

ICP 30 Broad Owner LLC. v Serafina to Go 30 Broad LLC
2026 NY Slip Op 32057(U)
May 21, 2026
Civil Court of the City of New York, New York County
Docket Number: Index No. LT- 320912-25/NY
Judge: Lauren L. Esposito
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CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK: PART 52

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ICP 30 BROAD OWNER LLC,

Index No. LT-320912-25/NY

Petitioner,

DECISION AND ORDER
Mot. Seq. No. 001

-against-

SERAFINA TO GO 30 BROAD LLC d/b/a
SERAFINA TO GO, XYZ CORP.,

Hon. Lauren L. Esposito, J.C.C.

Respondent(s),

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Recitation of the papers considered in reviewing the underlying motion as required by CPLR 2219(a):

<u>Papers</u>	<u>Numbered</u>
Resp.'s Notice of Motion; Affs. in Support, with Exhibits.....	1 (NYSCEF Doc. Nos. 12-23)
Pet.'s Affs. in Opp, with Exhibits.....	2 (NYSCEF Doc Nos. 26-33)
Resp.'s Affs. in Reply, with Exhibit.....	3 (NYSCEF Doc Nos. 34-40)

ICP 30 Broad Owner LLC (the petitioner) commenced this holdover proceeding against Serafina To Go 30 Broad LLC d/b/a Serafina To Go and XYZ Corp. (together “the respondents”) seeking a final judgment of possession of 30 Broad Street, Portion of Ground Floor and Storage Space, New York, New York 10004 (the premises) and the fair and reasonable value of the respondents’ use and occupancy of the premises at a rate to be determined by the court based on the allegations that respondents’ lease and rights to the premises were terminated upon the foreclosure and sale of the leasehold at the building. The respondent Serafina To Go 30 Broad LLC d/b/a Serafina To Go (hereinafter “Serafina”) appeared by counsel and filed a verified answer asserting several defenses. Currently before the court is Serafina’s motion pursuant to CPLR 3212 for summary judgment dismissing the petition because Serafina’s lease remains unaffected by the foreclosure sale and Serafina attorned to the petitioner. The petitioner filed opposition to Serafina’s motion, and Serafina filed a reply. On the return date of the motion the parties appeared by counsel, the court heard argument and submitted the motion. For the reasons that follow, the court grants Serafina’s motion.

Pursuant to CPLR 3212, a motion for summary judgment “shall be granted if, upon all the papers and proof submitted, the cause of action or defense shall be established sufficiently to warrant the court as a matter of law in directing judgment in favor of any party” (CPLR 3212[b]; see Zuckerman v City of New York, 49 NY2d 557, 562 [1980]). A party seeking summary judgment “must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case” (Winegrad v New York Univ. Med. Ctr., 64 NY2d 851, 853 [1985]; Zuckerman v City of New York, 49 NY2d at 562; Sillman v Twentieth Century-Fox Film Corp., 3 NY2d 395, 404 [1957]). The burden on the movant on a motion for summary judgment “is a heavy one” and “facts must be viewed in the light most favorable to the non-moving party” (William J. Jenack Estate Appraisers and Auctioneers, Inc. v Rabizadeh, 22 NY3d 470, 475 [2013], quoting Vega v Restani Constr. Corp., 18 NY3d 499, 503 [2012] [citation and internal quotation marks omitted]). Where the moving party fails to meet this burden, summary judgment cannot be granted, and the non-moving party bears no burden to otherwise persuade the court against summary judgment (Rabizadeh, 22 NY3d at 475). Indeed, the moving party's failure to make a prima facie showing of entitlement to summary judgment requires a denial of the motion, regardless of the sufficiency of the opposing papers (id.).

By way of background, according to the motion papers the petitioner purchased the ground lease at 30 Broad Street (the building) in June 2025 at a post-foreclosure auction sale and pursuant

to that purchase a referee assigned to the petitioner the ground lease at the building. Serafina is a tenant in the ground floor retail space in the building pursuant to a written lease, dated August 11, 2021 with a term for 11 years and 9 months, with the building's prior owner, 30 Broad Street Venture LLC. The petitioner commenced this proceeding to evict Serafina from the premises on the basis that Serafina's lease was extinguished by the foreclosure sale. In its motion for summary judgment, Serafina argues the petition should be dismissed because it was not named as a defendant in the foreclosure action and, therefore, its lease is unaffected by the foreclosure sale to the petitioner.

Tenants whose interests are subordinate to those of a mortgagee are typically considered necessary parties to mortgage foreclosure actions (see RPAPL 1311 ["Each of the following persons, whose interest is claimed to be subject and subordinate to the plaintiff's lien, shall be made a party defendant to the [mortgage foreclosure] action...every person having an estate or interest in possession, or otherwise, in the property as tenant in fee, for life, by the curtesy, or for years..."]; see also John Hancock Mut. Life Ins. Co. v 491-499 Seventh Ave. Assoc., 220 AD2d 208 [1st Dept 1995] [holding that tenants are necessary parties to foreclosure actions "only in the sense that their subordinate interests could be adversely affected only if they were joined, and not in the sense of being indispensable"]. "The absence of a necessary party in a foreclosure action leaves that party's rights unaffected by the judgment and sale, and the foreclosure sale may be considered void as to the omitted party. Thus, a lessee who is not joined in a foreclosure action "retains the right to remain in possession of the property for the remainder of the term of his or her tenancy, regardless of whether the lease has been recorded. The failure to join a tenant as a party fails to cut off the tenancy" 1426 46 St., LLC v Klein, 60 AD3d 740, 742 [2d Dept 2009][internal citations omitted]; see Markantonis v Madlan Realty Corp., 262 NY 354 [1933] [holding that, because the tenant was not named in the foreclosure action, the lease of the unnamed tenant was not extinguished by the foreclosure sale and the purchaser was entitled to enforce the provisions of the lease between the tenant and the previous owner]).

Serafina submits the documents in the mortgage foreclosure action captioned 30 Broad Owner LLC v 30 Broad Street Ventures LLC, et al, Index No. 850260/2024 in Supreme Court of the State of New York, County of New York, establishing that Serafina was not named in that action. Given that Serafina was not named as a defendant in the foreclosure action, its lease was not extinguished by the foreclosure sale (see 1426 46 St., LLC v Klein, 60 AD3d 740, 742-43 [2d Dept 2009]["Since the defendants were not properly joined as parties to the foreclosure action, the judgment of foreclosure and sale did not extinguish their tenancy rights."]). Accordingly, the court finds that Serafina has made a prima facie showing that it is entitled to summary judgment dismissing this proceeding seeking to evict Serafina because its tenancy was extinguished in the foreclosure action.

The petitioner contends that Serafina's lease, dated August 11, 2021 and executed after the mortgage foreclosed upon, was subordinate to the mortgage dated 2019. The petitioner notes article 7 of Serafina's lease states that its interest in the premises was expressly subordinate to that of the mortgagee stating in part that "[t]his Lease is subject and subordinate to each and every ground or underlying lease of the Real Property or the Building hereafter made by Landlord (collectively, the "Superior Leases") and to each and every trust indenture and mortgage..." (NYSCEF Doc. No. 17). Even so, as explained above Serafina had to be named in the foreclosure action for its tenancy to be extinguished, and the petitioner provides no authority to the contrary (see G. B. Seely's Son, Inc. v Fulton-Edison, Inc., 52 AD2d 575, 577 [2d Dept 1976][under RPAPL 1311 the plaintiff in an action to foreclose a mortgage must join all parties whose interests

are subordinate to that of the mortgagee").¹

In opposition, the petitioner does not refute that Serafina was not named as a party in the foreclosure action, it instead claims an issue of fact exists that precludes granting summary judgment to dismiss the petition. The petitioner contends that because Serafina’s lease was for a term of more than three years, the lease should have been recorded and because it was not recorded it is void as against a good faith purchaser for value. While New York Real Property Law states a lease with a term exceeding three years is considered a conveyance of real property and should be recorded (see Real Property Law §§ 290[3], 291), and the lease may be voided by a subsequent good faith purchaser who first records its interest (see Real Property Law § 291), “a purchaser with prepurchase notice, actual or constructive, of an unrecorded instrument or encumbrance is not a good faith purchaser for value and cannot avail himself or herself of the benefits of the recording statutes” (*7 Vestry LLC v Dept. of Fin. of City of N.Y.*, 22 AD3d 174, 184 [1st Dept 2005]).

Here, while it is undisputed that Serafina’s lease was unrecorded, the petitioner failed to raise an issue of fact concerning whether it was a good faith purchaser of the premises with no notice of Serafina’s tenancy. While the petitioner submits the affirmation of its president Michael Gontar stating that the petitioner had no actual or constructive notice of Serafina’s presence in the building, his affirmation is conclusory, and therefore insufficient to raise an issue of fact to defeat summary judgment (see *Zuckerman v. City of New York*, 49 NY2d 557, 562 [1980] [“mere conclusions, expressions of hope or unsubstantiated allegations or assertions are insufficient” to oppose a motion for summary judgment]). Moreover, Serafina submitted evidence that its presence in the building as a commercial ground floor establishment was open and notorious and provided constructive notice of Serafina’s tenancy to any purchaser of the building. Serafina provides the affirmation of its operations manager, Frank Granato, who avers that Serafina has openly operated a café and restaurant in the premises since 2021 and submits photographs of the restaurant showing bright yellow signage outside of the property (NYSCEF Doc. No. 40). Accordingly, the petitioner has failed to raise an issue of fact sufficient to defeat summary judgment.

In light of the above, the court need not address the parties’ arguments regarding attornment.

Accordingly, it is hereby,

ORDERED that the respondent’s motion for summary judgment is granted and this proceeding is dismissed.

The Clerk is directed to upload a copy of this decision to NYSCEF.

This constitutes the decision and order of the court.

Date: May 21, 2026
New York, NY



Hon. Lauren L. Esposito, J.C.C.

CHECK ONE:	<input checked="" type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> DENIED	<input type="checkbox"/> NON-FINAL DISPOSITION	<input type="checkbox"/> OTHER
MOTION SEQ. #: 001	<input checked="" type="checkbox"/> GRANTED	<input type="checkbox"/>	<input type="checkbox"/> GRANTED IN PART	<input type="checkbox"/>
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/>	<input type="checkbox"/> SUBMIT ORDER	<input type="checkbox"/> STAY CASE

¹ The petitioner cites, *220 W. 42 Assoc. v Ronbet Newmark Co.*, 53 AD2d 829 [1st Dept 1976], *affd.*, 40 NY2d 1000 [1976], a case where the court held “that the lease in question is subordinate to the rights of the mortgagee” because the lease clause contained “a covenant of quiet enjoyment was also explicitly subordinate to all mortgages on the premises.” However, that decision is inapposite because, unlike in that case, here the tenant was not named in the mortgage foreclosure action.