

Islam v Rodriguez
2022 NY Slip Op 34472(U)
December 27, 2022
Civil Court of the City of New York, Bronx County
Docket Number: Index No. 314955/2022
Judge: Krzysztof Lach
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CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF BRONX: HOUSING PART

JWELLI A. ISLAM

Petitioner

Index No. 314955/2022

- against -

DECISION/ORDER

MARISOL RODRIGUEZ
MICHAEL WIGLEY
VICTOR MOLINA
JOHN DOE
JANE DOE

Respondents,

Recitation, as required by CPLR § 2219 (a), of the papers considered in the review of the motion.

PAPERS	NUMBERED
Respondent’s Notice of Motion; Affirmation in Support; Memorandum of Law; & Exhibits	1 (NYSCEF Docs. #'s 7 - 11)
Petitioner’s Opposition	2 (NYSCEF Doc. # 12)
Respondent’s Affirmation in Reply	3 (NYSCEF Doc. # 13)

Upon the foregoing cited papers, the Decision and Order on Respondent’s Notice of Motion is as follows:

The instant holdover proceeding is predicated upon a “Notice to Quit, Vacate, & Surrender” dated December 19, 2019 (“the predicate notice”). It was served upon the named Respondents on December 28, 2019. Petitioner filed the instant Petition on May 26, 2022 or some twenty-nine months after the predicate notice was served. Prior to the commencement of this action, the Petitioner had commenced an identical summary holdover proceeding against the very same Respondents herein

under index number LT-004800-20/BX (“prior holdover proceeding”). The prior holdover was dismissed without prejudice for lack of personal jurisdiction. The predicate notice herein was the very same predicate noticed used in the prior holdover proceeding. The question now before the Court is whether the Petitioner can re-use the predicate notice after the prior holdover proceeding was dismissed. The Court rejects Petitioner’s ability to do so.

Since the prior holdover proceeding was dismissed, the “Notice to Quit, Vacate, & Surrender” upon which it was predicated cannot be revived or re-used to support the new action herein (*Kaycee W. 113th St. Corp. v Diakoff*, 160 AD2d 573 [1st Dept 1990]). Here, given the length of time that transpired between service of the predicate notice and the commencement of the instant proceeding, Respondents was entitled to a degree of finality when the prior holdover proceeding was dismissed. To hold otherwise would permit a state of ambiguity which would subject the Respondent to the whims of the Petitioner who may decide (or may not for that matter) to seek possession of the subject premises. The Court is aware of a line of cases which would permit the reuse of a predicate notice in a subsequent proceeding where the subsequent proceeding was commenced prior to the discontinuance of the prior proceeding, and where the tenant has been caused no discernible prejudice (e.g. *145 East 16th Street LLC v Spencer*, 36 Misc 3d 128 [A] [App Term 1st Dept 2012]; *890 Park LLC v. Rosenfeld* 34 Misc.3d 130[A] [App Term Dept 2011]). The facts herein do not permit the Court to follow these line of cases.

Accordingly, the instant holdover proceeding is dismissed without prejudice.

Dated: Bronx, New York
 December 27, 2022

HON. KRZYSZTOF LACH
Judge, Housing Court