

**U.S. Bank, N.A. v Ruvolo**

2024 NY Slip Op 31978(U)

June 6, 2024

Civil Court of the City of New York, Richmond County

Docket Number: Index No. LT-300183 and 2 and 2-24/RI

Judge: Kimberley Slade

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This opinion is uncorrected and not selected for official publication.

Civil Court of the City of New York  
County of Richmond

Index # **LT-300183 and 2-24/RI**



U.S. Bank, National Association as Legal Title  
Trustee for  
Truman 2016 SC6 Title Trust

**Decision / Order**

Petitioner(s)

-against-

Nicholas Ruvolo; Evelina Ruvolo; "Jane"  
"Smith" -Name

Refused; AND ANY AND ALL OTHER OCCUPANTS  
Respondent(s)

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion:

Papers	Numbered
Motion and Affidavits /Affirmations annexed	<u>18-23</u>
Answering Affidavits/ Affirmations	<u>24-28</u>
Reply Affidavits/ Affirmations	_____
Memoranda of Law	_____
Other file	_____

For purposes of disposition the above-referenced index numbers are consolidated. There are two separate proceedings, each for a separate floor in these post-foreclosure holdover proceedings that present the same issues.

Respondent moves to dismiss asserting, inter alia, that the predicate notice is defective as it fails to provide the date upon which respondent is required to surrender possession, that the units are inadequately described as they are simply delineated as unit 1 and 2 with “no further elaboration,” that the relationship between petitioner and John and Jane Doe is not explained and fails to comport with the requirements of RPAPL 741.

Respondent has provided an affidavit in which he avers Petitioner failed to include a date upon which he is to vacate and surrender the premises and has annexed a copy of the notice as it was received by him (NYSCEF 22, 20) in which it is shown that the date is not included. A review of Petitioner’s five on NYSCEF, titled “notice to quit and affidavits of service” indicates that on December 13, 2023 petitioner’s clerk, Penny McNeeley send an instruction letter to the process server, “Class Action, LLC” and it appears from this letter that the process server was explicitly instructed to insert a date in the notice that was to be served. The annexed notice dated December 13, 2023 does not have a date inserted – a later copy of the notice (p 19, NYSCEF 5) reveals a date. Respondent exhibits a copy of the notice as he avers it was received and that is without a date.

Petitioner opposes the motion and argues that the notice was properly served and points to the copy of the notice to quit annexed to the petition as proof of this, but does not address respondent’s assertions other than to argue that he has not sufficiently refuted the process server. Ironically, there is no affidavit from the process server asserting that the notice to quit was served with the date included.

The notice in these proceedings (NYSCEF 5) bear no heading or title, are Dated December 13, 2023 and are supported by an affidavit indicating they were served on January 4, 2024 and while the copy annexed to the petition at NYSCEF 5 bears a date upon which respondents are directed to vacate, the affirmation and exhibits of respondent bear no date and thus place a respondent in the untenable position of having to guess or speculate as to when they are to vacate or surrender prior to being served a holdover petition. Again, there is no affidavit that refutes any of respondent's assertions and thus, no basis to grant a traverse hearing in this proceeding.

The court disagrees with respondent's assertions that a notice to quit must state the date of surrender within the body of the notice. However, the vacate date must be readily ascertainable. A notice to quit may be served without a date upon which it expires if the language, chronology and circumstances allow for a competent assessment of the date upon which action is expected. In *Washington Mutual v. Hanspal*, 2007 NY Slip Op 52375(U)[18 Misc 3d 127(A) the Appellate Term for the Second Department determined, "[i]n our view, the court below correctly concluded that the 10-day notice was not rendered fatally defective by petitioner's omission to fill in the date by which appellant was required to vacate...we note that the statute does not specify any requirements with respect to the contents of the 10-day notice, that the notice was clearly entitled "Ten (10) day notice to Vacate," and that appellant could not reasonably have believed anything other than that he had ten days to vacate from the date the notice was affixed to the door..." However, Having elected to provide a date upon which respondent was expected to remove himself, it was petitioner's burden to ensure that this was unambiguous but it did not. As petitioner failed to serve a competent notice the motions are granted on this basis and the matter dismissed without prejudice. The remaining issues are not reached.



Kimberly Slede  
Judge, Housing Court

APPROVED  
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