

<b>Carnegie Mgt. Inc. v Johnson</b>
2022 NY Slip Op 34177(U)
November 14, 2022
Civil Court of the City of New York, Kings County
Docket Number: Index No. LT-303142-20/KI
Judge: Elizabeth Donoghue
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CIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF KINGS: HOUSING PART T

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CARNEGIE MANAGEMENT INC.,

Index No.: LT-303142-20/KI

Petitioner-Landlord,

-against-

**DECISION/ORDER**  
**Hon. Elizabeth Donoghue**

AMBER JOHNSON,

Motion Seq: 2

Respondent-Tenant,

and

JOHN DOE; JANE DOE,

Respondents-Occupants,

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Present: Hon. Elizabeth Donoghue

Recitation, as required by CPLR §2219(a), of the papers considered in the review of petitioner’s motion:

<b>Papers</b>	<b>Numbered</b>
Petitioner’s Motion with Affidavit, Affirmation, and Exhibits .....	<u>28-30</u>
Respondent’s Opposition .....	<u>31</u>
Petitioner’s Reply Affirmation... ..	<u>32</u>
Court File .....	<u>1-27</u>

Upon the foregoing cited papers, the Decision and Order on this motion is as follows:

Petitioner-landlord, Carnegie Management Inc. (“petitioner” or “landlord”) commenced this instant holdover proceeding seeking possession of the premises located at 345 Eldert Street, Apartment 22, Brooklyn, New York 11237 (“subject premises”) from respondents Amber Johnson (“respondent” or “Johnson”) and other alleged occupants John Doe and Jane Doe (“occupants”). This proceeding was predicated upon a 30 Day Written Notice titled “Notice Pursuant to Lease Paragraph “61”” (“Notice of Termination”) to Johnson, seeking respondent’s vacatur from and surrender of the subject premises on or before September 17, 2020.<sup>1</sup> Service of the Notice of

<sup>1</sup> See NYSCEF Document 1, pages 4-5.

Termination was effectuated upon Johnson by First Class Mail and Certified Mail, Return Receipt Requested only.<sup>2</sup> Thereafter, on September 25, 2020, petitioner commenced this proceeding by Notice of Petition and Petition.<sup>3</sup>

On July 27, 2022, this court dismissed this holdover proceeding without prejudice to parties' claim for a plenary action pursuant to CPLR §407.<sup>4</sup> Now, petitioner moves to reargue this court's Decision and Order, *inter alia*, seeks to strike respondent's jury demand, affirmative defenses, counterclaims and award summary judgment in favor of the petitioner. This court grants petitioner's motion to reargue, but adheres to its July 27, 2022, Decision and Order, and accordingly, other branches of petitioner's motion are denied as moot.

Petitioner moves this Court pursuant to CPLR §2221(d), which states:

"A motion for leave to reargue: 1.) shall be identified specifically as such; 2.) shall be based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion, but shall not include any matters of fact not offered on the prior motion; and 3.) shall be made within thirty days after service of a copy of the order determining the prior motion and written notice of its entry..."

A court has the inherent power, *sua sponte* or on motion of a party, to reconsider and vacate its prior decision before issuing an order thereon (see *Scritchfield v. Perry*, 245 A.D.2d 1054, 667 N.Y.S.2d 584 [App. Div. 4th Dept. 1997] citing, *American Re-Ins. Co. v. SGB Universal Bldrs. Supply*, 160 AD2d 586 [App. Div. 1<sup>st</sup> Dept 1990]; *Vinciguerra v Jameson*, 153 AD2d 452 [App. Div. 3<sup>rd</sup> Dept 1990; *Levinger v. General Motors Corp.*, 122 AD2d 419 [App. Div. 3<sup>rd</sup> Dept 1986]). While the determination to grant leave to reargue a motion lies within the sound discretion of the court, a motion for leave to reargue "is not designed to provide an unsuccessful party with

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<sup>2</sup> See Affidavit of Service of the Notice of Termination, NYSCEF Document 1, pages 6-8.

<sup>3</sup> See NYSCEF Document 1 and 2.

<sup>4</sup> CPLR §407 states, "the court may at any time order a severance of a particular claim, counterclaim or cross-claim, or as to a particular party, and order that, as to such claim or party, the special proceeding continue as an action or as a separate special proceeding."

successive opportunities to reargue issues previously decided, or to present arguments different from those originally presented” (internal citation omitted) (See *Matter of Carter v. Carter*, 81 A.D.3d 819, 916 N.Y.S.2d 821 [2nd Dept. 2011]).

Petitioner argues that this court overlooked or misapprehended certain matters of fact and law in dismissing this proceeding. In particular, petitioner argues that the predicate termination notice underlying this holdover proceeding was not served in accordance with requirements of Real Property Law (“RPL”) 226-c<sup>5</sup> and 232-a<sup>6</sup>, but rather in accordance with the notice provision of the lease. As such, the court erred in dismissing this case. This court disagrees with petitioner’s position.

Petitioner relies on paragraph 61 of the lease, which states:

“Lease buy-out. It is specifically agreed that the landlord may at any given time buy out the Tenant from this lease by giving him 30 day written notice, the landlord will pay to Tenant an amount equal to one month rent contained in this lease in the amount effective that month, Landlord will deliver to Tenant said buyout amount upon Tenant surrendering and delivering the keys. In the event Tenant fails to surrender possession at the end of the 30 days, tenant waives the buyout amount, however the expiration date of the lease shall be accelerated and this lease shall

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<sup>5</sup> RPL §226-c states: “Notice of rent increase or non-renewal of residential tenancy. 1. Whenever a landlord intends to offer to renew the tenancy of an occupant in a residential dwelling unit with a rent increase equal to or greater than five percent above the current rent, **or the landlord does not intend to renew the tenancy**, the landlord shall provide written notice as required in subdivision two of this section. If the landlord fails to provide timely notice, the occupant's lawful tenancy shall continue under the existing terms of the tenancy from the date on which the landlord gave actual written notice until the notice period has expired, **notwithstanding any provision of a lease or other tenancy agreement to the contrary**. 2. (a) If the tenant has occupied the unit for less than one year and does not have a lease term of at least one year, the landlord shall provide at least thirty days’ notice. (b) If the tenant has occupied the unit for more than one year but less than two years, or has a lease term of at least one year but less than two years, the landlord shall provide at least sixty days’ notice. (c) If the tenant has occupied the unit for more than two years or has a lease term of at least two years, the landlord shall provide at least ninety days’ notice” (emphasis added).

<sup>6</sup> Real Property Law (“RPL”) §232-a states: “No monthly tenant, or tenant from month to month, shall hereafter be removed from...buildings in the city of New York on the grounds of holding over the tenant’s term unless pursuant to the **notice period required by subdivision two of section two hundred twenty-six-c** of this article..., the landlord...serve upon the tenant, **in the same manner in which a notice of petition in summary proceedings is now allowed to be served by law**, a notice in writing to the effect that the landlord elects to terminate the tenancy and that unless the tenant removes from such premises on the day designated in the notice, the landlord will commence summary proceedings under the statute to remove such tenant therefrom” (emphasis added).

expire on the 30<sup>th</sup> day of the 30 day buy out notice as if that day were the date herein definitely fixed for the expiration of the term.”

The Housing Stability and Tenant Protection Act of 2019 (“HSTPA”), *inter alia*, amended the RPL by adding §226-c and modifying §232-a. The HSTPA particularly added RPL §226-c to create a notice requirement upon expiration of an ordinary lease prior to commencement of a summary proceeding. RPL §226-c applies “... **notwithstanding any provision of a lease or other tenancy agreement to the contrary**”.

It is well-established precedent, that an agreement in purported or actual settlement of a landlord-tenant dispute which waives the benefit of a statutory protection is unenforceable as a matter of public policy, even if it benefits the tenant (see *Drucker v. Mauro*, 2006 NY Slip Op 3006, 30 A.D.3d 37, 814 N.Y.S.2d 43 [App. Div. 1st Dept. 2006]). Any agreement in a lease waiving any provision of a statute makes such an agreement void and unenforceable because it is against public policy (see *St. Andrews Par. v. Gallagher*, 200 N.Y.S. 590, 121 Misc. 167 [App. Term 2<sup>nd</sup> Dept. 1923]). Since respondent’s cumulative tenancy at the subject premises lasted more than a year but less than two years at the time notice was given, petitioner was subject to the 60 days’ notice requirement afforded by RPL §226-c and §232-a.

In light of the discussion *supra*, this court reiterates its earlier finding that, in a landlord-tenant proceedings, failure to strictly comply with the statutes governing summary proceedings deprives the court of jurisdiction and mandates dismissal (see *MSG Pomp Corp. v. Jane Doe*, 185 A.D.2d 798, 586 N.Y.S.2d 965 [App. Div. 1st Dept. 1992], quoting *Berkley Assocs. Co. v. Di Nolfi*, 122 A.D.2d 703, 505 N.Y.S.2d 630 [App. Div. 1st Dept. 1986]). A summary proceeding is a special proceeding governed entirely by statute and it is well established that there must be strict compliance with the statutory requirements to give the court jurisdiction (see *Clarke v. Wallace*

*Oil Co.*, 284 A.D.2d 492, 727 N.Y.S.2d 139 [App. Div. 2nd Dept. 2001] [internal citations omitted]).

In conclusion, the court grants petitioner's motion to reargue but adheres to its July 27, 2022, Decision and Order for the reasons stated *supra*. Since the court adheres to its earlier Decision and Order, the court does not address other parts and branches of petitioner's motion as they are moot. Accordingly, this holdover proceeding remains dismissed but without prejudice to parties' claim for a plenary action pursuant to CPLR §407.

The foregoing constitutes the Decision and Order of this Court.

Dated: Brooklyn, New York  
November 14, 2022

*Hon. Elizabeth Donoghue*