

Rampersad v Rampersad
2023 NY Slip Op 30454(U)
January 10, 2023
Civil Court of the City of New York, Queens County
Docket Number: Index No. 306076/21
Judge: Kimon C. Thermos
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CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF QUEENS HOUSING PART E

-----X
BASDEO RAMPERSAD,

Petitioner,

INDEX # 306076/21

-against-

DECISION / ORDER

RADIKA RAMPERSAD,

Respondent -Licensee

“JOHN DOE AND JANE DOE”

Respondent – Underlicensees

-----X
Present: Kimon C. Thermos, JHC

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

Papers	Numbered
Notice of motion, Affidavits and exhibits (NYSCEF #10)	1
Notice of cross-motion, Affidavits and exhibits (NYSCEF #12-18).....	2
Reply (NYSCEF #19-20).....	3

Appearing for the Petitioner:	Law Office of Robert G. Frank
Appearing for the Respondent:	Christina, A. Santora, Esq., Queens Legal Services

Upon the foregoing cited papers, the Decision/Order on this Motion is as follows:

Prior to commencing this licensee holdover proceeding pursuant to RPAPL 713(7), Petitioner served Respondent with a Ten Day Notice to Quit (“Predicate Notice”). The Predicate Notice describes the premises for which removal is sought as “All rooms entire building... in the building known As and located at 243-10 138th Avenue Rosedale, New York, 11420.”

The parties are former spouses who were divorced several years ago. After the divorce, Respondent and their daughter moved out of the house and pursuant to the divorce settlement deeded the house over to Petitioner for a sum certain. After these events, Petitioner permitted Respondent and their daughter to move back into the house so that both could medically care for

her. There is other litigation between the parties since then including an order of protection that excludes Petitioner from the premises and is currently in effect.

Respondent filed the instant motion seeking to dismiss: 1) pursuant to RPAPL 741 (3) for failure to properly describe the premises sought for removal; 2) pursuant to CPLR 3211(a)(10) for failure to name a necessary party; 3) pursuant to R.P.L. 3211 for lack of subject matter jurisdiction; and 4) because the predicate notice is fatally defective due to Petitioner's familial relations with Respondent.

Respondent argues that she and her daughter only occupy the second floor of the premises and that Petitioner has rented out the first floor and basement to independent parties. Petitioner cross moves for permission to amend the pleadings, inter alia, to reflect that the premises sought to be recovered are only the second-floor apartment as argued by Respondent.

Petitioner argues that pleading amendments are routinely permitted and absent substantial prejudice this is true. However, Respondent argues that although the petition may be readily amendable the predicate notice supporting the holdover is fatally defective because it grossly misdescribes the premises for which the license was granted and is not amendable, thereby rendering the petition defective and dismissible.

RPAPL 713(7) requires that a ten-day notice to quit must be served upon the respondent prior to commencement of a special proceeding to obtain possession of the premises. A valid notice of termination is a condition precedent to the proceeding. *170 W. 85th St. Tenants Assn. v. Cruz*, 173 A.D.2d 338, 339 (App. Div., 1st Dept. 1991). It has been held that a proper predicate notice must be clear and unambiguous as to the grounds stated therein. A defective predicate notice cannot be cured or amended. *Chinatown Apts. v. Chu Cho Lam*, 51 N.Y.2d 786, 787 (1980); *Vartarian v. Brady*, 184 Misc.2d 333, 340 (N.Y. Cty. Civ. Ct. 1999); *Lehtonen v. Dellaquila*, 2020 N.Y. Slip Op 50683(U)(App. Term, 2d Dept, 2d, 11th & 13th Jud. Dists. 2020); *SAAB Enters. v. Bell*, 198 A.D.2d 342, 343 (App. Div., 2d Dept. 1993); *Ellivkroy Realty Corp. v. HDP 86 Sponsor Corp.*, 162 AD2d 238, 238 [App. Div., 1st Dept, 1990]; *City of Buffalo Urban Renewal Agency v. Lane Bryant Queens*, 90 AD2d 976, 977 (App. Div., 4th Dept, 1982).

The Predicate Notice incorrectly advises Respondent to vacate the entire house all rooms and all floors. Petitioner has not disputed that there is an independent tenancy on the first floor and possibly two others in the basement as well. Petitioner's proffered explanation that Respondent "moves freely throughout the whole house" is unsupported and too vague to justify the erroneously expansive description. Besides, Petitioner has acknowledged the error in the description of the premises sought to be recovered by cross-moving to amend the pleading accordingly. Respondent's motion to dismiss is granted for failure to state a cause of action due to the nullity of the defective predicate notice. There is no need to address the remaining branches of Respondent's motion to dismiss.

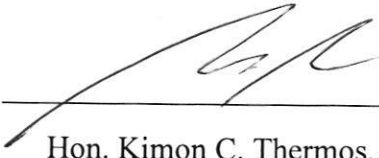
Accordingly, Petitioner's cross-motion to amend the petition is denied as academic since the predicate notice is defective, unamendable, and thus cannot serve as the required predicate to the holdover.

Although not raised by the Respondent, the Court questions whether personal jurisdiction over Respondent was even effectuated since, according to the process server's affidavit¹, service of the pleading was made, after due diligence efforts to personally serve failed, by affixing presumably at the building door and not the second-floor apartment as required.

This constitutes the Decision and Order of the Court.

Dated: January 10, 2023

Queens, New York



Hon. Kimon C. Thermos, JHC

¹ NYSCEF #5