

**51st St. LLC v Lorenzo**

2024 NY Slip Op 34097(U)

June 28, 2024

Civil Court of the City of New York, Kings County

Docket Number: Index No. LT-317273-23/KI

Judge: Edward Harold King

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This opinion is uncorrected and not selected for official publication.

CIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF KINGS: Part 52

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51ST STREET LLC,

Petitioner

Index No. LT-317273-23/KI

-against-

**Decision After Trial**

LEISHA N. LORENZO  
SASHA LINGERIERE LLC,  
“XYX CORPORATION”

Respondents.

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HOH. EDWARD H. KING

Petitioner commenced this commercial landlord-tenant non-payment action on or about June 5, 2023, by filing a Petition and Notice of Petition, in Kings County Civil Court seeking rent arrears in the amount of \$21,000.00, and a judgment for possession of the subject premises located at 822 Utica Avenue, Ground Floor, Basement and Backyard. This Court conducted a trial of this non-payment matter on May 21, 2024. Petitioner presented two (2) witnesses. The first witness was Leon Mann. Mr. Mann testified that he was one of the owners of the Petitioner. Through Mr. Mann the Petitioner offered the deed of record as Petitioner’s 1 in evidence. Mr. Mann testified that the document was the original deed and that he was present when the deed was initially given. The Court inquired of Petitioner’s counsel whether she had a certified copy of the deed or whether there was an attorney’s certification that would be forthcoming. Over Defense counsel’s objection on other grounds, the Court accepted Petitioner’s 1, subject to connection of a certification from counsel, into evidence.

Upon review of the rules of evidence, this Court dispenses with the need for certification because the witness testified that it was the original deed.

Upon further questioning from Petitioner’s counsel, Petitioner sought to admit as Petitioner’s 2, a purported copy of the lease between the parties. Counsel for the Respondents objected. The objections raised by Respondents’ counsel were that:

- (1) The lease was signed by only the officer for the Petitioner, and not signed by the Respondent on the signature page.
- (2) That the document offered starts off with Article 1 and that the second page of the document offered starts off with Article 6, and that the document offered appears to be an incomplete copy.
- (3) There was no foundation laid by Petitioner that the document offered was a business record.

The Court, after extensive attempts by Petitioner’s Counsel to admit Petitioner’s 2, sustained the objection and Petitioner’s 2 was not admitted into evidence. Petitioner’s counsel then sought to introduce as Petitioner’s 3 in evidence a purported rent ledger. Over Respondents counsel’s objection, the Court admitted the Rent Ledger into evidence as Petitioner’s 3.

Petitioner then called Leisha Lorenzo, as an individual Respondent, in support of its case in chief. In questioning the individual Respondent, Petitioner’s counsel then sought leave for the Court to take Judicial Notice of a certain civil action commenced in the Supreme Court of the State of New York-Kings County bearing Index Number 526292 of 2023. Specifically, Petitioner requested that the Court pay attention to the document denominated at Exhibit C, NYSCEF document 8 submitted as part of an emergency order to show cause to that Court. The alleged purpose of Petitioner’s counsel request was to establish the lease and its contents.

This Court granted the Petitioner’s request. Subsequently, this Court reviewed Exhibit C of NYSCEF document 8, of the above referenced Supreme Court action. Upon review, document 8 reveals that the lease submitted by the Respondent herein is likewise incomplete in that said lease commences with Article 1 and Article 2, but then jumps to Article 6. There is no

showing of Articles 2, 3, 4, or 5 and thus the lease relied upon by the Petitioner is incomplete and not fully illustrative of its terms.

As to the Petitioner's case in chief, this Court initially failed to give the Respondents' counsel an opportunity to cross-examine Mr. Mann. After Petitioner completed its examination of Ms. Lorenzo, the Court reopened the examination of Mr. Mann to allow cross-examination by Respondent and thereafter redirect by Petitioner. Notwithstanding this cumbersome procedure, the parties completed their presentation of all the evidence and both rested. Respondents' counsel then made a request for a Trial Order of Dismissal on the basis that Petitioner failed to make out a prima facie case.

To establish prima-facie entitlement to judgment in a commercial landlord-tenant nonpayment proceeding the landlord must demonstrate: (1) the existence of a landlord-tenant relationship evidenced by a valid lease agreement, (2) the tenant's possession of the premises, (3) the tenant's default in paying the agreed-upon rent, and (4) compliance with the statutory requirement of serving a proper rent demand, pursuant to RPAPL § 711(2). Additionally, the landlord must demonstrate authority to lease the premises, which can be established through ownership or authorization (*Redhead v. Henry*, 160 Misc. 2d 546 [Civ. Ct., Kings County 1994]). Failure to satisfy any of these elements may preclude judgment in favor of the landlord.

This Court finds that the Petitioner failed to make out a prima facie case of entitlement to a money judgment as it failed to set forth with particularity the agreement signed by the parties. This Court further finds that the Rent Ledger submitted as Petitioner's 3 in evidence, has insignificant weight as it cannot be contrasted against the actual agreement between the parties which was not put into evidence by Petitioner.

As a result, the Trial Order of Dismissal requested by Respondents' counsel at end of the Petitioners' case is granted. The instant proceeding is dismissed without prejudice. The foregoing constitutes the Judgment, Decision and Order of this Court.

Dated: June 28, 2024

  
EDWARD HAROLD KING, JUDGE  
CIVIL COURT - KINGS COUNTY

**Hon. Edward Harold King  
Judge, Civil Court**