

Carrington Arms LLC v English
2026 NY Slip Op 32103(U)
January 28, 2026
City Court of New Rochelle, Westchester County
Docket Number: Index No. LT-000132-25
Judge: Michelle K. Bernstein
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CITY COURT OF THE CITY OF NEW ROCHELLE
COUNTY OF WESTCHESTER

CARRINGTON ARMS LLC,
Petitioner,
-against-

Index No. LT-000132-25

ADELANA ENGLISH,
Respondent.

DECISION AND ORDER

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Bernstein, J.:

The following papers were read on this motion:

Notice of Motion for Summary Judgment, Affirmation in Support, Exhibits A-C	1-2, 3-5
Notice of Cross-Motion, Affirmation in Opposition and in Support of Cross-Motion	6-7
Reply Affirmation in Support of Motion and in Opposition to Cross Motion	8
Reply Affirmation in Support of Petitioners Cross Motion to Strike Respondent's Answer	9

Petitioner commenced this summary holdover proceeding on or about January 22, 2025, against respondent to recover 33 Lincoln Avenue, Apartment 3C, New Rochelle, New York (premises). Petitioner terminated respondent's tenancy based on substantial violations of her lease including, *inter alia*, allegations of unauthorized occupants, unsanitary apartment conditions, an illegal pet, and excessive noise. The instant matter was returnable on February 20, 2025, a date on which Carrington Arms, LLC (petitioner) appeared, by counsel. Adelana English (respondent) failed to appear at the proceeding and a judgment of possession and warrant of eviction was issued, with a five day stay. An Order to Show Cause (OTSC) was filed by respondent on or about May

23, 2025, and the case was placed on the June 5, 2025, court calendar, and then adjourned to July 10, 2025, for respondent to obtain legal counsel. On July 10, 2025, respondent appeared with counsel, and the Court granted the OTSC vacating the judgment and warrant; the matter was adjourned to July 30, 2025, for trial. On July 30, 2025, a settlement conference was held and the matter was adjourned to September 30, 2025, for a trial. On or about September 25, 2025, respondent filed an answer via the Electronic Document Delivery Service (EDDS), which contained a denial of the allegations in the petition and affirmative defenses as follows: (1) petitioner failed to comply with the Violence Against Women and Justice Department Reauthorization Act of 2005 (VAWA); (2) petitioner waived any alleged violations in termination notice; and (3) petitioner failed to allege good cause as required by the Low Income Housing Tax Credit program (LIHTC). On September 26, 2025, respondent filed a motion to dismiss via EDDS. On September 30, 2025, when the parties appeared, the Court set a schedule for opposition and reply papers. On November 25, 2025, the motion was marked fully submitted.

The Motion and Cross-Motion

Respondent now moves by notice of motion for summary judgment pursuant to CPLR §§ 3211(a)(1), and (7) and 3212(b) based on the following; (1) petitioner failed to serve respondent VAWA notices; (2) petitioner failed to state the regulatory status of the subject property under the LIHTC program, and compliance with the applicable statutes, rule and regulations; and (3) petitioner waived any right it may have had to terminate respondent's tenancy for breach of lease because it waited too long to commence this holdover proceeding. Respondent also seeks an order granting such other and further relief as the Court deems just and proper.

Petitioner cross-moves for a default judgment against respondent asserting that her answer

was filed late pursuant to RPAPI. § 743. Petitioner also opposes respondent's motion arguing, in part: (1) there is no factual or legal basis alleged in respondent's moving papers; (2) alternatively, should the Court determine there are merits to respondent's claim, the respondent's answer was filed late and the issues raised are without merit. Moreover, petitioner asserts that respondent's claim that it "'waited too long', i.e. three months, to file this proceeding is frivolous." (Finger affirmation ¶ 23). Respondent opposes petitioner's cross-motion asserting that her answer was timely filed and has merit.

Petitioner's Cross Motion for a Default Judgment

The Court first addresses petitioner's cross motion seeking a default judgment against respondent alleging that her answer was filed late and without leave of court should be stricken along with her motion to dismiss. Petitioner asserts that respondent's answer was due on February 20, 2025, the original return date of the instant matter

"Pursuant to RPAPI 743, the time to answer a holdover petition is at the time when the petition is to be heard. Where the proceeding to hear the petition is adjourned; the time to answer the petition is also adjourned." (*Warren LLC v Carbello*, 2009 NY Misc LEXIS 2408, *5 [Sup Ct, Queens County 2009]). There is no dispute that respondent initially defaulted on February 20, 2025, that respondent filed an OTSC to vacate the default judgment and warrant issued against her, and that subsequently her OTSC to vacate her default judgment and warrant was granted on July 10, 2026. As the Court granted respondent's OTSC vacating the default judgment and warrant, the instant proceeding returned to a new starting point, and as the matter was adjourned twice for trial, once to July 30, 2025, and then to September 30, 2025, the Court finds that respondent's answer was timely filed. Accordingly, petitioner's cross-motion is denied in its entirety.

Respondent's Motion to Dismiss

In the context of a CPLR § 3211 motion to dismiss, the pleadings are necessarily afforded a liberal construction (*Goshen v Mut. Life Ins. Co.*, 98 NY2d 314 [2002] [citing *Leon v Martinez*, 84 NY2d 83 [1994]; see also CPLR § 3026). Thus, petitioner is afforded "the benefit of every possible favorable inference" (*id.*).

VAWA Notices

Respondent moves for dismissal of the petition asserting that petitioner's failure to serve respondent with VAWA notices is fatal and should result in dismissal of the instant proceeding. The Appellate Division, Second Department, discussed the history of VAWA in *Matter of Johnson v Palumbo*, 154 AD3d 231, 240 (2d Dept 2017), stating:

"Originally enacted in 1994, one of the VAWA's purposes was to provide greater protections to victims of domestic violence (*see* Violent Crime Control and Law Enforcement Act of 1994, Pub L 103-322, tit IV, 108 US Stat 1796). In 2005, it was reauthorized and expanded to include, among other things, protection for victims of domestic violence who receive publicly assisted housing benefits, including participants of the Section 8 Housing Choice Voucher Program (*see* Violence Against Women and Department of Justice Reauthorization Act of 2005, Pub L 109-162, tit VI, 119 US Stat 2960; 42 USC § 14043e *et seq.*, now 34 USC § 12471 *et seq.*). In expanding the VAWA to encompass certain public housing programs, Congress acknowledged that "[t]here is a strong link between domestic violence and homelessness," and "[w]omen and families across the country are being discriminated against, denied access to, and even evicted from public and subsidized housing because of their status as victims of domestic violence" (42 USC § 14043e [1], [3], now 34 USC § 12471 [1], [3]). Domestic violence has caused shelter populations to increase because of the scarcity of housing (*see* Mireya Navarro, *Homeless, Because They Are Abused at Home*, NY Times, Nov. 11, 2014, § A at 1, col 0). The purpose of the VAWA, as applied to public housing, is to reduce domestic violence and stalking, among other things, and to prevent homelessness (*see* 42 USC § 14043e-1, now 34 USC § 12472)."

24 Code of Federal Regulations (CFR) § 5.2005(a)(1) provides:

"(a) Notification of occupancy rights under VAWA, and certification form. (1) A covered housing provider must provide to each of its applicants and to each of its tenants the notice of occupancy rights and the certification form as described in this section: (i) A "Notice

of Occupancy Rights under the Violence Against Women Act,” as prescribed and in accordance with directions provided by HUD, that explains the VAWA protections under this subpart, including the right to confidentiality, and any limitations on those protections; and (ii) A certification form, in a form approved by HUD, to be completed by the victim to document an incident of domestic violence, dating violence, sexual assault or stalking, and that: (A) States that the applicant or tenant is a victim of domestic violence, dating violence, sexual assault, or stalking; (B) States that the incident of domestic violence, dating violence, sexual assault, or stalking that is the ground for protection under this subpart meets the applicable definition for such incident under § 5.2003; and (C) Includes the name of the individual who committed the domestic violence, dating violence, sexual assault, or stalking, if the name is known and safe to provide”

The notification of occupancy rights and certification form described in 24 CFR § 5.2005(a)(1) will be referred to, collectively, as the VAWA notices. Petitioner does not contest respondent’s argument that it is a “covered housing provider” (24 CFR § 5.2005[a][1]) required to provide VAWA notices to respondent.

Pursuant to 24 CFR § 5.2005(a)(2)(iii), VAWA notices must be provided to a tenant “[w]ith any notification of eviction or notification of termination of assistance.” Respondent asserts that based upon statute and case law, that the instant proceeding must be dismissed as ~~petitioner failed to include the VAWA notice in the termination notice of September 24, 2024,~~ the [n]otice of [p]etition, and the [p]etition.” (Moccia affirmation ¶¶ 23-27; *Carnegie Park Pres. LP v Cintron*, 2024 NY Misc LEXIS 14601 [Civ Ct, NY County 2024]; *1471 Brooklyn LLC v Glanville*, 2024 NYLJ LEXIS 3639 [Civ Ct, Kings County 2024]; *Chinatown Apartments, Inc. v Chu Cho Lam*, 51 NY2d 786 [1980]). In a holdover proceeding, the issuance of a notice of termination is a “notification of eviction” pursuant to 24 CFR § 5.2005(a)(2)(iii) and requires a landlord to provide VAWA notices. New York courts have held that a landlord’s failure to provide a copy of the VAWA notices along with the notice of termination requires dismissal of an eviction proceeding. (See *Williamsburg Hous. Pres. LP v Thompson*, 2025 NY Misc LEXIS 7763, 2025

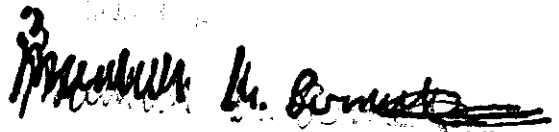
NY Slip Op 33532[U][Civ Ct, Kings County 2025]; *Carnegie Park Pres. LP*, 2024 NY Misc LEXIS 14601; *1471 Brooklyn LLC*, 2024 NYLJ LEXIS 3639; *Rahman v Lewis*, 84 Misc 3d 720 [Civ Ct, Bronx County 2024]).

Petitioner does not contest that VAWA notices were ever filed, nor can petitioner amend the predicate termination notice to include the VAWA notices. (*Chinatown Apartments*, 51 NY2d 786 [1980]). Petitioner does not provide any factual or legal defense to respondent's argument that dismissal is required. The instant summary nonpayment proceeding cannot be supported by a defective predicate notice and must be dismissed (*id.*). Accordingly, the Court finds that petitioner's failure to serve the VAWA notices with the termination notice renders the notice of termination fatally defective and the petition is dismissed without prejudice.

The Court does not reach respondent's remaining arguments as moot.

This constitutes the Decision and Order of the Court.

Dated: New Rochelle, New York
January 28, 2026

A handwritten signature in black ink, appearing to read "Michelle K. Bernstein", with a stylized flourish at the end.

Hon. Michelle K. Bernstein
City Court Judge