

**Grote St. Apts., L.P. v Philip**

2023 NY Slip Op 30755(U)

March 16, 2023

Civil Court of the City of New York, Bronx County

Docket Number: Index No. LT-309111-22/BX

Judge: Kisha L. Miller

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This opinion is uncorrected and not selected for official publication.

CIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF BRONX: HOUSING PART J

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GROTE STREET APARTMENTS, L.P.,

Index No. L&T 309111/22

Petitioner,

DECISION/ORDER

-against-

Motion seq. no. 2

LYNETTE PHILIP, LENAY HUNT,

Respondents.

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HON. KISHA L. MILLER:

Richard Layliev, Esq., for Petitioner.  
Mobilization for Justice, Inc., for Respondent Philip.

Recitation, as required by C.P.L.R. § 2219(a), of the papers considered in review of the motion to dismiss.

**Papers**

**Numbered**

Notice of Motion and Affidavits Annexed..... NYSCEF Doc. Nos. 12-18

Petitioner commenced this summary eviction proceeding to recover possession of the premises located at 760 East 183<sup>rd</sup> Street, Apartment 421, Bronx, New York, based upon nonpayment of rent. Respondent Philip filed a *pro se* answer and after retaining counsel, filed an amended answer on consent of the parties. Respondent now moves to dismiss the proceeding for failure to state a cause of action pursuant to CPLR §3211(a)(7) and 24 CFR §982.310(e)(2)(ii) based upon Petitioner’s failure to serve the New York City Department of Housing Preservation and Development (“HPD”) with a copy of the Notice of Petition and Petition. Petitioner did not submit written opposition.<sup>1</sup>

<sup>1</sup> The parties executed a stipulation adjourning the proceeding to October 17, 2022. The parties agreed Respondent would serve the motion by September 16; Petitioner would serve opposition by September 30; and Respondent would serve reply by October 7. On October 17, Petitioner had not filed opposition, so the court adjourned the proceeding to December 2 for Petitioner to file opposition by November 17 and Respondent to serve reply papers by November 28. On December 2, the court adjourned the proceeding to December 12 for Petitioner to either discontinue the proceeding or file opposition papers. On December 12, Petitioner elected not to discontinue the proceeding so the court adjourned the proceeding to January 27, 2023, with a final marking for Petitioner to file opposition papers. On January 27, 2023, Petitioner had not filed opposition and did not explain its failure to do so. The court reserved decision on the motion.

Respondent's motion is granted.

The petition alleges Respondent receives a Section 8 housing subsidy administered by HPD. Upon commencing a proceeding against a Section 8 tenant, the owner must give the public housing authority ("PHA") a copy of any owner eviction notice to the tenant (24 CFR §982.310[e][2][ii]). An owner eviction notice is defined as "a notice to vacate, or a complaint or other initial pleading used under State or local law to commence an eviction action" (24 CFR §982.310[e][2][i]). One of the purposes of the regulation, which applies with equal force to nonpayment as well as holdover proceedings, is to "guard against casually or haphazardly commenced eviction proceedings against section 8 tenants" and to "give notice to the public housing agency administering section 8 funding that the continued possession of occupants in whom it has a substantial interest is threatened" (*Jennie Realty Co v Sandberg*, 125 Misc 2d 28 [App Term, 1st Dept 1984]). Notification is important to enable the PHA to monitor the actions of the landlord and to afford it the opportunity to intervene if it deems it necessary to protect the interests of the Section 8 tenant (*Town of Oyster Bay Hous. Auth. v Kohler*, 34 Misc 3d 1243[A], 2012 NY Slip Op 50518[U] [Dist Ct, Nassau County 2012]).

Here, Petitioner does not allege in the pleadings that it gave notice to HPD and there is no proof of such notice upon the agency. Failure to notify HPD is a fatal defect to a summary eviction proceeding (*Sam Burt Houses v. Smith*, 2015 NYLJ LEXIS 5953 [Civ Ct, Kings County 2015] [nonpayment proceeding dismissed where landlord did not serve copies of notices upon HPD]; *Clinton-178 Towers LLC v. Chapple*, 58 Misc 3d 198, 2017 NY Slip Op 27332 [Civ Ct, Bronx County 2017] [failure to give the requisite notice to the PHA is certainly a defense which, if proven at trial or on a motion to dismiss or for summary judgment, could result in the dismissal of the proceeding"]; *1068 Gerard Partnership L.P. v Laroche*, 76 Misc 3d 122[A], 2022 NY Slip Op 51062[U] [Civ Ct, Bronx County 2022] [court dismissed the petition where notice was not given to the PHA]).

Based upon Respondent's uncontested and unopposed motion, and the lack of any proof that Petitioner satisfied the requirements of 24 CFR §982.310(e)(2)(ii), the proceeding is hereby dismissed.

Accordingly, it is

ORDERED that Respondent's motion to dismiss the proceeding is granted. The proceeding is dismissed without prejudice.

This constitutes the decision and order of the court.

Dated: March 16, 2023

*JM*



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KISHA L. MILLER, J.H.C.