

Plaza Gardens Real Estate Corp. v Pitts
2026 NY Slip Op 32108(U)
July 6, 2026
Civil Court of the City of New York, Queens County
Docket Number: Index No. L&T 314297/24
Judge: Clinton J. Guthrie
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CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF QUEENS: HOUSING PART SPP

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PLAZA GARDENS REAL ESTATE CORP.,

Index No. L&T 314297/24

Petitioner,

-against-

DECISION/ORDER

RHONDA PITTS, “JOHN DOE”, “JANE DOE”,

Respondents.

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Present:

Hon. CLINTON J. GUTHRIE
Judge, Housing Court

Recitation, as required by CPLR § 2219(a), of the papers considered in the review of respondent’s motion for summary judgment pursuant to CPLR § 3212 (seq. 3):

Papers	Numbered
Notice of Motion & All Documents Annexed.....	<u>1 (NYSCEF #50-53)</u>
Affirmation in Opposition & All Documents Annexed.....	<u>2 (NYSCEF #55-57)</u>
Affirmation in Reply & All Documents Annexed.....	<u>3 (NYSCEF #58-60)</u>

Upon the foregoing cited papers, the decision and order on respondent’s motion is as follows.

PROCEDURAL HISTORY

This summary holdover proceeding based upon a 30-day “Notice of Termination of Tenancy at Sufferance” was filed in September 2024. Respondent Rhonda Pitts (“respondent”) appeared through counsel in December 2024. Respondent interposed an answer and moved for discovery upon petitioner’s “ground for removal” under the Good Cause Eviction Law (GCEL) in July 2025. By Decision/Order dated January 20, 2026, Judge Bryant F. Tovar granted the discovery motion in part.

After the completion of discovery, respondent made the instant motion for summary

judgment. Following an adjournment for briefing, this court heard argument on the motion on June 29, 2026.

DISCUSSION/CONCLUSION

At issue here is petitioner’s alleged “ground for removal” under the GCEL [L 2024, ch 56, § 1, part HH]. The permissible grounds for removal for units subject to the GCEL are set out in Real Property Law (RPL) § 216. The “Notice to Tenant of Applicability or Inapplicability of the New York State Good Cause Eviction Law” (“GCEL Notice”) annexed to the petition and notice of termination checks the box for the following option:

“(M. The landlord is not renewing the lease because the landlord seeks in good faith to withdraw the unit from the housing rental market. To establish this good cause in an eviction proceeding, the landlord must establish good faith to withdraw the unit from the rental housing market by clear and convincing evidence (good cause for eviction under paragraph I of subdivision 1 of section 216 of the Real Property Law)[.]” (See NYSCEF Doc. 1).

This ground corresponds to RPL § 216(1)(i), which contains substantially similar language to the notice quoted above. Respondent argues that petitioner’s discovery responses fail to show petitioner’s intent to remove the premises from the rental market, that the predicate notice is defective because it does not provide details of petitioner’s intent to withdraw the premises from the rental market, and that the petition is defective because of a lack of facts supporting its ground for removal. Petitioner opposes the motion and asserts that petitioner has sufficiently met its burden to overcome summary judgment.

Petitioner’s response to discovery consisted of a “Response to Notice for Discovery & Inspection” signed by petitioner’s attorney and dated April 22, 2026. The sole relevant “response” is as follows: “Petitioner is not in possession of any such documents. Petitioner has the intention to remove the premises from the rental market in order to sell the property however

no actions have been taken toward a sale of the property as it is still occupied.” (See NYSCEF Doc. 49). In opposition to respondent’s motion, petitioner’s member, Farhad Basal, provided additional details in his affirmation, namely that the subject property was purchased with the intention of selling it, rather than renting it, and that the sale value will be maximized if it is vacant. Mr. Basal’s conclusions are based on his “20 years” in the real estate industry, during which he has “bought and sold hundreds of properties.” (Basal Aff., ¶¶ 11-17).

Respondent claims that an intention to sell a property, without more, cannot qualify as a good faith intention to remove a premises from the rental market under RPL § 216(1)(i). In support, respondent references RPL § 216(2), which creates a cause of action for a tenant required to surrender a housing accommodation for one of three grounds, including withdrawal from the housing rental market, against a “landlord or purchaser” who makes a fraudulent statement regarding such intention to remove the accommodation from the housing rental market. Respondent argues that the inclusion of the word “purchaser” in RPL § 216(2) manifests a legislative intent to have the purchaser’s details and plan for the property disclosed if a property is to be withdrawn from the rental market via a sale. Respondent also references analogous “removal from the rental market” provisions of the Rent Stabilization Code (9 NYCRR § 2524.5(a)(1) and California’s “Ellis Act,” both of which exclude or have been held to exclude an intention to sell the property.

In interpreting a statute, “[a]s a general rule, unambiguous language . . . is alone determinative.” (*Riley v County of Broome*, 95 NY2d 455, 463 [2000]). What constitutes a “good faith [intent] to withdraw a housing accommodation from the housing rental market” will be fact-specific, but the court does not find the plain language to categorically exclude an

intention to sell the property. Unlike the Rent Stabilization Code, the statute does not specifically exclude selling the property as a permissible means of withdrawing a unit from the rental market. Nor is there language in the statute requiring that the accommodation must be removed *permanently* (or some other temporal qualifier) from the rental market. Moreover, in contrast with other forms of rent regulation, GCEL coverage is not unit- or tenant-specific; instead, it may vary depending on whether a specific landlord qualifies for an enumerated exemption or ground for removal (*see QN St. Albans Holdings LLC v Sands*, 85 Misc 3d 275, 277 [Civ Ct, Queens County 2024]).

Nonetheless, the statute requires “good faith” to be demonstrated by “clear and convincing evidence” for a judgment of possession to be granted to a petitioner claiming the ground under RPL § 216(1)(i). What constitutes “good faith” in other contexts, such as in rent-stabilized owner’s use cases, is generally case-specific and will often turn on credibility determinations at trial (*see Horsford v Bacott*, 32 AD3d 310, 312 [1st Dept 2006], *affd* 8 NY3d 874 [2007] [Affirming lower court “finding of fact on the issue of good faith, which was based largely on considerations relating to the credibility of the testifying witness[.]”]; *Sendowski v Pilzer*, 47 Misc 3d 142[A], 2015 NY Slip Op 50627[U] [App Term, 1st Dept 2015]). While good faith under RPL § 216(1)(i) must be demonstrated by “clear and convincing evidence,” this does not create an enhanced standard within the confines of summary judgment; only an issue of fact requiring a trial must be shown to defeat summary judgment (*see Ostad v Nehmadi*, 167 AD3d 490, 490 [1st Dept 2018]). The question, then, is whether petitioner’s pleadings and submissions in opposition are sufficient to demonstrate an issue of fact as to petitioner’s alleged good faith intention to withdraw the subject unit from the housing rental market.

As for the sufficiency of petitioner’s claimed ground in the predicate notice and petition, which respondent attacks in the motion, the GCEL requires the annexation/incorporation of a completed GCEL Notice with predicate notices and summary eviction proceeding petitions (*see* RPL § 231-c; RPAPL § 741(5-a)). Here, a GCEL notice claiming the “withdrawal from the housing rental market” ground by checking the corresponding box was annexed to the 30-day notice of termination and the petition. Other courts have held that specific facts supporting GCEL grounds for removal must also be pleaded to pass muster under RPAPL § 741(4) [Petition must “[s]tate the facts upon which the special proceeding is based.”] (*see University Riverview Assoc. v Chisholm*, 2026 NY Slip Op 50479[U], *7 [Civ Ct, Bronx County 2026]; *141 MacDonough St. Hous. Dev. Fund Corp. v Allen*, 2025 NY Slip Op 34594[U], *4-5 [Civ Ct, Kings County 2025]; *TD Equities, Inc. v Cribbs*, 85 Misc 3d 1282[A], 2025 NY Slip Op 50775[U], *4-5 [Civ Ct, Queens County 2025]; *RP Wimbledon Owner, LLC v Chisholm*, 86 Misc 3d 1075, 1081 [Civ Ct, NY County 2025]; *but cf. Bedrock Equities LLC v Husain*, 2026 NY Slip Op 26044, *5 [Civ Ct, Kings County 2026]).

Additionally, recently, the Appellate Term, Second Department held that a failure to properly plead GCEL-required information in the petition will result in dismissal (*see Morgan v Caesar*, App Term Docket No. 2025-1249 K C [App Term, 2d Dept, 2d, 11th & 13th Jud Dists, June 17, 2026] [A copy is annexed hereto is Exhibit A]). While the GCEL does not create any new causes of action, a tenant who is presumptively subject to the GCEL may only be dispossessed after the landlord has established one of the grounds for removal set out in RPL § 216 (*see 1719 Gates LLC v Torres*, 85 Misc 3d 906, 910 [Civ Ct, Queens County 2024]). Petitioner has unequivocally met its burden of “appending” a completed GCEL notice to the

petition and notice of termination, as required by RPAPL § 741(5-a) and RPL § 231-c.

However, RPAPL § 741(5-a) does not supersede RPAPL § 741(4); the “facts upon which the proceeding is based” must still be included in the petition and proven to obtain complete relief (*see Volunteers of Am.-Greater N.Y., Inc. v Almonte*, 17 Misc 3d 57, 59 [App Term, 2d Dept, 2d, 11th & 13th Jud Dists 2007], *affd sub nom. Matter of Volunteers of Am.-Greater N.Y., Inc. v Almonte*, 65 AD3d 1155 [2d Dept 2009]; *1646 Union, LLC v Simpson*, 62 Misc 3d 142[A], 2019 NY Slip Op 50089[U] [App Term, 2d Dept, 2d, 11th & 13th Jud Dists 2019]).

While the GCEL notice incorporated in RPL § 231-c provides a streamlined means for putting a tenant on notice of a landlord’s claimed exemption or ground for removal, mere recitation of a ground simply will not invariably suffice to set forth the facts upon which the proceeding is based, particularly when a ground such as seeking in “good faith” withdraw the unit from the rental market, dependent as it is upon specific factual circumstances, is alleged. In analogizing to the rent-stabilized context, a bare assertion of a landlord’s seeking possession for personal use as a primary residence was held by the Appellate Division, First Department to be insufficient “to afford the tenant enough information to prepare a defense to a . . . holdover proceeding if he or she does not believe that the owner’s intention is genuine.” (*Hirsch v Stewart*, 63 AD3d 74, 82 [1st Dept 2009]). This court simply does not discern any intention by the legislature to immunize GCEL-related grounds from the basic obligation to plead sufficient facts to permit a respondent to prepare a defense (*see Cribbs*, 2025 NY Slip Op 50775[U], *5).

As petitioner has failed to allege *any* relevant facts keyed to its claimed GCEL ground in the termination notice or petition, the petition fails to comport with RPAPL § 741(4) and the petition is dismissed upon a failure to state a cause of action (*see Henry v Kingsberry*, 66 Misc

3d 143[A], 2020 NY Slip Op 50175[U] [App Term, 2d Dept, 2d, 11th & 13th Jud Dists 2020];
Migliaccio v Childs, 65 Misc 3d 131[A], 2019 NY Slip Op 51575[U] [App Term, 2d Dept, 2d,
11th & 13th Jud Dists 2019] [citing *Giannini v Stuart*, 6 AD2d 418 [1st Dept 1958]]).¹
Respondent’s motion for summary judgment is granted solely to the foregoing extent. The clerk
shall issue a judgment dismissing the petition (*see* CPLR § 411).

This Decision/Order will be filed to NYSCEF.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

Dated: Queens, New York
July 6, 2026

CJ

HON. CLINTON J. GUTHRIE
J.H.C.

APPROVED

CGUTHRIE , 7/6/2026, 4:58:09 PM

CHECK ONE:
MOTION SEQ. #: 3
CHECK IF APPROPRIATE:

NOTES

☒	CASE DISPOSED	☐	NON-FINAL DISPOSITION	
☒	GRANTED	☐ DENIED	☐ GRANTED IN PART	☐ OTHER
☐	SETTLE ORDER		☐ SUBMIT ORDER	☐ STAY CASE
☐	INCLUDES TRANSFER/REASSIGN		☐ FIDUCIARY APPOINTMENT	☐ REFERENCE

¹ While respondent retained counsel and ultimately obtained discovery in this proceeding, proper pleading is a prima facie requirement (*see Jeffco Mgt. Corp. v Local Dev. Corp. of Crown Hgts.*, 22 Misc 3d 141[A], 2009 NY Slip Op 50455[U] [App Term, 2d Dept, 2d, 11th & 13th Jud Dists 2009]).