

Roosevelt Is. Assoc. v Heller

2026 NY Slip Op 31688(U)

April 16, 2026

Supreme Court, New York County

Docket Number: Index No. 156223/2025

Judge: Lyle E. Frank

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. LYLE E. FRANK **PART** **11M**

Justice

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ROOSEVELT ISLAND ASSOCIATES

Plaintiff,

- v -

STEVEN R. HELLER,

Defendant.

-----X

INDEX NO. 156223/2025

MOTION DATE 12/15/2025

MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59

were read on this motion to/for DISMISSAL.

This action arises out of allegations that defendant has engaged in objectionable conduct which created a hazardous condition to the building and cotenants. Plaintiff commenced this action seeking rental arrears and an order enjoining defendant from continuing to engage in objectionable conduct. Plaintiff subsequently amended the complaint to include an ejectment cause of action.

Defendant now moves to dismiss plaintiff's amended complaint pursuant to CPLR §321 1 (a)(7); or in the alternative and to remove the action to Civil Court pursuant to New York Const., Art VI, § 19(a) and CPLR §325(d)¹. Plaintiff opposes the instant motion and cross-moves for partial summary judgment. For the reasons set forth below, plaintiff's cross-motion is denied and defendant's motion is granted in part.

¹ Defendant initially sought dismissal of the amended complaint as improper and dismissal of use and occupancy claims, in its reply defendant withdrew those portions of the motion.

Background

Plaintiff is the owner and landlord of the building located at 2 River Road New York, New York 10044, which provides subsidized housing for persons with disabilities and senior citizens.

Defendant suffers from schizophrenia, among other mental illnesses, and has been the tenant of apartment #4-C within the building since February 18, 2000, pursuant to a written lease of the same date. The most recently amended and renewed lease was dated December 10, 2024.

On or about May 8, 2025, plaintiff commenced a summary nonpayment proceeding against defendant, LT-308248-25/NY. Plaintiff served defendant with a Notice to Cure on May 9, 2025 and commenced this action on May 13, 2025. On or about June 30, 2025, plaintiff served a Notice of Termination. Plaintiff then amended its complaint to assert a cause of action for ejectment while the nonpayment proceeding was pending. Subsequently, on November 18, 2025, the parties settled the nonpayment proceeding with the stipulation specifying the amount due on defendant's rental account through November 30, 2025.

Standard of Review

It is well-settled that on a motion to dismiss for failure to state a cause of action pursuant to CPLR § 3211(a)(7), the pleading is to be liberally construed, accepting all the facts as alleged in the pleading to be true and giving the plaintiff the benefit of every possible inference. *See Avgush v Town of Yorktown*, 303 AD2d 340 [2d Dept 2003]; *Bernberg v Health Mgmt. Sys.*, 303 AD.2d 348 [2d Dept 2003]. Moreover, the Court must determine whether a cognizable cause of action can be discerned from the complaint rather than properly stated. *Matlin Patterson ATA Holdings LLC v Fed. Express Corp.*, 87 AD3d 836, 839 [1st Dept 2011]. "The complaint must

contain allegations concerning each of the material elements necessary to sustain recovery under a viable legal theory.'" *Id.*

Discussion

Preliminarily the Court denies plaintiff's request to convert the motion as one for summary judgment, the Court does not agree with plaintiff's position that defendant has "charted a summary judgment course". Moreover, issue has not been joined as to plaintiff's amended answer therefore summary judgment is procedurally improper. As to the portion of defendant's motion that seeks removal of this matter to Housing Court, that application is denied. The first cause of action in the amended complaint seeks injunctive relief, relief that cannot be obtained in the Housing Court. Accordingly, there is no basis for this matter to be transferred.

The main argument in support of defendant's motion to dismiss is that plaintiff's notice of termination, upon which the ejectment cause of action is predicated, was vitiated by the stipulation of settlement between the parties in the related nonpayment proceeding. Further, defendant contends that the notice of termination is deficient because it fails to allege any conduct that occurred after the cure period and only repeats the allegations in the notice to cure without any further details including dates and times of the alleged offending conduct and that the notice of termination lacks the requisite language in violation of the Department of Housing and Urban Development (HUD) Handbook (4350.3 REV-1), Section 8-13(B).

In opposition, plaintiff contends that the stipulation did not vitiate the notice of termination and submits an affirmation to establish that defendant has not cured the defaults in the notice to cure.

Without reaching the merits or addressing whether plaintiff has established that defendant has failed to cure the deficiencies in the notice to cure, the termination notice is devoid of the

requisite language as provided by HUD. Specifically, the notice of termination fails to “[a]dvise that persons with disabilities have the right to request reasonable accommodations to participate in the hearing process.” The Appellate Term First Department has held that a notice of termination that does not contain the requisite language is “insufficient to serve as a predicate for this eviction proceeding” (*2013 Amsterdam Ave. Hous. Assn., L.P. v King*, 63 Misc 3d 36, 38 [App Term 2019]). Moreover, the Court notes that consistent with the terms of the settlement agreement in the nonpayment proceeding, any future eviction proceeding should be commenced in the Housing Court. Accordingly, it is hereby

ORDERED that plaintiff’s second cause of action is dismissed.

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4/16/2026
DATE

LYLE E. FRANK, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE