

PML I LLC v Ravix

2008 NY Slip Op 31324(U)

April 30, 2008

Supreme Court, Kings County

Docket Number: 0059835/2008

Judge: Sabrina B. Kraus

Republished from New York State Unified Court System's E-Courts Service.
Search E-Courts (<http://www.nycourts.gov/ecourts>) for any additional information on this case.

This opinion is uncorrected and not selected for official publication.

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF KINGS: HOUSING PART H

PML I LLC, X

Petitioner-Landlord

-against-

DECISION & ORDER
Index No.: L&T 59835/08

HON. SABRINA B. KRAUS

LYNCH M. RAVIX
EDMINDO A. ROACH, JR
2665 BEDFORD AVENUE - APT. A2
BROOKLYN, NY 11210

Respondent-Tenant

“JOHN DOE” and/or “JANE DOE”

Respondent - Undertenants

X

Recitation of the papers considered in review of the Court’s order dismiss the proceeding based on fatal defects in the predicate notice and pleadings:

Papers	Numbered
Petition, Predicate Notice & Affidavits of Service	1
Notice of Petition & Aff. Of Service	2
Renewal Lease Dated 11/21/06	3
DHCR Registration	4
Postcard from Court to Resp for 5/7/08 Inquest	5
May 7, 2008 Transfer Order	6
Record on Inquest	

BACKGROUND

This summary holdover proceeding was commenced by **PML I LLC** ("Petitioner"), and seeks to recover possession of Apartment A2 at 2665 Bedford Avenue, Brooklyn, New York, 11210 ("Subject Premises"), based on allegations

that **LYNCH M. RAVIX** (“Respondent”) and **EDMINDO A. ROACH, JR.** (“Undertenant”) are licensees with no ongoing right to possession of the subject premises.

Undertenant appeared in Court on March 17, 2008, and alleged that Respondent’s rent stabilized tenancy had never been terminated, nor had he surrendered possession of the subject premises. The case was adjourned to April 9, 2008, for Respondent to appear. On April 9, 2008, again the Undertenant appeared, and alleged that Respondent was having trouble getting to court because of problems with his car. The Court advised Petitioner’s counsel, on the record, that the papers were defective on their face, and the proceeding was subject to dismissal. This was at 11:09 a.m. in the morning. Petitioner’s counsel requested that the case be recalled so that Petitioner would have a brief opportunity to prepare prior to addressing that issue. As of 12:50 p.m. Petitioner’s counsel did not return to address the issue, and the matter was adjourned to April 14, 2008 at 2:30 p.m., for said purpose and for Respondent to appear.

On April 14, 2008, there was no appearance either by Respondent or the Undertenant, and the matter was adjourned to May 7, 2008 for inquest at 2:30 p.m., and a post card was sent to Respondent and Undertenant.

On May 7, 2008, the proceeding inadvertently appeared on the Court’s 9:30 a.m. calendar, instead of 2:30p.m.calendar. The Respondent was mistakenly defaulted as of 10:30 a.m., and the matter was transferred to Part X and then Part P for inquest.

However, at 2:30 pm. both Respondent and Undertenant appeared as scheduled, and the file was transferred back to Part H with instructions from Judge Fiorella, that the Resolution Part resolve the matter. Petitioner's counsel was located, and appeared in the afternoon to address the proceeding .

The Court raised again the issue of a *sua sponte* dismissal based on the defects in the papers. However, given the procedural irregularities that had taken place earlier in the day, the Court offered Petitioner an opportunity to adjourn the proceeding, to submit papers or have an additional opportunity to prepare before addressing the Court on the issue. Petitioner's counsel requested that the case be recalled so he could consult with his colleagues as to whether Petitioner would request such an adjournment. The Court granted the request. Upon recall, Petitioner's counsel declined the Court's offer for an adjournment, and instead argued that the vacating of the inadvertent default could not be done in Part H, and could only be done by Judge Fiorella.

The Court indicated that it was Judge Fiorella who had transferred the file back to Part H to resolve that issue, and that in fact no judgment had ever been prepared by the Court, or signed by Judge Fiorella. Since the inquest was taken prior to the return date and time given on which it was scheduled, the inquest is deemed null and void, and the matter was heard at 2:30 p.m. as originally scheduled. The Court again offered Petitioner the opportunity to make any additional applications. Petitioner declined to do so.

The Court then took the sworn statement of Respondent, that he was the tenant of record, and never surrendered his tenancy to Petitioner. Additionally,

the file contained copies of two exhibits, put into evidence by Petitioner at the inquest earlier in the day, which indicated that Respondent, Lynce M Ravix, was the Rent-Stabilized tenant of record of the subject premises. One was a Renewal Lease dated November 21, 2006 for a term from April 1, 2007 through March 31, 2009. The second is a copy of the DHCR records filed by Petitioner, which indicate that as of April 23, 2008, Respondent was the rent- stabilized tenant of record for the subject premises, with a legal registered rent of \$761.80.

Based on the undisputed facts regarding his testimony, and even assuming the truth of all statements made by Petitioner, including the testimony offered at the inquest¹, the papers upon which this proceeding are predicated are fatally defective on their face and the proceeding must be dismissed.

The papers allege that this proceeding is a licensee proceeding brought pursuant to RPAPL §713 (7). As this Court has previously held (*see e.g. P.S. 85th Street FLP v. Demos*, 17 Misc.3d 1139(a), N.Y.L.J., Jan 10, 2008, p.29, col.1.), Petitioner may not ask the Court to award it a judgment of possession against a rent-stabilized tenant, except in accordance with the Rent Stabilization Code. The Code does not permit the termination of a rent-stabilized tenancy pursuant to RPAPL §713(7), nor does the Petitioner have standing to proceed directly against the licensee of the tenant of record, absent a termination of the rent-stabilized

¹ The Court reviewed the testimony of Apostolos Leonardos, offered at inquest, which included the testimony that Respondent had told Mr. Leonardos that he was moving, and that the Keyspan had a new name on the utility account. However, while this testimony would be pertinent to a non-primary residence or illegal subletting claim, it does not provide a basis for a cause of action alleged in this proceeding.

tenancy or a
surrender by the tenant of record. Westway Plaza Associates v. Doe, 179 A.D.2d
408 (1st Dept., 1992)

Based on the foregoing, it is clear that even when viewed in the light most favorable to Petitioner, the pleadings and predicate notice are fatally defective and the proceeding must be dismissed. Neither the statement in the predicate notice that “Lynch M. Ravix vacated the premises, and that the Landlord and Tenant relationship **expired** upon the vacatur of the prime tenant,”(emphasis added), nor Petitioner’s testimony at inquest, provide a basis to terminate the regulated tenancy of Respondent under RPAPL §713(7). While the lease remains in effect, Petitioner may bring a subletting proceeding, if supported by the relevant facts, or Petitioner may commence a non-primary residency proceeding at the appropriate time.

This constitutes the decision and order of the Court.

**Dated: Brooklyn, New York
April 30, 2008**

**SABRINA B. KRAUS
JHC**

TO: SLOCHOWSKY & SLOCHOWSKY, LLP
Attorneys for Petitioner
By: Charles Loveless, Esq.
26 Court Street - Suite 304
Brooklyn, New York 11242

LYNCE M. RAVIX
s/h/a LYNCH m. RAVIX
Respondent - Tenant
2665 Bedford Avenue - A2
Brooklyn, New York 11210

EDMUNDO ROACH
Respondent - Undertenant
2665 Bedford Avenue - A2
Brooklyn, New York 11210