

Mannapova v Mannopova

2022 NY Slip Op 34549(U)

November 28, 2022

Civil Court of the City of New York, Richmond County

Docket Number: L&T Index No. 050008/22

Judge: Eleanora Ofshtein

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This opinion is uncorrected and not selected for official publication.

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF RICHMOND: HOUSING PART Y

-----X
GULNORA MANNAPOVA,

Petitioner(s),

L&T Index No. 050008/22
Motion Seq. No: 1

-against-

DECISION/ORDER

MUKHLISA MANNOPOVA
AKA MUKHLISA MANNAPOVA,

Respondent(s),

-----X
Hon. ELEANORA OFSHTEIN,
Judge, Housing Court

Recitation, as required by CPLR §2219(A), of the papers considered in the review of this motion:

<u>Papers</u>	<u>NYSCEF Document</u>
Respondent's motion.....	all
Petitioner's opposition.....	all

Decision/Order upon cited papers and after argument, is as follows:

In this summary holdover proceeding, Respondent, by her attorney, moves for dismissal pursuant to CPLR §3211(a)(7) on technical grounds regarding the insufficiency of the pleadings. Despite a lack of a verified answer on the part of Respondent, or any allegation of confusion, it is Petitioner's obligation to properly plead its case.

Petitioner's opposition papers describe the circumstances as a family dispute, wherein Petitioner was the mother-in-law of Respondent, and that after a dispute between the married couple, Respondent's now-ex-husband was removed from the premises after an order of protection was issued against him. Petitioner commenced this action soon after her son's removal to seek to evict her ex-daughter-in-law from the premises. Neither the predicate notice, nor the petition, however, specified any of these facts.

Additionally, while Respondent claims there was a lease and rental payments to Petitioner, Petitioner disputes any lease or payments made, yet states in its predicate notice, that it 'elects to terminate Respondent's tenancy'.

To add to the confusion, Petitioner's opposition does not argue 'tenancy' or 'licensee' status, and instead, argues that RPAPL§ 713(10) does not require a notice because Petitioner has

been locked out of the premises by Respondent, a claim not raised in the predicate notice or petition.

The pleadings must specify, with sufficient particularity, the occurrences intended to be proved and the material elements of each cause of action (see, CPLR 3013). General conclusions are insufficient. Similarly, RPAPL §741 requires that the contents of the petition to recover possession of real property “state the facts upon which the special proceeding is based” (section 4), and “state the respondent’s interest in the premises and his/her relationship to petitioner with regard thereto” (section 2). Failure to strictly comply with the statute governing summary proceedings deprives the court of jurisdiction and mandates dismissal (see, MSG Pomp Corporation v Jane Doe, 185 AD2d 798 [1st Dept 1992]).

Here, the predicate notice, titled “Notice of Termination”, states “that the Landlord elects to terminate your tenancy of the above described premises now held by you as a licensee of the Landlord...” The petition does not elaborate or provide any additional information as to why Petitioner claims Respondent to be a ‘tenant’ and, alternatively, a ‘licensee of the landlord’. In fact, the petition states that Respondent “is the occupant of the premises hereinafter described pursuant to an oral agreement made heretofore”, but provides no additional facts or basis for termination.

A proceeding where there is no Landlord/Tenant relationship, brought pursuant to RPAPL §713(7) or RPAPL §713(10), and a proceeding where there is a Landlord/Tenant relationship, pursuant to RPAPL §711, are substantially different, require different notices and facts to support each allegation, and provide Respondent with an opportunity to raise different defenses. A predicate notice must be clear, unequivocal and unambiguous (see Ellivkroy Realty Corp v HDP 86 Sponsor Corp, 162 AD2d 238 [1st Dept 1990]), or it cannot support a summary proceeding (see Chinatown Apartments, Inc v Chu Cho Lam, 51 NY2d 786 [1980]).

In the case at bar, Petitioner fails to allege sufficient facts to unambiguously appraise the occupant of the grounds upon which Petitioner was proceeding (see also, 582 Gates, LLC v Farmer, 65 Misc 3d 156[A], [App Term, 2nd Dept 2019]), and provides conflicting information as to how it sees Respondent’s relationship to itself, for example, as a tenant whose tenancy has terminated, or as a licensee.

Additionally, it appears that the Notice of Petition fails to comport with the current pleading requirements. A new form for the Notice of Petition in Holdover proceedings was

promulgated under 22 NYCRR §208.42(b)(c) pursuant to Administrative Order No. 163 dated August 7, 2019 issued by the Honorable Marks, Chief Administrative Judge of the State of New York. The order directed that “Use of these forms shall be optional up to and including September 30, 2019, and mandatory thereafter... I further repeal all former versions of the form notice of petition in nonpayment and holdover proceedings”.

For these reasons, the motion is granted, and the case is dismissed.

This constitutes the decision and order of this Court.

Dated: Richmond, New York
November 28, 2022



HON. ELEANORA OFSHTEN
JHC