

In Kyun Choi v Ibrahim
2023 NY Slip Op 35131(U)
December 22, 2023
Civil Court of the City of New York, Richmond County
Docket Number: Index No. LT-302213-23/RI
Judge: Matthew P. Blum
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CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF RICHMOND

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Index No. LT-302213-23/RI

IN KYUN CHOI

Petitioner,

**DECISION AND ORDER
AFTER INQUEST**

-against-

**HON. MATTHEW P. BLUM
JUDGE CIVIL COURT**

HIZAM NAGI NASSER IBRAHIM;
ISLAND MIX CONVENIENCE, INC.;
“JOHN DOE”;
“XYZ CORP.”
3972 Hylan Boulevard, Unit 1B
Staten Island, New York 10308

Respondents,

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I: PROCEDURAL HISTORY

In Kyun Choi (hereinafter “Petitioner”), the owner of 3972 Hylan Boulevard, Unit 1B, Staten Island, New York (hereinafter “the Premises”, filed this action, a holdover eviction based on illegal activity pursuant to RPAPL §711 and §715, against Hizam Nagi Nasser Ibrahim, Island Mix Convenience, Inc., Bassam Gaber; “John Doe”, and “XYZ Corp.” (hereinafter “Respondents”) on or about October 31, 2023. The basis for said action was the alleged illegal sale of marijuana by Respondents, none of whom are licensed by New York State to engage in the sale or distribution of marijuana/cannabis, out of the aforementioned commercial property. On November 30, 2023, this matter appeared before Your Honor in Part 52 of Richmond County Civil Court. Respondents failed to appear or file an answer. The case was adjourned for inquest on

December 21, 2023 for Inquest. On December 21, 2023, upon Respondents' failure to answer or appear on this date, an Inquest was held before Your Honor.

Prior to the commencement of this action, an action as filed in New York State Supreme Court, Richmond County, by the City of New York against the Petitioner and Respondents in this matter. As of the date of this Decision, that matter is still pending.

II: TRIAL

At Inquest, Petitioner presented evidence via the testimony of two witnesses, the Petitioner himself, In Kyun Choi, and Police Officer Michael Dmitriev of the NYPD 122nd Precinct.

In Kyun Choi testified that he is the lawful owner of 3972 Hylan Boulevard, Staten Island, New York 10308, a commercial building with three units, including the subject Premises, Unit 1B. A certified copy of the deed to this property was entered into evidence without objection. Mr. Choi testified that he had entered into a lease of the subject unit on October 10, 2020 with Respondent Ibrahim. Respondents Island Mix Convenience, Inc., Bassam Gaber, "XYZ Corp." and "John Doe" are the undertenants currently in possession of the premises utilizing it as a "Smoke Shop". A copy of the lease was entered into evidence without objection. Included in the various provisions of the lease was language forbidding the property to be used for an "unlawful purpose".

Police Officer Michael Dmitriev of the NYPD 122nd Precinct testified as well. PO Dmitriev testified that on May 3, 2023, on or about 4:40 PM, acting as a "Ghost" in the undercover operation, he along with an undercover 19 year-old Auxiliary Police Officer, entered into the subject Premises. While inside PO Dmitiriev observed the underage Auxiliary Police Officer purchase one pre-rolled marijuana cigarette from the clerk working at said location in exchange

for a sum of United States currency. He further testified that said pre-rolled marijuana cigarette was photographed, vouchered under invoice number 5000227585, and sent to the NYPD lab for testing. The photograph, voucher, and lab report containing the results of said testing were admitted into evidence without objection. The certified lab report from the New York City Police Department Police Laboratory Controlled Substance Analysis Section revealed that said item tested positive for Cannabis with an aggregate weight of 1.241g. PO Dmitriev also stated that in addition to the sale that he personally witnessed, he was aware of similar undercover sale operations that were conducted at the same subject Premises on previous dates but, was not present for said sales.

In addition to the testimony, Petitioner, without objection, entered the sworn affidavit of Dawn Kelly, Senior Investigator with the New York State Office of Cannabis Management, the agency responsible for issuing licenses for business to participate in New York State's adult-use, medical, and cannabinoid hemp industries. Senior Investigator Kelly further provides that she has full access to the official records of Adult-Use Retail Dispensary Licenses and Conditional Adult-Use Retail Dispensary Licenses for the entire State of New York, including records for both applicants as well as those granted licenses and that the subject Premises does not have any of the aforementioned licenses nor does it have any pending applications to obtain said licenses.

III: APPLICABLE LAW

"No tenant or lawful occupant of a dwelling or housing accommodation shall be removed from possession except in a special proceeding." Said proceeding may be maintained where "the premises , or any part thereof, are used or occupied as a bawdy-house, or house or place of assignation for lewd persons, or for purposes of prostitution, or for any illegal trade or

manufacture, or other illegal business.” RPAPL §711(5). In such cases, the landlord as well as the tenant are subject to eviction if the landlord fails to bring an action and diligently prosecute the tenant engaging in said illegal activity. RPAPL §715(1).

Cannabis Law §125 states in sum and substance that no person shall engage in the cultivation, distribution, or sale of cannabis or cannabis products without obtaining the requisite licensing to do so. Cannabis Law §13 states that an adult-use on site consumption licensee shall not provide cannabis products to any person under the age of twenty-one and no person under the age of twenty-one shall be permitted on the premises of a cannabis on-site consumption facility. Violation of §125 subjects the violator to prosecution under PL §222.

IV: DECISION

First, the Court finds that both witnesses testified credibly.

Next, the Court finds that Petitioner met his burden of proof by proving a prima facie case at Inquest. Based on the testimony and evidence presented without objection, Petitioner proved that the Respondents were conducting illegal activity out of the subject Premises, namely, engaging in the sale of cannabis or cannabis products without the requisite New York State license to do so and selling cannabis or a cannabis product to a person under the age of twenty one. Accordingly, the Court finds that said activity by Respondents breaches the lease held with Petitioner and therefore, subjects them to eviction from said Premises.

V: CONCLUSION

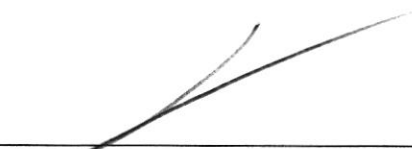
Based on the foregoing,

ORDERED, Petitioner is hereby granted a judgment of possession. Petitioner does not seek a monetary judgment. Thus, no monetary judgment is awarded.

ORDERED, a warrant of eviction against all Respondents with the earliest execution date being stayed 5 days from the date of this Decision.

This constitutes the final Decision and Order of the Court.

Dated: Staten Island, New York
December 22, 2023



HON. MATTHEW P. BLUM JCC

Hon. Matthew P. Blum
Judge, Civil Court