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| <b>Owl Cr. Props., LLC v Timmons</b>                                                                                                                                                                                           |
| 2022 NY Slip Op 35134(U)                                                                                                                                                                                                       |
| August 16, 2022                                                                                                                                                                                                                |
| Civil Court of the City of New York, Bronx County                                                                                                                                                                              |
| Docket Number: Index No. L&T 302566/21                                                                                                                                                                                         |
| Judge: Kisha L. Miller                                                                                                                                                                                                         |
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CIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF BRONX: HOUSING PART J

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OWL CREEK PROPERTIES, LLC,

Index No. L&T 302566/21

Petitioner,

DECISION/ORDER

-against-

Motion seq no. 1

MONIQUE TIMMONS,  
STEVEROY K. JEFFERS, AWARIE JAMAL  
BROWNE, DEBRA C. LIGHTFOOT, JAY LEE,  
JOHN DOE, JANE DOE,

Respondents.

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HON. KISHA L. MILLER:

Borah, Goldstein, Altschuler, Nahins & Goidel, P.C., for Petitioner.  
Mobilization for Justice, Inc., for Respondents Timmons and Jeffers.

Recitation, as required by C.P.L.R. § 2219(a), of the papers considered in review of this motion for leave to conduct discovery.

| Papers                                       | Numbered |
|----------------------------------------------|----------|
| Notice of Motion and Affidavits Annexed..... | 1        |
| Answering and Affidavits Annexed.....        | 2        |
| Reply Affidavit.....                         | 3        |

Upon the foregoing cited papers, the decision and order on this motion is as follows:

Petitioner commenced this holdover summary eviction proceeding to recover possession of the premises located at 307 East 188th St., Apt. 3W, Bronx, New York, on the basis that Respondent Timmons does not occupy the premises as her primary residence. The notice of non-renewal alleges, inter alia, that Timmons purchased a home in Georgia and subleased the premises to Respondents Jeffers, Browne, Lightfoot and Lee. Timmons and Jeffers, represented by counsel, filed an answer, admitting Timmons’ residence in Georgia and asserting succession rights on behalf of Jeffers. Attempting to settle the proceeding, Jeffers provided documents to Petitioner in support of his succession claim, but Petitioner states the documents are incomplete

and insufficient. Petitioner now seeks leave pursuant to CPLR 408 to engage in discovery, including a pre-trial examination of Jeffers.

Petitioner argues there is ample need for discovery since the information relevant to the purported succession claim, including the date Timmons vacated and the period Jeffers occupied the premises as his primary residence, are within Respondents' exclusive knowledge and control. Petitioner argues that Respondents should respond to the proposed document demand, which seeks information specifically tailored to address the issues in this proceeding and the merits of Jeffers' claim. Petitioner also requests an order pursuant to RPAPL §745 or RPL §220 directing Jeffers to pay \$30,911.87, representing use and occupancy owed from May 2021 through April 2022 at \$1190.05 per month, plus use and occupancy *pendente lite* while the parties engage in discovery.

Respondents oppose Petitioner's request for discovery, claiming Jeffers voluntarily provided several documents that sufficiently establish the familial relationship and the required primary residency during the relevant period. Respondent argues that the discovery demands, which requests multiple categories of documents, including the names and addresses of Respondents' doctors and copies of all medical records, are overboard and invasive, and seek confidential information that is highly prejudicial to Respondents. Concerning Petitioner's request for past and ongoing use and occupancy, Respondents argue Petitioner failed to demonstrate entitlement to such relief pursuant to RPAPL §745 or RPL §220.

In summary proceedings, discovery must be sought by leave of court and may only be granted upon a showing of ample need (*New York University v. Farkas*, 121 Misc 2d 643 [Civ Ct, NY County 1983]). As stated in *Farkas*, the factors a court considers in determining whether discovery should be granted is whether petitioner has stated a cause of action; whether the information sought is directly related to the cause of action; whether the requested disclosure is carefully tailored and is likely to clarify the disputed facts; whether prejudice will result from

granting the request; whether the prejudice can be diminished or alleviated; and whether the court should structure the discovery, particularly where there are pro se litigants. Not all of these factors “need to be present in every case” for discovery to be granted (*Mautner-Glick Corp. v Higgins*, 64 Misc 3d 16, 2019 NY Slip Op 29129 [App Term, 1st Dept 2019]).

Notwithstanding the general sentiment that discovery is antithetical to the purposes of a summary proceeding (*Cox v J.D. Realty Associates*, 217 AD2d 179 [1st Dept 1995]), discovery has been found to be appropriate when a succession claim is raised (*217 E. 82nd St. Co. v Perko*, 10 Misc 3d 146[A], 2006 NY Slip Op 50157[U] [App Term, 1st Dept 2006]). Facts concerning the respondent’s residence, the period of co-occupancy, and the use made of the premises are peculiarly within the respondent’s knowledge and should be explored (*Hughes v Lenox Hill Hosp.*, 226 AD2d 4 [1st Dept 1996]; *Quality & Ruskin Assoc. v London*, 8 Misc 3d 102, 2005 NY Slip Op 25154 [App Term, 2d Dept 2005]).

Respondents are in possession of critical facts regarding Jeffers’ occupancy of the subject premises. Petitioner established the materiality of the discovery sought, and that the information is directly related to the cause of action and likely to clarify the disputed facts. No prejudice will befall Respondents since it is Petitioner’s own case that will be delayed, if at all, by granting discovery (*Bromley Co., LLC v Rachman*, 4 Misc 3d 136[A], 2004 NY Slip Op 50828[U] [App Term, 1st Dept 2004]). The main inquiry is whether the discovery demands are carefully tailored, or “palpably overbroad” and subject to being stricken entirely (*Nineteen N.Y. Props. Ltd. Partnership v 535 5th Operating*, 211 AD2d 411 [1st Dept 1995]; *Posh Pillows v Hawes*, 138 AD2d 472 [2d Dept 1988]).

Here, Petitioner’s Notice of Discovery and Inspection lists 42 items requesting various documents, some of which are overbroad and improper. However, rather than strike the entire demand, the better course of action in this proceeding is to craft an order narrowly tailored to the

issue of the succession claim (*Renaissance Equity Holdings, LLC v Webber*, 61 Misc 3d 298, 2018 NY Slip Op 28241 [Civ Ct, Kings County 2018]).

As to items 17 (criminal records), 19 (airline purchases), and 20 (airline mileage), the demands are stricken as overbroad and not likely to clarify the disputed facts in this proceeding. Items 23-25, requesting monthly telephone and cellular bills are proper; however, the portion of those requests requesting the inclusion of call details of all local and long-distance calls are stricken as overbroad, constituting a “fishing expedition” (*Bishop v Stevenson Commons Assoc., L.P.*, 74 AD3d 640 [1st Dept 2010]). Item 37, requesting “all E-Z Pass, commuter railroad and bus ticket bills, receipts, and statements,” is also overbroad. The court will limit this request to the production of E-Z Pass statements. Items 38 (names and addresses of health care providers), 39 (copies of medical records), 40 (copies of co-pay/medical invoices), and 41 (copies of health/medical insurance records) are all stricken as palpably improper. The information sought may be confidential and privileged.

Regarding the relevant time period for the information requested, the discovery demand requests documents from “August 2018 through the present, and/or the two- year period prior to actual date Respondent-Tenant Monique Timmons vacated possession of the premises and relocated her residency through the present.” While Petitioner claims it is uncertain whether Timmons vacated in 2019, based upon the purchase of the Georgia residence, or in 2020, based upon her Georgia issued driver’s license, Petitioner agrees, to some extent, that the relevant period is 2017 through 2019.

Lastly, during the court conference, the parties agreed that Jeffers would pay ongoing use and occupancy at a reduced rate of \$952.04 based upon a breach of warranty of habitability defense without Petitioner admitting or acknowledging said breach. The parties further agreed that Petitioner reserves its claims to past use and occupancy and Respondents reserve any defenses.

Accordingly, it is

ORDERED that Petitioner's motion seeking leave to conduct discovery is granted.

Respondents shall comply with the Notice of Discovery and Inspection (NYSCEF Doc. No. 30, Exhibit C) except as to those items limited or stricken by this court. Respondents shall respond to the demand in accordance with the procedures set forth in Article 31 of the CPLR; it is further

ORDERED that Respondent Jeffers pay use and occupancy *pendente lite* at the rate of \$952.04 by the 10<sup>th</sup> of each month beginning September 2022. Petitioner reserves its claim for payment of past use and occupancy and Respondents reserve any defenses; it is further

ORDERED that the proceeding shall be marked off calendar pending the completion of discovery and may be restored by notice of motion, or by stipulation.

This constitutes the decision and order of the court.

Dated: August 16, 2022



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KISHA L. MILLER, J.H.C.