

**Green v Palmer**

2021 NY Slip Op 32081(U)

October 15, 2021

Civil Court of the City of New York, Queens County

Docket Number: 52165/20

Judge: Clinton J. Guthrie

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This opinion is uncorrected and not selected for official publication.

CIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF QUEENS: HOUSING PART E

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BERKLEY GREEN,

Index No. L&T 52165/20

Petitioner,

-against-

**DECISION/ORDER**

CRYSTAL PALMER, JOHN DOE, JANE DOE,

Respondents.  
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Present:

Hon. CLINTON J. GUTHRIE  
Judge, Housing Court

Recitation, as required by CPLR § 2219(a), of the papers considered in the review of petitioner’s motion to restore, for a default judgment and warrant, and for execution upon the warrant:

<b>Papers</b>	<b>Numbered</b>
Notice of Motion & Affirmation/Affidavit/Exhibits Annexed.....	<u>1 (NYSCEF #4)</u>
Affidavit of Facts with Affidavit of Service.....	<u>2 (NYSCEF #7-8)</u>
Exhibits A-E.....	<u>3-7</u>

Upon the foregoing cited papers, the decision and order on petitioner’s motion and the hearing/conference taken via Microsoft Teams on October 13, 2021 is as follows.

PROCEDURAL HISTORY

This nonpayment proceeding was commenced in February 2020. Before any action could be taken, all eviction proceedings were suspended as a result of the COVID-19 public health emergency. See Administrative Order (AO) 68/20. Thereafter, in April 2021, petitioner made the instant motion to restore and for a default judgment, warrant, and related relief. The motion appeared in the HMP Part on June 30, 2021 and respondent Crystal Palmer was referred to Queens

Legal Services. The motion was adjourned to Part E on July 30, 2021. Queens Legal Services appeared on July 30, 2021 as friend of the court. At the time, they could not confirm whether respondent was seeking rental assistance. The proceeding was adjourned to August 18, 2021 for Queens Legal Services to confirm representation.

On August 18, 2021, respondent failed to appear and an attorney from Queens Legal Services appeared only to advise the court that she had not had contact with respondent. At the time, Part A of the COVID-19 Emergency Eviction and Foreclosure Prevention Act (“EEFPA”) [L 2020, ch 381], which had required a hearing upon motion before the entry of default judgments in eviction proceedings (Section 5), had been enjoined by the US Supreme Court. *See Chrysafts v. Marks*, 594 US \_\_, 2021 WL 3560766 [2021]. Since petitioner had not submitted non-military affidavits, however, the proceeding was adjourned to September 7, 2021 for submission. On September 7, 2021, respondents failed to appear. Prior to the September 13th court date, Governor Kathy Hochul signed L 2021, ch 417, which reinstated the motion and hearing requirements before default judgments could be issued in eviction proceedings (Part C, Subpart A, Sec. 5).

Upon respondents’ failure to appear on September 7, 2021, the court granted petitioner’s motion to restore and for a default judgment (which had not been withdrawn) to the extent of setting it down for a hearing as required by L 2021, ch 417. The hearing was scheduled for September 28, 2021. On September 28, 2021, respondents failed to appear and the petitioner’s attorney sought to submit upon the exhibits that he had provided to the court. However, a portion of the documents were not authenticated and the proceeding was adjourned to October 13, 2021 for submission of an affidavit.

On October 13, 2021, respondents failed to appear. Prior to the court date, an affidavit from

petitioner was served on respondents and the affidavit and proof of service were filed to NYSCEF. The court conducted a hearing/conference with petitioner's attorney. Petitioner's attorney responded that, to his knowledge, petitioner had not received either a COVID-19 hardship declaration or an Emergency Rental Assistance Program (ERAP) application from any respondent. Petitioner's attorney also responded in the negative when asked if any respondents were elderly, disabled, or otherwise infirm. Petitioner's attorney then requested that the court grant the relief sought in the motion upon the documents submitted.

#### DISCUSSION & CONCLUSION

Petitioner submitted an attorney-certified deed as its Exhibit B. After comparing its contents with the same document found on the ACRIS (Automated City Register Information System), the deed was admitted. Petitioner's Exhibit D is a copy of a purported Department of Housing Preservation and Development (HPD) registration. The court has been unable to confirm its contents on HPD's website and no information is provided to authenticate the document. Accordingly, it is not admitted (although the court notes that the premises are not alleged to be a multiple dwelling). Petitioner's Exhibit A is a breakdown of rent arrears through September 1, 2021, which is authenticated via the affidavit of Adloi Green and admitted. Finally, petitioner's Exhibit C is a lease between the parties running from February 1, 2019 through January 31, 2020, which is also properly authenticated via Adloi Green's affidavit and admitted.

Upon reviewing petitioner's motion and evidence, the motion must be denied as to the ultimate relief requested and the proceeding dismissed without prejudice (*see* CPLR 409). It is well established that a lease or rental agreement must be in effect "at the time the proceeding is commenced" for relief to be granted in a summary nonpayment proceeding. *See 265 Realty, LLC v.*

*Trec*, 39 Misc 3d 150[A], 2013 NY Slip Op 50974[U] [App Term, 2d Dept, 2d, 11th & 13th Jud Dists 2013]; *see also Lakeview Affordable Hous., LLC v. Turner*, 66 Misc 3d 142[A], 2020 NY Slip Op 50163[U] [App Term, 2d Dept, 9th & 10th Jud Dists 2020]; *Shahid v. Carillo*, 18 Misc 3d 136[A], 2008 NY Slip Op 50278[U] [App Term, 2d Dept, 2d & 11th Jud Dists 2008]. The lease submitted by petitioner here expired on January 31, 2020. The petition is dated February 3, 2020 and the proceeding was commenced thereafter, regardless of whether commencement is keyed to filing or service. *See 92 Bergenbrooklyn, LLC v. Cisarano*, 50 Misc 3d 21, 25 [App Term, 2d Dept, 2d, 11th & 13th Jud Dists 2015].


Since neither the petition nor any evidence presented by petitioner establishes that a new rental agreement was created after the proffered lease expired on January 31, 2020, this nonpayment proceeding lacks merit since no lease or rental agreement were in effect when the proceeding was commenced. *See 265 Realty, LLC*, 2013 NY Slip Op 50974[U], \*2. Moreover, the lease names Adloi Green as the landlord. Insofar as Berkley Green is named as the landlord in the petition and the rent demand, the petition and rent demand are also defective to the extent that they misstate the relationship of the parties. *See RPAPL § 741(2); 459 Webster Ave., LLC v. Green*, 64 Misc 3d 146[A], 2019 NY Slip Op 51349[U] [App Term, 2d Dept, 9th & 10th Jud Dists 2019] [Petition dismissed where landlord did not “demonstrate that there was any agreement between the parties, express or implied”]. For these reasons, the petition is dismissed without prejudice and the relief sought in petitioner’s motion, including a default judgment and related relief, is denied in its entirety. The clerk is directed to enter a judgment of dismissal in favor of respondents. *See CPLR § 411*.

This Decision/Order will be filed to NYSCEF. The court will mail a copy of this

Decision/Order to each respondent.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

Dated: Queens, New York  
October 15, 2021

  
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HON. CLINTON J. GUTHRIE, J.H.C.

**SO ORDERED - HON. CLINTON J. GUTHRIE**