

**Planas v Dougherty**

2023 NY Slip Op 34361(U)

December 12, 2023

Supreme Court, New York County

Docket Number: Index No. 159764/2023

Judge: Erika M. Edwards

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ERIKA M. EDWARDS

PART 10M

Justice

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MILEN PLANAS,

Petitioner,

- v -

TERENCE DOUGHERTY,

Respondent.

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INDEX NO. 159764/2023

MOTION DATE 10/26/2023

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21

were read on this motion to/for INJUNCTION/TRO CROSS-MTN DISMISS.

Upon the foregoing documents, the court grants Respondent Terence Dougherty's ("Respondent") cross-motion to dismiss Petitioner Milen Planas' ("Petitioner") Petition and the court denies and dismisses the Petition and enters judgment in favor of Respondent as against Petitioner.

Petitioner brought this proceeding as a purported Petition by order to show cause against Respondent seeking a temporary restraining order preventing Respondent from preventing Petitioner from accessing the premises, changing the locks to the premises and permitting Petitioner the authority to access the premises by having the locks forcibly removed should Respondent change them. Petitioner also seeks a preliminary injunction ordering Respondent to refrain from changing the locks, contacting Petitioner, and obstructing, preventing or denying Petitioner's access to the premises.

The court previously granted in part Petitioner's request for a temporary restraining order by granting the portion seeking an order directing Respondent to refrain from preventing

Petitioner access to the premises and from changing the locks without seeking prior approval from the New York City Housing Court, but the court denied the remainder of the request.

Respondent opposes the Petition and cross-moves to dismiss Petitioner's Petition, pursuant to CPLR 3211(a)(1), (4) and (7) and 6301. Respondent argues in substance that Petitioner failed to file a proper Petition or Summons and Complaint, so it is procedurally improper. Respondent argues that the initiating document is actually an attorney affirmation. Respondent further argues in substance that the court should dismiss this proceeding based on documentary evidence, because Petitioner failed to state a claim, because there is a prior action pending under Index No. 159731/2023, and because Petitioner failed to name and serve a proper party.

Petitioner failed to oppose Respondent's cross-motion.

The court denies Petitioner's purported Petition and order to show cause and finds that Petitioner failed to demonstrate entitlement to any of the relief requested. Although Petitioner filed an affidavit from the Petitioner the day after filing the purported Petition, the initiating documents were in an improper format, they were procedurally defective and failed to satisfy the requirements of a Verified Petition.

Additionally, Petitioner failed to satisfy the requirements for obtaining a preliminary injunction, pursuant to CPLR 6301 and 6312, in that she failed to demonstrate that there is a cause of action, that Respondent threatens to do an act in violation of Respondent's rights or tending to render a judgment in Petitioner's favor ineffectual, that she is likely to succeed on the merits, or that the balance of equities is in her favor. The court also finds that Petitioner failed to demonstrate that she has a right to remain in possession of the premises since the death of James

Dougherty, who was the rightful owner of the premises and whose Estate is represented by Respondent.

Additionally, Petitioner failed to mention that the previous illegal lockout proceeding which Petitioner claimed was dismissed with judgment in her favor, was granted on default and subsequently vacated. Therefore, there was no court order in effect determining that Respondent's previous attempts of preventing Petitioner access to the premises or locking Petitioner out of the premises was improper.

Additionally, as argued by Respondent, Petitioner failed to name Respondent in his capacity as Executor of the Estate of James Dougherty as a party to this action and Petitioner knew or should have known that Respondent was the Executor based on papers filed in a prior action.

Finally, the prior pending action has since been resolved and the Petition withdrawn, therefore, dismissal is not warranted on this basis.

Therefore, the court grants Respondent's cross-motion and dismisses the Petition.

The court has considered all arguments raised by the parties which were not specifically addressed herein and the court denies any additional request for relief not expressly granted herein.

As such, it is hereby

ORDERED that the court grants Respondent Terence Dougherty's cross-motion to dismiss Petitioner Milen Planas' Petition, the court denies and dismisses the Petition and enters judgment in favor of Respondent as against Petitioner.

This constitutes the decision and order of the court.

*Erika M. Edwards*  
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12/12/2023  
**DATE**

ERIKA M. EDWARDS, J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/> DENIED	<input type="checkbox"/> GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		<input checked="" type="checkbox"/> OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	REFERENCE