

**NYC Blue Mgt. LLC v Finn**

2023 NY Slip Op 34601(U)

December 4, 2023

Civil Court of the City of New York, Queens County

Docket Number: Index No. L&T 300696/20

Judge: Logan J. Schiff

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CIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF QUEENS: HOUSING PART B

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NYC BLUE MANAGEMENT LLC

Index No. L&T 300696/20

Petitioners

-against-

**DECISION/ORDER/JUDGMENT**

SONIA S. FINN, ET AL

Respondents

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Present: Hon. Logan J. Schiff  
Judge, Housing Court

Recitation of the papers considered in review of Respondent’s motion to dismiss pursuant to CPLR 3211(a)(7): NYSCEF Doc. Nos. 16-34.

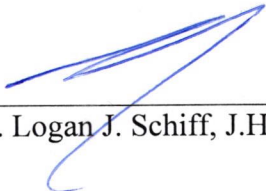
This is a licensee holdover commenced under RPAPL 713(7) by the successor-in-interest to the purchaser at a foreclosure auction. Petitioner alleges an implied licensee was created with Respondent, the former owner, through Petitioner’s inaction upon obtaining title the premises, including by failing to “ask Respondents for rent or use and occupancy, or provide them with a rent bill, or any other request for payment.” Respondent now moves to dismiss arguing, among other things, that a license was never created.

Contrary to Petitioner’s assertion, a license is not created with a prior owner in exclusive possession merely through a party’s inaction upon acquisition of the property (*see 130-50 228th, LLC v Moseley*, 181 NYS3d 817 [App Term, 2d Dept, 2d, 11th & 13th Jud Dists 2022] [noting that the hallmark of a license is a lack of exclusive possession and a revocable privilege to do one or more acts upon the land without affording any possessory rights]). Thus, Petitioner’s failure to accept rent from the former owner for a sustained period of time did not create a license and would at most create a tenancy at sufferance, a cause of action that was not properly pled here (*see Hok Kwan Chu v Lee*, 972 NYS2d 143 [App Term, 2d Dept, 2d, 11th & 13th Jud Dists 2013]).

Where a party acquires title by a referee’s deed following a foreclosure auction, it may commence a summary proceeding under RPAPL 713(5) for eviction of the former owner and any other occupants. However, once the property is conveyed to a successor-in-interest there is no cause of action under 713(5), and in fact there may not be a cause of action under any provision of RPAPL 713 (*see Sequoia Partners, LLC v Ali*, 126 NYS3d 811 [App Term, 2d Dept, 9th & 10th Jud Dists 2020]). To the extent this result may be impractical or inequitable, it is for the legislature to remedy (*see Castle Peak 2012-1 REO, LLC v New York Found. for Senior Citizens*, 115 NYS3d 805 [App Term, 2d Dept, 2d, 11th & 13th Jud Dists 2019]; *Federal Home Loan Mtge. Assn v Perez*, 968 NYS2d 317 [App Term, 2d Dept, 9th & 10th Jud Dists 2013]).

Accordingly, Respondent's motion to dismiss is granted and this proceeding is dismissed without prejudice. Respondent is hereby awarded a judgment of dismissal. This constitutes the decision and order of the court.

Dated: December 4, 2023  
Queens, New York

  
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Hon. Logan J. Schiff, J.H.C.