Barrow v Griffith
2026 NY Slip Op 31293(U)
March 16, 2026
Supreme Court, Kings County
Docket Number: Index No. 506596/2025
Judge: Richard J. Montelione
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At IAS Part 99 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse located at 360 Adams Street, Brooklyn, NY 11201, on the 16th day of March 2026.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS: PART 99

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JUANITA BARROW on behalf of the Estate of BRADLEY BOX,

Plaintiff,

-against-

LEAH GRIFFITH, JOHN DOE, AND JANE DOE,

Defendants.

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DECISION and ORDER

Index No.: 506596/2025
Mot. Seq. Nos.: 1&2
CAL # 1+2

After oral argument, the following papers were read on this motion pursuant to CPLR 2219(a):

Papers	NYSCEF DOC. #
Summons & Complaint; Answer	1-2
Notice of Motion(MS # 1)/Attorney Affirmation in Support/Exhibits A-F.....	4-11
Notice of Cross Motion (MS# 2)/Attorney Affirmation and Affidavits of defendant Leah Griffith, and Jonathan Griffith in Opposition to Motion and Support of Cross Motion/ Exhibits A-D	15-20
Attorney Affirmation and Plaintiff's Affidavit in Opposition to Cross Motion and in Further Support of Motion (Reply)/Exhibit A	22-25

MONTELIONE, RICHARD J., J.

This action was commenced on February 25, 2025, when the Summons and Verified Complaint of plaintiff Juanita Barrow on behalf of the Estate of Bradley Box (BARROW) was filed in the Supreme Court of the State of New York, County of Kings, against defendants Leah Griffith (GRIFFITH), John Doe, and Jane Doe, seeking a judgment of possession and an order of ejectment with related relief arising from defendants' alleged holdover tenancy and continued possession of the residential basement premises at 1493 Putnam Avenue, Basement (All Rooms), Brooklyn, New York 11237, following expiration of the term and service of a ninety-day notice of nonrenewal, termination of tenancy, and intention to recover possession. (NYSCEF Doc No. 1, Summons and Verified Complaint.)

Defendant Griffith filed a pro se answer with affirmative defenses on March 27, 2025. (NYSCEF Doc No. 2, Answer.) Defendants John Doe and Jane Doe are included as answering

defendants in the same pleading. (*Id.*) To date, no motion has been made to identify or name the John Doe and Jane Doe. Issue is joined.

MOTION SEQUENCE #s 1 & 2

In Motion Seq. # 1, plaintiff Barrow moves, pursuant to CPLR 3212(a), for a judgment of possession and an order of ejectment on summary judgment as against answering defendant Griffith, together with dismissal of said defendant's answer, and further moves, pursuant to CPLR 3215(a), for a default judgment of possession and an order of ejectment as against defendants JOHN DOE and JANE DOE, together with such other and further relief as the Court deems just and proper. (NYSCEF Doc No. 4, Notice of Motion for Summary Judgement and Default Judgement.)

In Motion Seq. # 2, defendant GRIFFITH, cross-moves for an order granting leave to file and serve defendant's proposed amended answer, an order dismissing the proceeding pursuant to CPLR § 3211 or, in the alternative, an order granting defendant's motion for summary judgment pursuant to CPLR § 3212, together with such other and further relief as the Court deems just and proper. (NYSCEF Doc No. 15, Notice of Cross-Motion.)

The motions are consolidated for disposition.

PERTINENT BACKGROUND

The subject premises is the basement apartment, all rooms, located at 1493 Putnam Avenue, Brooklyn, New York 11237, which is a two-family residence owned by plaintiff Juanita Barrow, as Administrator of the Estate of Bradley Box.[i] (NYSCEF Doc No. 1, Verified Complaint ¶¶ 1, 5, 10; NYSCEF Doc No. 6, Deed; NYSCEF Doc No. 23, Plaintiff Affidavit ¶ 3.) Plaintiff alleges that defendants Leah Griffith, John Doe, and Jane Doe entered into possession of the subject premises pursuant to a rental agreement with plaintiff/landlord and/or plaintiff's predecessor in interest and are presently in possession of the premises. (NYSCEF Doc No. 1, Verified Complaint ¶¶ 2–4.) Plaintiff further alleges that the term of defendants' occupancy expired on January 31, 2025, pursuant to a Ninety Day Notice to Tenant on Non-Renewal of Lease, Termination of Tenancy and Intention to Recover Possession dated October 3, 2024, which was served on defendants and elected to terminate their tenancy effective that date. (NYSCEF Doc No. 1, Verified Complaint ¶¶ 6–8; NYSCEF Doc No. 8, Ninety Day Notice.) The record reflects affidavits of service showing service of a 90-day notice on defendants, including an affidavit by Su-Yan Loren Barrow attesting to service of a 90-day notice in this action. (NYSCEF Doc No. 8, Affidavit of Service; NYSCEF Doc No. 25, Affidavit of Service.)

Plaintiff commenced this ejectment action by filing a summons and verified complaint on February 25, 2025, seeking a judgment of possession, an order of ejectment directing the Sheriff to remove defendants from the subject premises and deliver possession to plaintiff, and an award of use and occupancy against defendants jointly and severally through any ejectment date. (NYSCEF Doc No. 1, Summons and Verified Complaint, at 1–4.) In support of her motion for summary judgment, plaintiff avers that there is no current written lease agreement with defendant Griffith, that Griffith resides in the basement apartment, and is not a lawful tenant

under any lease or statutory tenancy but occupies the premises without right or authorization and is subject to removal. (NYSCEF Doc No. 23, Plaintiff Affidavit ¶¶ 5–7.)

DISCUSSION OF DISPOSITIVE LEGAL ARGUMENT

Motion Seq. # 1:

Plaintiff moves for summary judgment seeking a judgment of possession and order of ejectment against answering defendant Leah Griffith, and for default judgment of possession and ejectment against non-answering defendants John Doe and Jane Doe, arguing that this is an ejectment action in which plaintiff has established ownership by deed, proper service and expiration of a Ninety Day Notice of Termination dated October 3, 2024, and defendants' continued occupancy without any claim of title or current leasehold. (NYSCEF Doc No. 5 ¶¶ 3–7, 10, 13–17.)

Defendant opposes summary judgment and supports dismissal, asserting, amongst other arguments that plaintiff has not met the prima facie burden and that multiple triable issues of fact exist, including a defective predicate notice, and defenses under Article 6-A of the Real Property Law, the Law Good Cause Eviction Law (GCEL). (NYSCEF Doc No. 16 ¶¶ 2–3, 21–22, 38–52, 57–62.) Defendant argues that GCEL applies and that plaintiff's Ninety Day Notice is defective because it omits required GCEL language regarding applicability or exemption, which, under RPAPL § 226-c, entitles defendant to the continuation of her tenancy under existing terms. (NYSCEF Doc No. 16 ¶¶ 33–47.)

Motion Seq. # 2:

On Motion Seq. # 2, defendant moves for leave to file an amended answer, to dismiss the complaint under CPLR § 3211, and, in the alternative, for summary judgment under CPLR § 3212, arguing that leave to amend should be freely granted because plaintiff first produced the Ninety Day Notice and affidavits of service in motion practice after defendant's pro se answer, and the proposed amended answer asserts meritorious defenses, including but not limited to failure to provide GCEL notice. (NYSCEF Doc No. 16 ¶¶ 2, 3–7, 12–15, 53–56; NYSCEF Doc No. 20 ¶¶ 3–11.) Defendant contends that dismissal is warranted because, amongst other reasons, the defective Ninety Day Notice deprives the court of jurisdiction and cannot be amended, and because plaintiff's failure to include GCEL language bar relief and entitle defendant to judgment as a matter of law. (NYSCEF Doc No. 16 ¶¶ 23–25, 26–35, 36–52, 57–62; NYSCEF Doc No. 17 ¶¶ 1–4, 9, 13–17; NYSCEF Doc No. 18 ¶¶ 1–4; NYSCEF Doc No. 20 ¶¶ 3–11.)

Plaintiff contends dismissal is unwarranted because, amongst other reasons, GCEL does not apply to the illegal basement unit in this small, family-owned property and thus no GCEL language was required in the Ninety Day Notice. (NYSCEF Doc No. 22 ¶¶ 5–7, 17–23, 24–29, 39–41; NYSCEF Doc No. 23 ¶¶ 5–7, 11–12.)

ARGUMENT SUMMARY

Plaintiff's motion for summary judgment (Motion Seq. # 1) turns first on whether she has met her prima facie burden under CPLR 3212 by showing ownership, expiration of defendant's right to occupy, and continued possession without any cognizable defense. Plaintiff relies on the general summary-judgment framework articulated in *Zuckerman v. City of New York*, 49 N.Y.2d 557 (1980), and *Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320 (1986), emphasizing that once the movant produces admissible proof establishing entitlement to judgment as a matter of law, the burden shifts to the opponent to come forward with evidence, not conclusory allegations, raising a triable issue of fact.

In opposition, defendant invokes the summary-judgment standard from *Hodge v. St. Eloi*, 168 A.D.3d 690 (2d Dept 2019), and *D'Amico v. Zingaro*, 135 A.D.3d 805 (2d Dept 2016), arguing that plaintiff cannot satisfy her initial burden merely by pointing to gaps in defendant's case but must "affirmatively demonstrate the merit" of her position, and that any unresolved material disputes—particularly over the validity of the predicate notice and the applicability of the Good Cause Eviction Law—require denial of summary judgment. She further argues that an incurably defective Ninety Day Notice deprives the court of a foundational basis for this ejectment action.

With respect to the alleged defect in the Ninety Day Notice, defendant relies heavily on summary-proceeding precedent holding that a defective predicate notice is jurisdictional and cannot be amended. She cites *Gerolemou v Soliz*, 184 Misc 2d 579 (App Term 2d Dept 2000), *Chinatown Apts., Inc. v. Chu Cho Lam*, 51 N.Y.2d 786 (1980), and *Rochdale Village Inc. v. Goode*, 842 N.Y.S.2d 142 (App Term 2d Dept 2007), for the principles that where a predicate notice is defective, the court is without jurisdiction and the proceeding must be dismissed.

As to the Good Cause Eviction Law, defendant's theory is that plaintiff's Ninety Day Notice is defective because it omits the GCEL disclosures required by RPAPL 226-c(1)(a), particularly as to whether the unit is or is not subject to RPL article 6-A and, if exempt, the reason for exemption; she cites the statute's provision that if the landlord fails to provide timely notice, "the occupant's lawful tenancy shall continue under the existing terms of the tenancy" until the notice period has expired. RPAPL 226-c(2). She argues that, under this statutory text, plaintiff cannot invoke any exemption—such as a "small landlord" exemption under RPL 211(3) and 214(1)—without having identified that exemption in the notice, and thus plaintiff's failure to include GCEL language both extends her tenancy and precludes summary judgment.

Plaintiff counters in part that the GCEL is inapplicable here because the basement unit is not a lawful dwelling. To support GCEL's inapplicability to "illegal" units, she cites "*Coppa Realty Corp. v. Roundtree*, 2025 NY Slip Op (App Term 2d Dept)**". (NYSCEF Doc No. 22 ¶¶ 24–28.) Plaintiff argues that, because GCEL does not apply in the first place, RPAPL 226-c's embedded GCEL notice language is not required, and defendant cannot rely on that omission to continue her tenancy or defeat ejectment.

On defendant's cross-motion for leave to amend, to dismiss, and for summary judgment (Motion Seq. # 2), defendant's primary doctrinal support for amendment comes from CPLR

3025(b) and cases such as *Public Administrator of Kings County v. Hossain Const.*, 27 A.D.3d 714 (2d Dept 2006), *Conthur Development v. Dacar Garage Corp.*, 463 N.Y.S.2d 158 (Civ Ct, N.Y. County 1983), *Edenwald Contracting Co. v. New York*, 60 N.Y.2d 957 (1983), *Long Island Title Agency, Inc. v. Frisa*, 45 A.D.3d 649 (2d Dept 2007), and *BSP 1908 Belmont 1 LLC v. Tavarez*, 60 Misc 3d 1215(A) (Civ Ct, N.Y. County 2018). Defendant argues that those authorities emphasize that leave to amend should be "freely given" and that it is an abuse of discretion to deny leave absent significant prejudice, surprise, or a proposed pleading that is "palpably insufficient or clearly devoid of merit." Defendant argues that her proposed amended answer, which adds detailed defenses based on the Ninety Day Notice and GCEL, could not have been formulated earlier because plaintiff did not file the predicate notice and affidavits until after her pro se answer, so fairness and the liberal amendment policy weigh in favor of granting leave.

Plaintiff, by contrast, leans on Edenwald's "palpably insufficient" standard to argue that the proposed affirmative defenses—defective notice, and GCEL—lack factual support or legal merit in light of the affidavits of service, the nature of the basement unit, and the absence of documentary proof, and also points to procedural considerations, citing *Deutsche Bank Nat'l Trust Co. v. Quinones*, 114 A.D.3d 719 (2d Dept 2014), to argue that conclusory cross-motions filed after a court-ordered deadline without leave should be rejected.

Ultimately, the outcome of both motions hinges on whether GCEL and RPAPL 226-c apply to this basement unit in light of the statutory exemptions.

APPLICATION

The well-known standards to be applied by the trial courts regarding motions for summary judgment are found in *Ayers v City of Mount Vernon*, 176 AD3d 766, 769 [2d Dept 2019]:

> '[T]he proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact' (*Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320, 324, 508 N.Y.S.2d 923, 501 N.E.2d 572; *Winegrad v. New York Univ. Med. Ctr.*, 64 N.Y.2d 851, 853, 487 N.Y.S.2d 316, 476 N.E.2d 642; *see Zuckerman v. City of New York*, 49 N.Y.2d 557, 562, 427 N.Y.S.2d 595, 404 N.E.2d 718). 'Failure to make such prima facie showing requires a denial of the motion, regardless of the sufficiency of the opposing papers' (*Alvarez v. Prospect Hosp.*, 68 N.Y.2d at 324, 508 N.Y.S.2d 923, 501 N.E.2d 572; *seeWinegrad v. New York Univ. Med. Ctr.*, 64 N.Y.2d at 853, 487 N.Y.S.2d 316, 476 N.E.2d 642). 'Once this showing has been made, however, the burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action' (*Alvarez v. Prospect Hosp.*, 68 N.Y.2d at 324, 508 N.Y.S.2d 923, 501 N.E.2d 572; *see Zuckerman v. City of New York*, 49 N.Y.2d at 562, 427 N.Y.S.2d 595, 404 N.E.2d 718).
>
> To succeed on a summary judgment motion, a movant must establish its cause of action or defense sufficiently to warrant the court as a matter of law in directing judgment in its

favor (CPLR § 3212[b]), and to demonstrate, by advancing sufficient "evidentiary proof in admissible form," the absence of any material issues of fact (*Winegrad v. New York Univ. Med. Ctr.*, 64 N.Y.2d 851, 853, 487 N.Y.S.2d 316, 476 N.E.2d 642 [1985]; *Zuckerman v. City of New York,* 49 N.Y.2d 557, 562, 427 N.Y.S.2d 595, 404 N.E.2d 718 [1980]). Where the proponent of the motion makes a prima facie showing of entitlement to summary judgment, the burden shifts to the party opposing the motion to demonstrate by admissible evidence the existence of a factual issue requiring a trial of the action (*Vermette v. Kenworth Truck Co.*, 68 N.Y.2d 714, 717, 506 N.Y.S.2d 313, 497 N.E.2d 680 [1986]; *Zuckerman, supra,* 49 N.Y.2d at 560, 562, 427 N.Y.S.2d 595, 404 N.E.2d 718).

AMEND PLEADING

CPLR 3025(b) Amendments without leave, provides that:

A party may amend his or her pleading, or supplement it by setting forth additional or subsequent transaction or occurrences, at any time by leave of court or by stipulation of all parties. Leave shall be freely given upon such terms as may be just including the granting of costs and continuances. Any motion to amend or supplement pleadings shall be accompanied by the proposed amended or supplemental pleading clearly showing the changes or additions to be made to the pleading.

GOOD CAUSE EVICTION LAW (GCEL)

N.Y. Real Prop. Law § 217 states:

No action shall be maintainable and no judgment of possession shall be entered for housing accommodations pursuant to section two hundred sixteen of this article, unless the landlord has complied with any and all applicable laws governing such action or proceeding and has complied with any and all applicable laws governing notice to tenants, including without limitation the manner and the time of service of such notice and the contents of such notice.

N.Y. Real Prop. Law § 211[2] & [3] distinguishes the term "small landlord" (RPL 211[3]) from the term "landlord" (RPL 211[2]). Subparagraph 3 states as follows:

3. (a) The term "small landlord" as used in this article shall mean a landlord of no more than (i) ten units in the state, or (ii) such other number of units in the state designated by local law pursuant to paragraph (b) of subdivision two of section two hundred thirteen of this article.

(b) If a landlord is a single natural person, then that landlord is a small landlord if they own or are a beneficial owner of, directly or indirectly, in whole or in part, no more than the number of units established pursuant to paragraph (a) of this subdivision; if there is more than one natural person owner, then no one person may own or be a beneficial

owner of, directly or indirectly, in whole or in part, more than the number of units established pursuant to paragraph (a) of this subdivision.

N.Y. Real Prop. Law § 214, Covered housing accommodations, states in part:

Where this article applies, it shall apply to all housing accommodations except:

1. premises owned by a small landlord provided that in connection with any eviction proceeding in which the landlord claims an exemption from the provisions of this article on the basis of being a small landlord, such landlord shall provide to the tenant or tenants subject to the proceeding the name of each natural person who owns or is a beneficial owner of, directly or indirectly, in whole or in part, the housing accommodation at issue in the proceeding, the number of units owned, jointly or separately, by each such natural person owner, and the addresses of any such units, excluding each natural person owner's principal residence …

N.Y. Real Prop. Law § 226-c[1] & [2], effective August 18, 2024 states in pertinent part:

1.(a) … Whenever a landlord … does not intend to renew the tenancy, the landlord shall provide written notice as required in subdivision two of this section. The notice shall append or contain the notice required pursuant to subdivision two of this section. The notice shall append or contain the notice required pursuant to section two hundred thirty-one-c of this article …

Lastly, N.Y. Real Prop. Law § 231-c[1] states in pertinent part as follows:

A landlord as defined in subdivision two of section two hundred eleven of this chapter shall append to or incorporate into any … notice required pursuant to paragraph (a) of subdivision one of section two hundred twenty-six-c of this article, notice required pursuant to subdivision two of section seven hundred eleven of the real property actions and proceedings law, or petition pursuant to section seven hundred forty one of the real property actions and proceedings law, the following notice:

NOTICE TO TENANT OF APPLICABILITY OR INAPPLICABILITY OF THE NEW YORK STATE GOOD CAUSE EVICTION LAW …

Plaintiff bears the initial burden to establish entitlement to judgment as a matter of law. Plaintiff has failed to meet its burden of proof due to the failure to include Good Cause Eviction Law language in the Ninety Day Notice. Plaintiff's Exhibit C, "Ninety Day Notice to Tenant On Non-Renewal of Lease, Termination of Tenancy and Intention to Recover Possession" (NYSCEF Doc. No. 8) is devoid of the required notice language direct by RPL 226-c and is also devoid of any separately appended RPL 226-c notice. Further plaintiff fails to document that the

subject apartment is in fact illegal or cite any statutory or case law authority that GCEL is inapplicable to "illegal" units and therefore no GCEL notice was required. The case cited by plaintiff in support, *Coppa Realty Corp. v. Roundtree*, 2025 NY Slip Op (App Term 2d Dept) cannot be found.

Plaintiff commenced the instant ejectment action on February 25, 2025 (see NYSCEF Doc. # 1. As set forth above, the notice requirements of GCEL went into effect on August 18, 2024. Plaintiff's action is subject to the notice requirement of GCEL. Real Property Law § 226-c:

> ...(I)f the landlord does not intend to renew the tenancy, the landlord shall provide written notice as required in subdivision two of this section. The notice shall append or contain the notice required pursuant to section two hundred thirty-one-c of this article, which shall state the following: (i) if the unit is or is not subject to article six-A of this chapter, the "good cause eviction law", and if the unit is exempt, such notice shall state why the unit is exempt from such law; (ii) if the landlord is not renewing the lease for a unit subject to article six-A of this chapter, the lawful basis for such non-renewal; and (iii) if the landlord is increasing the rent upon an existing lease of a unit subject to article six-A of this chapter above the applicable local rent standard, as defined in subdivision eight of section two hundred eleven of this chapter, the justification for such increase. If the landlord fails to provide timely notice, the occupant's lawful tenancy shall continue under the existing terms of the tenancy from the date on which the landlord gave actual written notice until the notice period has expired, notwithstanding any provision of a lease or other tenancy agreement to the contrary.

As the requirements of Real Property Law § 226-c to indicate whether the unit is covered by this provision or to provide for the lawful basis for such non-renewal were not stated in the 90 day notice, plaintiff's motion for an order of ejectment must be DENIED. Moreover, there is no documentary evidence or indication in any notice that the apartment is in fact illegal.

That branch of defendant's cross-motion (Motion Seq. # 2) in which defendant seeks leave to file and serve the proposed amended answer is GRANTED. CPLR 3025(b) directs that leave to amend "shall be freely given," and the authorities cited by defendant—including *Edenwald Contracting Co. v. New York*, 60 N.Y.2d 957 (1983), *Public Administrator of Kings County v. Hossain Const.*, 27 A.D.3d 714 (2d Dept 2006), *Long Island Title Agency, Inc. v. Frisa*, 45 A.D.3d 649 (2d Dept 2007)—make clear that leave should be denied only where the proposed pleading is palpably insufficient or clearly devoid of merit, or where the opponent demonstrates significant prejudice or surprise. Here, defendant's proposed amended answer adds affirmative defenses based on the insufficiency of the Ninety Day Notice as a result of the Good Cause Eviction Law, that are grounded in facts first revealed when plaintiff filed the notice

and affidavits as Exhibit C to the motion papers on May 29, 2025, after defendant's pro se answer.

Given the presence of substantial legal questions about the notice, and the applicability of GCEL, that are not facially frivolous, the proposed amendments cannot be deemed palpably insufficient, and plaintiff has not identified concrete prejudice beyond delay.

That branch of defendant's cross-motion (Motion Seq. # 2) in which defendant seeks dismissal of the complaint pursuant to CPLR 3211(a)(8) based on a defective predicate notice is GRANTED and the complaint must necessarily be dismissed. That branch of defendant's cross-motion (Motion Seq. # 2) in which defendant seeks summary judgment dismissing the complaint based on the theories—defective predicate notice, Good Cause Eviction Law, is also GRANTED.

Accordingly, defendant's MS# 2 for leave to file the proposed amended answer and the dispositive relief is GRANTED; and plaintiff's MS# 1 must necessarily be DENIED in all respects.

CONCLUSION

For the foregoing reasons, it is hereby

ORDERED, that Motion Seq. # 1 is **DENIED** in its entirety; and is further

ORDERED, that Motion Seq. # 2 is **GRANTED** in its entirety and the instant complaint is **DISMISSED**; and it is further

ORDERED, that all other relief requested herein has been reviewed and is **DENIED**.

This constitutes the decision and order of the Court.

Hon. Richard J. Montelione

[i] The court notes that the caption indicates "Juanita Barrow on behalf of the Estate of Bradley Box." This does not indicate capacity to sue and it does not appear that ancillary letters were issued in New York State. Notwithstanding, "capacity to sue" is an affirmative defense which is waived if not raised in an answer or by pre-answer motion to dismiss. "The defense of lack of capacity is waived if not raised in an answer or in a pre-answer motion to dismiss (*see Rimberg v Horowitz*, 206 AD3d 832, 834 [2022]; *Bank of N.Y. Mellon v Barkan*, 190 AD3d 676, 677 [2021]; *Wells Fargo Bank Minn., N.A. v Mastropaolo*, 42 AD3d 239, 243 [2007]), and "it was inappropriate for the court to raise that affirmative defense sua sponte" (*Wells Fargo Bank, N.A. v Halberstam*, 166 AD3d 710, 711 [2018]; *see Wells Fargo Bank Minn., N.A. v Mastropaolo*, 42 AD3d at 243-244)," *see Rodriguez v Rodriguez*, 229 AD3d 824, 825, 217 NYS3d 120, 2024 NY Slip Op 04090, 2, 2024 WL 3588292 [2d Dept 2024].