

**Holy Spirit Assn. for the Unification of World
Christianity v Crawford**

2022 NY Slip Op 32785(U)

August 12, 2022

Civil Court of the City of New York, New York County

Docket Number: L&T Index No. 302755-20

Judge: Evon M. Asforis

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This opinion is uncorrected and not selected for official publication.

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK: HOUSING PART H

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HOLY SPIRIT ASSOCIATION FOR THE
UNIFICATION OF WORLD CHRISTIANITY,

Petitioner,

-against-

ANNICE CRAWFORD,

Respondent-Tenant,

JACOB CRAWFORD,
JOHN DOE & JANE DOE,

Respondent(s)-Undertenant(s).
-----X

HON. EVON M. ASFORIS

Recitation, as required by CPLR 2219(a), of the papers considered in the review of Respondent Jacob Crawford's motion to dismiss the Petition:

<u>Papers</u>	<u>NYSCEF Doc.#</u>
Notice of Motion, & Affidavits Annexed.....	16-19
Answering Affirmation, and Exhibits.....	24
Reply Affirmation, and Exhibits.....	26
Sur-reply Affirmation, and Exhibits.....	

Upon the foregoing cited papers, the Decision/Order on this Motion is as follows:

Relevant Procedural History

Holy Spirit Association for the Unification of World Christianity ("petitioner") commenced this alleged nuisance holdover proceeding against Annice Crawford, Jacob Crawford, John Doe, and Jane Doe (collectively "respondents"). The Petition seeks to recover possession of Room 1624, located at 481 Eighth Avenue, New York, New York ("subject premises"). The subject premises is located in the hotel known as "The New Yorker Hotel" and is subject to the rent stabilization code.

Petitioner served a Seven Day Termination Notice (“Notice”) dated September 3, 2020, on respondent Annice Crawford. The Notice alleges that respondent’s son Jacob Crawford repeatedly harassed nurses in the building asking them for cigarettes (June 2020); stole the backpack of a Spectrum employee working the building (August 2020); stretched out in front of the elevator (August 2020); and walked behind and touched a resident on the arm (Sept. 2020). Upon expiration of the Notice, petitioner served respondents with a Notice of Petition and Petition dated September 24, 2020.

Respondent, Jacob Crawford, retained counsel, Housing Conservation Coordinators (“HCC”) and now moves by Notice of Motion dated February 7, 2022, to dismiss the proceeding pursuant to Civil Practice Law and Rules (“CPLR”) § 3211 (a) (2) and (7); and Real Property and Proceedings Law (“RPAPL”) § 741. Respondent argues in his pre-answer motion, that the Petition must be dismissed because (1) it fails to state respondent’s interest in the premises and his relationship to petitioner; (2) petitioner failed to serve a termination notice on respondent, Jacob Crawford; (3) petitioner fails to state facts sufficient to support the Petition in the termination notice; and (4) petitioner fails to state facts sufficient to state a cause of action for nuisance.

Respondent, Annice Crawford also retained counsel New York Legal Assistance Group (“NYLAG”). NYLAG filed an Answer on Ms. Crawford’s behalf, however they have not submitted any papers in support or opposition to the motion.

In opposition, petitioner argues that the Petition should not be dismissed against Annice Crawford because the Notice and the Petition are not deficient as to Ms. Crawford. Petitioner argues that its failure to state Jacob Crawford’s interest in premises and relationship to petitioner is not prejudicial to respondents. The Notice and the pleadings sufficiently inform respondents of

the basis and grounds for commencing this proceeding and enables them to interpose a defense. Petitioner asserts that the pleadings need not be overly restrictive and rigid but inform respondents of the basis of the proceeding and any failure to do so is amendable. Petitioner further asserts that the Notice served on Annice Crawford is sufficiently specific and informative of the facts and circumstances of the alleged events.

Motion to Dismiss

“On a motion to dismiss pursuant to CPLR § 3211, the pleading is to be afforded a liberal construction (see, CPLR § 3026). We accept the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory” (Leon v Martinez, 84 NY2d 83, 87 [1994]; see also, Morone v Morone, 50 NY2d 481, 484; Rovello v Orofino Realty Co., 40 NY2d 633, 634). “However, allegations consisting of bare legal conclusions, as well as factual claims inherently incredible or flatly contradicted by documentary evidence are not entitled to such consideration” (Caniglia v Chicago Tribune-N.Y. News Syndicate, 204 AD2d 233, 233 - 234 [App Div, 1st Dept 1994]; see also Skillgames, LLC v Brody, 1 AD3d 247, 250 [App Div, 1st Dept 2003]).

In a pre-answer motion pursuant to CPLR § 3211 (a)(7), the standard the court considers is whether the pleading states a cause of action, not whether the proponent of the pleading has a cause of action (Sokol v Leader, 74 AD3d 1180 [App Div, 2nd Dept, 2010]; Leon v Martinez, 84 NY2d 83, 88; Guggenheimer v. Ginzburg, 43 NY2d 268, 275 [1977]). “Whether a plaintiff can ultimately establish its allegations is not part of the calculus” (Sokol v Leader, 74 AD3d 1180; see EBC I, Inc. v. Goldman, Sachs & Co., 5 NY3d 11 [2005]).

Analysis

First, respondent argues petitioner fails to state Jacob Crawford’s interest in the premises and his relationship to petitioner. Respondent argues he is a permanent tenant pursuant to RSC § 2520.6(j). RSC § 2520.6(j) states, “[f]or housing accommodations located in hotels, an individual of such individual’s family members residing with such individual, who have continuously resided in the same building as a principal residence for a period of at least six months Unless otherwise specified, reference in this Code to “tenant” shall include permanent tenant with respect to hotels.”

In this case, it is undisputed that Jacob Crawford has resided in the subject premises with his mother, Annice Crawford, for more than six months as required by the statute. Petitioner acknowledges Jacob Crawford’s presence in the subject premises since 2012 (see, *Seven Day Termination Notice, Paragraph 6*). Therefore, this would indicate Jacob Crawford is a permanent tenant as defined by RSC § 2520.6(j). Petitioner argues that its characterization of Jacob Crawford as an undertenant is not prejudicial to respondent and is amendable. The court notes the petitioner has not cross-moved to amend the Petition.

Notwithstanding respondent’s argument regarding respondent’s interest in the premises and status as a permanent tenant, the Court finds that petitioner’s failure to serve Jacob Crawford with the Seven Day Notice of Termination requires dismissal of the proceeding.

RSC § 2524.2(a) which governs termination notices in rent regulated accommodations provides that,

Except where the ground for removal or eviction of a tenant is nonpayment of rent, no tenant shall be removed or evicted from a housing accommodation by court process, and no action or proceeding shall be commenced for such purpose upon any of the grounds permitted in section 2524.3 or 2524.4 of this Part, **unless and until the owner shall have given written notice to such tenant as hereinafter provided.** (Emphasis added).

Herein the RSC requires that the tenant be given a written termination notice which was not done in this case. It is also well established that service of a proper termination notice is a prerequisite to a summary eviction proceeding. A valid notice of termination is a condition precedent to the commencement of a summary holdover proceeding (see, Chinatown Apts. Inc. v. Chu Cho Lam, 51 N.Y.2d 786, 788 [App. Term 1st Dept 1980]; 170 W. 85th St. Tenants Assn. v. Cruz, 173 AD2d 338, 339 [1st Dept 1991]; RSC § 2524.2). If this condition precedent to the proceeding has not been met, the petitioner is unable to satisfy that condition by amending the predicate notice. Consequently, a defective predicate notice requires dismissal of the proceeding (Chinatown Apts. V Chu Cho Lam, 51 NY2d 786, 787 [App Term 1st Dept 1980]; Second & E. 82 Realty v. 82nd St. Gily Corp., 192 Misc 2d 55, 56-57 [Civ Ct, NY County 2002, Billings, J.]).


Additionally, RPAPL 741(4) requires that the Petition state the facts upon which the special proceeding is based. This ensures the tenant will be informed of the factual and legal claims he is facing and enables the tenant to interpose the appropriate defenses City of New York v. Brown, 465 119 Misc 2d 1054 [Civ Ct 1982], MSG Pomp Corp. v Doe, 185 AD2d 798, 800 [1st Dept App Div 1992].

In this instance, Jacob Crawford was not served with the termination notice and was not informed of the facts and legal claims brought against him. It is undisputed that petitioner only named and served Annice Crawford with the Seven Day Termination Notice and failed to name and serve Jacob Crawford. Thus, petitioner's failure to serve Jacob Crawford with a notice of termination is a fatal flaw in this proceeding, and the Petition must be dismissed.

Therefore, the portion of respondent’s motion seeking to dismiss the Petition because the petitioner failed to serve respondent Jacob Crawford with a notice of termination is granted, and the Petition is dismissed.

This constitutes the decision and order of this court.

Dated: New York, New York
August 12, 2022


EVON M. ASFORIS
JUDGE HOUSING COURT

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