

**White v Briscoe**

2022 NY Slip Op 31620(U)

May 27, 2022

Civil Court of the City of New York, Queens County

Docket Number: Index No. HP 566/21

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 C

-----X  
DAWN WHITE

Index No. HP 566/21

Petitioner,

-against-

**DECISION/ORDER**

ADRIAN BRISCOE, ARTHUR BRISCOE,

Respondents,

-and-

DEPARTMENT OF HOUSING PRESERVATION  
AND DEVELOPMENT,

Respondent.

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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 amend the petition pursuant to CPLR § 3025(b) and deem the proposed amended petition served and filed:

<b>Papers</b>	<b>Numbered</b>
Notice of Motion & Affirmation/Exhibits Annexed.....	<u>1 (NYSCEF #5)</u>
Affidavit in Opposition & Exhibits Annexed.....	<u>2 (NYSCEF #6-8)</u>
Affirmation in Reply & Exhibits Annexed.....	<u>3 (NYSCEF #9)</u>

Upon the foregoing cited papers, the decision and order on petitioner’s motion to amend the petition is as follows.

PROCEDURAL HISTORY

This harassment HP action was commenced by pro se order to show cause in August 2021. On October 18, 2021, after respondents-owners failed to appear, petitioner appeared with

counsel and this court rendered an interim order following an inquest and adjourned to November 29, 2021. Following additional adjournments and respondents-owners' retention of counsel, petitioner made the instant motion to amend the petition in March 2022. After the motion was fully briefed, the court heard argument on April 14, 2022 and reserved decision.

### DISCUSSION & CONCLUSION

Pursuant to CPLR § 3025(b), “[a] party may amend his or her pleading . . . at any time by leave of court or by stipulation of all parties. Leave shall be freely given upon such terms as may be just including granting of costs and continuances.” See e.g. *Faiella v. Tysens Park Apts., LLC*, 110 AD3d 1028, 1029 [2d Dept 2013] [“Leave to amend a pleading should be freely given absent prejudice or surprise to the opposing party, unless the proposed amendment is palpably insufficient or patently devoid of merit.”]; *Nationstar Mtge., LLC v. Jean-Baptiste*, 178 AD3d 883, 886 [2d Dept 2019].

Petitioner seeks to amend her petition to in order to increase “specificity,” add allegations, and add potential relief, including an order to correct under the Housing Maintenance Code and statutory damages and civil penalties. The motion is supported by an attorney affirmation, exhibits, and a proposed amended verified petition. Respondents oppose the motion, primarily through an affidavit of respondent-owner “Adrian Brisco” and exhibits, including a stipulation from an illegal commercial lockout proceeding between petitioner and “Adrien Briscoe.”<sup>1</sup> Respondents’ principal assertion in opposition is that petitioner’s harassment claims were raised, litigated, and settled in the lockout proceeding (Index No. 10165/2021), and thus are barred from being relitigated herein by reason of res judicata. Petitioner, in her reply, annexes the pleadings from the lockout proceeding and argues that any claims raised therein and

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<sup>1</sup> The alternate spellings are found each respective document.

their resolution do not have preclusive effect on petitioner's claims raised in the proposed amended petition.

The doctrine of res judicata "holds that, as to parties in a litigation and those in privity with them, a judgment on the merits by a court of competent jurisdiction is conclusive of the issues of fact and questions of law necessarily decided therein in any subsequent action." *Gramatan Home Investors Corp. v. Lopez*, 46 NY2d 481, 485 [1979] [Internal citations omitted]. The doctrine is "grounded on the premise that once a person has been afforded a full and fair opportunity to litigate a particular issue, that person may not be permitted to do so again." *Id.* A stipulation resolving a case will generally have res judicata effect only when it disposes of claims "with prejudice," and even then, that designation is narrowly interpreted when warranted. *See Pawling Lake Prop. Owners Assn., Inc. v. Greiner*, 72 AD3d 665, 668 [2d Dept 2010]; *Van Hof v. Town of Warwick*, 249 AD2d 382, 382 [2d Dept 1998].

Here, the petition from the illegal lockout proceeding alleges that respondent Adrian Briscoe unlawfully kept petitioner from possession of the "side porch and door," "garage," "backyard," and "driveway." The proceeding is brought pursuant to RPAPL § 713(10) and the petition does not plead any claims (harassment or otherwise) under the Housing Maintenance Code. A summary eviction proceeding (including one based on illegal lockout grounds) brought under RPAPL Article 7 is one "to recover real property," as stated in RPAPL § 701. The Court of Appeals has held that a summary proceeding "is of a purely possessory character." *Jones v. Gianferante*, 305 NY 135, 139 [1953]; *see also Patchogue Assoc. v. Sears, Roebuck & Co.*, 37 Misc 3d 1, 4 [App Term, 9th & 10th Jud Dists 2012]. Therefore, the claims raised in the proposed amended petition, which are all grounded in the Housing Maintenance Code, could not have been properly raised by petitioner in the illegal lockout proceeding (and even if raised, any


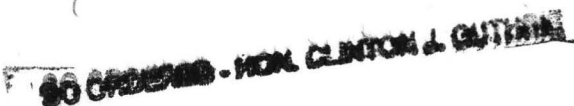
related relief could have been granted on an ancillary basis only if a judgment of possession had been granted, which was not the case). See *Fieldbridge Assoc., LLC v. Sanders*, 70 Misc 3d 140[A], 2021 NY Slip Op 50128[U] [App Term, 2d Dept, 2d, 11th & 13th Jud Dists 2021]; *615 Nostrand Ave. Corp. v. Roach*, 15 Misc 3d 1, 4 [App Term, 2d Dept, 2d & 11th Jud Dists 2006]. Furthermore, there is no proof showing that the illegal lockout proceeding ended in a stipulation disposing of any claims “with prejudice.”<sup>2</sup> See *Greiner*, 72 AD3d at 668. Therefore, the court does not find that any of the proposed amended claims are barred by res judicata.

As the court does not find the proposed amendment to be palpably insufficient or patently devoid of merit, and respondents have not established either surprise or prejudice (*Faiella*, 110 AD3d at 1029), petitioner’s motion to amend the petition is granted and the proposed amended petition is deemed served and filed. Respondents shall be permitted to interpose an answer to the amended petition on or before June 15, 2022. This matter shall be restored to the Part C calendar for pretrial conference on June 29, 2022 at 11:00 AM. This Decision/Order will be filed to NYSCEF.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

Dated: Queens, New York  
May 27, 2022

To: Akeem Amodu, Esq.  
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HON. CLINTON J. GUTHRIE  
J.H.C.  


<sup>2</sup> The stipulation from the illegal lockout proceeding annexed by respondents (dated September 1, 2021) only waives claims to “damages resulting from [r]espondent’s delay in complying with the court’s August 25, 2021 order.” There is nothing before the court to demonstrate that this notation should be interpreted to include any claims arising under the Housing Maintenance Code.

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