

Persaud v Price
2026 NY Slip Op 32106(U)
June 26, 2026
Civil Court of the City of New York, Queens County
Docket Number: Index No. LT-309094-25/QU
Judge: Kimon C. Thermos
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CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF QUEENS: HOUSING PART B

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SOHAN PERSAUD,

Petitioner-Landlord,

-against-

Index No.: LT-309094-25/QU

Motion Seq. No. 3

SHERRY PRICE AND JAMES PRICE,

Respondent-Tenants,

DECISION/ORDER

“JOHN DOE” AND “JANE DOE”,

Respondents-Undertenants.

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Present: Hon. Kimon C. Thermos, J.H.C.

Recitation, as required by CPLR §2219(a) of the papers considered in the review of Respondent’s motion:

PAPERS	NUMBERED
Respondent’s Motion, Affirmations & Exhibits (NYSCEF #30-34).....	1
Petitioner’s Affidavit or Affirmation in Opposition (NYSCEF #36).....	2
Respondents Affidavit or Affirmation in Reply (NYSCEF #37).....	3

Appearing for the Petitioner:	Law Office of Neville McFarlane
Appearing for the Respondent:	New York Legal Assistance Group

Upon the foregoing cited papers, the Decision/Order on Respondent’s motion is as follows:

This is a holdover proceeding seeking possession of premises located at 243-10 138th Avenue, Second Floor Apartment, Rosedale, NY 11422 (the “Subject Premises”). The Petition seeks a judgment of possession and a monetary judgment of the fair market value for use and occupancy of at least \$2,800 per month. The Petition does not plead the regulatory status of the Subject Premises. Respondent James Price is represented by the New York Legal Assistance Group (“NYLAG”). Respondent has not yet filed an answer in this proceeding.

On April 24, 2025, Petitioner served Respondents with a “Ten (10) Day Notice to Quit and Vacate for Former Owners and Licensees, Certified Deed and Good Cause Eviction Notice” by conspicuous service. *See* NYSCEF Doc. 3. Petitioner also served Respondents with a separate

“Alternative Thirty (30) Day Termination of Tenancies Notice for At Will or By Sufferance Occupants, Certified Deed and Good Cause Eviction Notice” on April 24, 2025. *See Id.* On July 7, 2025, Respondents were allegedly served with the Petition and Notice of Petition via conspicuous service. The Petition states that Petitioner Sohan Persaud is the owner of the Subject Premises who acquired title pursuant to a sale from the prior owner in January 2024. The Petition pleads that Respondents are “Licensees/ At Will / by Sufferance Occupants”, and that Respondents have no lease and no landlord-tenant relationship exists between the parties. *See* Petition, NYSCEF Doc. 1. Paragraph (4) of the Petition states that Petitioner seeks possession of the property pursuant to RPAPL §713(7)(a)(b), which permits special proceedings to be maintained against licensees after service of a ten-day notice to quit. The next paragraph seeks “OR In the alternative Removal of At Will / by Sufferance Occupants” pursuant to RPAPL §228, which permits termination of at will or at sufferance tenancies after service of a thirty-day notice. *Id.* The Petition notes that a prior case was commenced against Respondents in January 2024, which was dismissed because the Court found that Respondents were not tenants and Respondents were served with an improper predicate notice referring to them as tenants. *Id.*; *see Sohan Persaud v. Sherry Price et al.*, LT-310710-24/QU, Decision/Order (April 11, 2025).

Respondent states that he has been residing at the Subject Premises with his wife and daughter since July 2013 and now moves to dismiss pursuant to CPLR §3211(a)(7) on the basis that 1) Petitioner’s predicate notices plead alternative causes of action; 2) Petitioner failed to plead its relationship to Respondent in violation of RPAPL §741(2); 3) Petitioner did not serve the predicate notice as required by RPAPL §735; and 4) Petitioner did not serve the form Notice of Petition required by 22 NYCRR §208.42(b). In the alternative, Respondent requests leave to file a verified answer.

On a motion to dismiss under CPLR § 3211(a)(7), the court must afford pleadings a liberal construction, accept all facts alleged in the petition as true, accord the petitioner the benefit of every possible favorable inference, and determine only whether the facts alleged fit within any cognizable legal theory. *Leon v. Martinez*, 84 N.Y.2d 83, 87-88 (1994).

Respondent argues that the Petition must be dismissed because it does not state the relationship between Petitioner and Respondents as required by RPAPL §741(2). Respondent argues that it unclear from the Petition whether Respondents are licensees, tenants at will, or tenants by sufferance, and Petitioner cannot claim alternative legal theories of possession under RPAPL §741(2). In opposition, Petitioner argues that alternative pleading does not render a Petition inherently defective. Petitioner cites to cases in which courts have held that alternative pleading is permitted absent prejudice or confusion.

See 130-50 228th, LLC v. Moseley, 77 Misc. 3d 139(A) (App. Term 2d Dep’t 2022); *Kew Gardens Portfolio Holdings, LLC v. Bucheli*, 69 Misc.3d 129(A) (App. Term 2d Dep’t 2020). Petitioner contends that the Petition fairly apprises Respondents of the basis for the relief sought and “[t]he alternative pleading merely preserves possible non-tenant characterizations of Respondent’s continued occupancy arising from circumstances predating Petitioner’s ownership, while consistently maintaining that Respondents have no leasehold rights as against Petitioner.” *See* Affirmation in Opposition, NYSCEF Doc. 36.

Petitioner is correct that pleading in the alternative is permitted in a summary proceeding where no prejudice or confusion results from the alternative pleading. *See Bucheli*, 69 Misc.3d 129(A); *see also Matter of Kern v. Guller*, 40 A.D.3d 1231 (App Term 3d Dep’t 2007). However, the primary case that Petitioner cites for this proposition involved a petition which pled that the respondents were either licensees or squatters. *See Bucheli*, supra. Under those circumstances, the Court found that the respondents could not point to any prejudice or confusion resulting from the alternative pleading. *Id.* Petitioner also cites to *Moseley*, where the Court reiterated that it is not necessarily unreasonable for a petition to assert, as alternative grounds for the proceeding, that a respondent is either a licensee or a squatter. *See Moseley*, 77 Misc.3d 139(A). Petitioner only cite cases where courts permitted petitioners to alternatively plead that respondents were either licensees or squatters. The distinction between a licensee and a squatter is different than what Petitioner alleges here: that Respondent is either a licensee, a tenant at will, or a tenant by sufferance. A respondent that is characterized as either a licensee or a squatter is required to be served with the same ten-day notice to quit pursuant to RPAPL §713. In contrast, a petitioner alleging that a respondent is a tenant at will or a tenant by sufferance must serve the respondent with a thirty-day termination notice. *See* RPL §228. Therefore, alternatively pleading that a respondent is a “licensee / tenant at will / tenant by sufferance” would require a petitioner to serve a respondent with predicate notices with conflicting vacate dates, as Petitioner did here. Although the parties’ relationship was determined in a prior proceeding not to be that of landlord-tenant, Respondent correctly points out the confusing nature of this alternative pleading and the corresponding predicate notices with conflicting vacate dates. Under these circumstances, pleading alternative theories of possession based on serving two separate notices was prejudicial to Respondents and requires dismissal of this proceeding. *See JP Morgan Chase Bank, N.A. v. Carrasquillo*, 84 Misc. 3d 1211(A) (Civ. Ct. Queens Cnty. 2024) (dismissing proceeding where Respondent was served with a 10-day notice to quit with an “alternative” 90-day notice to quit, as the ambiguity rendered the notice confusing and

defective); *Cf. Bucheli*, 69 Misc.3d 129(A) (reversing trial court's dismissal where Respondents pointed to no prejudice or confusion resulting from the alternative pleading).

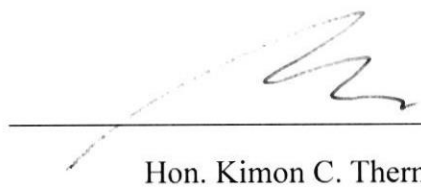
Additionally, the difference between whether a person can be characterized as a licensee or a tenant at will depends on whether that person has exclusive possession or control over the subject premises. *See Sherhan v. Numyal Food, Inc.*, 20 Misc.3d 40 (App. Term 2d Dep't 2008). Whether Respondents had exclusive possession of the Subject Premises is information that should have been within the knowledge of Petitioner at the time the Petition was filed. Petitioner states that Respondents were already in possession of the property before he acquired title, and that Respondent James Price is allegedly in possession through Respondent Sherry Price, who he alleges is a former owner of the property. He also states that he has been unable to freely access the Subject Premises, and that Respondent has allegedly changed the locks on the front door of the property. *See* Sohan Persaud Affirmation, NYSCEF Doc. 36 at 10. However, Petitioner does not explain the efforts he made to ascertain Respondents' possessory interests in the Subject Premises. Nor does he state whether he made any efforts to inquire with the former owner about how Respondents came into possession of the property. Thus, without a showing of a diligent effort to ascertain the nature of the occupants' possession, the Court finds that resorting to pleading that Respondents are licensees, or alternatively, tenants at will or tenants by sufferance, was unreasonable under the circumstances. *See also Moseley*, 77 Misc.3d 139(A) (concluding that the failure to describe a purported license in a petition is a fundamental omission warranting dismissal).

Based on the foregoing, this proceeding is dismissed without prejudice. The Court need not address Respondent's remaining arguments for dismissal as they are now moot. Respondent shall serve a Notice of Entry of this Decision/Order upon Petitioner via NYSCEF. This case was previously scheduled for a June 29, 2026 appearance as a control date. As this case has been dismissed, the parties do not need to appear on that date.

This constitutes the decision and order of the Court and will be uploaded to NYSCEF.

June 26, 2026

Queens New York



Hon. Kimon C. Thermos, JHC

CHECK ONE:

X

CASE
DISPOSED

MOTION SEQ. #: 3

X

GRANTED

DENIED

CHECK IF
APPROPRIATE:

SETTLE
ORDER

INCLUDES
TRANSFER/REASSIGN

NON-FINAL
DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY
APPOINTMENT

OTHER

STAY CASE

REFERENCE