTMENT
- REFEREE APPOINTMENT
- NEXT APPEARANCE DATE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

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ARDSLEY HOLDINGS, LLC,

Plaintiff(s),

- against -

ESPERANZA HERNANDEZ AND CITY TIRE INC.
2123 JEROME AVENUE
BRONX, NY 10453,

Defendant(s).

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DECISION AND ORDER

Index No: 26958/20E

In this action for ejectment, non-party PALMANA REALTY CORP. (Palmana) moves seeking an order pursuant to CPLR §§ 1018 and 1021, substituting it as plaintiff in this action on grounds that as the new owner of the premises at issue, Palmana is plaintiff's successor in interest. The instant motion is unopposed.

For the reasons that follow hereinafter, Palmana's motion is granted on default and without opposition.

Pursuant to the complaint, this action is for ejectment. The complaint alleges that plaintiff is the landlord for the premises located at 2123 Jerome Avenue, Street Level Store, Bronx, NY 10453 (2123). On June 13, 2016, plaintiff and defendants entered into a modification agreement, whereby the lease between plaintiff and the prior tenants at 2123, dated May 1, 2013, would be modified to list defendants as tenants and would be extended through February 14,

2020. In 2020, plaintiff decided to sell 2123 and pursuant to the initial lease dated May 1, 2013, defendants were served with a ninety day notice of cancellation, indicating that plaintiff had elected to cancel the lease effective February 14, 2020. Despite the foregoing, defendants remain in possession. Based on the foregoing, plaintiff seeks a judgment of possession and for money damages for use and occupancy arrears totaling \$25,000.

Palmana's motion seeking an order substituting it as plaintiff in this action is granted. Significantly, the record establishes that on September 27, 2021, plaintiff conveyed 2123 to Palmana, such that Palmana now owns 2123.

CPLR § 1018 states that “[u]pon any transfer of interest, the action may be continued by or against the original parties unless the court directs the person to whom the interest is transferred to be substituted or joined in the action.” Moreover, pursuant to CPLR § 1021, “[a] motion for substitution may be made by the successors or representatives of a party or by any party.” Thus, while an action may continue even after a party thereto has been divested of interest, upon a motion to substitute the successor in interest, the court ought to grant substitution (*U.S. Bank, N.A. v Duran*, 174 AD3d 768, 769 [2d Dept 2019] [“Thus, it was established that Gustavia, rather than MERS, was the real defendant in interest. The branch of Gustavia's cross motion which was for leave

to amend the caption and to substitute Gustavia as successor in interest in place of MERS should, therefore, have been granted, and the caption amended accordingly.”]; *First Am. Tit. Ins. Co. v Chavannes*, 176 AD3d 678, 680 [2d Dept 2019] [“Upon the submissions by Golden Grand that it had received an assignment of Robert's interest in this action and that it had thereafter assigned such interest to First American, the Supreme Court providently exercised its discretion in granting those branches of Golden Grand's motion which were to substitute First American as the plaintiff and to amend the caption accordingly.”]; *41st Rd. Properties, LLC v Wang Real Prop., LLC*, 164 AD3d 455, 458 [2d Dept 2018] [“Upon 41st Road's submission of proof that Emigrant had assigned it the mortgage and the note, the Supreme Court providently exercised its discretion in granting 41st Road's motion to be substituted as the plaintiff and to amend the caption accordingly.”])

In support of the instant motion, Palmana submits an agreement between plaintiff and Palmana, dated September 27, 2021. The agreement indicates that plaintiff conveyed ownership of 2123 to Palmana effective October 4, 2021.

Based on the foregoing, Palmana establishes that as the new owner of 2123, it is the successor in interest to plaintiff's ejectment claim in this action. Accordingly, the instant motion is granted. It is hereby

ORDERED that Palmana be hereby substituted in place of plaintiff in this action. It is further

ORDERED that the all pleadings are deemed amended to reflect the substitution and that the caption herein be amended to read as follows:

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PALMANA REALTY CORP.,

Plaintiff(s),

- against -

ESPERANZA HERNANDEZ AND CITY TIRE INC. 2123
JEROME AVENUE
BRONX, NY 10453,


Defendant(s).

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It is further

ORDERED that Palmana serve a copy of this Order with Notice of Entry upon defendants within thirty (30) days hereof.

Dated : February 25, 2022
Bronx, New York



HON. FIDEL E. GOMEZ, AJSC