

Linden Plaza Preserv. L.P v Diaby

2025 NY Slip Op 33143(U)

August 8, 2025

Civil Court of the City of New York, Kings County

Docket Number: Index No. LT-302591-24/KI

Judge: Shantonu J. Basu

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CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF KINGS: HOUSING PART T

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LINDEN PLAZA PRESERVATION L.P

Petitioner

Index No.: LT-302591-24/KI

-against-

DECISION/ORDER

MADOUSSOU DIABY et al.

Respondent(s)

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Present:

Hon. Shantonu J. Basu
Judge, Housing Court

As required by CPLR § 2219(a), the following is a recitation of the papers considered in the review of motion sequence 1 and motion sequence 2.

PAPERS	NUMBERED
Notice of Motion, Affirmation, Exhibits, etc.....	<u>1</u>
Notice of Cross-Motion, Affirmation, Exhibits, etc.....	<u>2</u>
Affirmation in Reply.....	<u>3</u>

For the reasons stated below, the court grants Respondent’s motion to dismiss (sequence 1) and denies Petitioner’s cross-motion (sequence 2) as moot.

Respondent has moved to dismiss on the grounds that Petitioner did not use the court-mandated notice of petition form and that Petitioner did not serve a VAWA notice along with the notice of termination.

Courts have ruled that even slight deviations from the mandated notice of petition forms can result in a dismissal. “Appellate courts, including in the Second Department, have not hesitated to find prejudice warranting dismissal based on even modest technical defects that misstate the law or otherwise fail to fully apprise respondents of their rights” (*M&S Queens Realty LLC v London*, 79 Misc 3d 788, 790-91 [Civ Ct, Queens County 2023]) [dismissing a petition because the notice of petition did not comply with Administrative Order /163/19 amending 22 NYCRR 208.42(b)].

Because, as is discussed below, the court dismisses the petition on other grounds, the court declines to opine as to whether dismissal would be warranted on these grounds. The deviations from the prescribed form in the instant case may be too slight to require dismissal.

More problematic is the failure of Petitioner to serve the VAWA notice along with the notice of termination.

The purpose of the VAWA forms is to protect survivors of domestic violence from displacement and inform all individuals of their rights under VAWA. In the instant case, the allegations are that Respondent did not complete an income recertification form. This does not seem to implicate VAWA protections.

Nonetheless, it is not for this court to speculate about the underlying cause of the alleged failure to complete an income recertification. Courts have ruled that the VAWA forms must be attached to the notice of termination (*see 1471 Brooklyn LLC v Glanville*, 2024 NYLJ LEXIS 3639 [Civ Ct, Kings County 2024] [“A review of the Notice of Termination reflects that Petitioner failed to annex a VAWA notice. Petitioner’s non-compliance with the VAWA requirements mandates a dismissal of this proceeding”] [*citing Diego Beekman Mutual Housing Association HDFC v McClain*, LT 320278-23/BX (Civ Ct, Bronx County 2024)]).

Here the VAWA notice was not annexed to the notice of termination. Therefore, the court grants Respondent’s motion sequence 1 and the proceeding is dismissed without prejudice.

Petitioner’s cross-motion is denied as moot.

This constitutes the decision/order of the court.

Dated: August 8, 2025
Brooklyn, NY



Hon. Shantonu J. Basu
Housing Court Judge