

SJ Qualified Opportunity Zone Fund LLC v Jarrett

2022 NY Slip Op 34675(U)

September 29, 2022

Civil Court of the City of New York, Queens County

Docket Number: Index No. L&T 67634/19

Judge: Jeannine Baer Kuzniewski

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CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF QUEENS; HOUSING PART A
SJ QUALIFIED OPPORTUNITY ZONE FUND LLC

Petitioner,

-against-

Index No.: L&T 67634/19
DECISION/ORDER

SUSAN GAIL JARRETT
RAHSHEEM NORFLEET
MICHAEL N. GILLIN
MARSHA SONIA SHADE

Respondents,

“JOHN DOE” & “JANE DOE”

Occupants.

Hon. Jeannine Baer Kuzniewski

Recitation, as required by CPLR §2219(a), of the papers considered in the review of this Motion for default and inquest and cross motion to dismiss;

<u>Papers</u>	<u>Numbered</u>
Notice of Motion, Affirmation & Affidavit	<u>1</u>
Respondent’s Opposition, Notice of Cross Motion, Affirmation & Exhibits	<u>2</u>
Petitioner’s Reply and Opposition to Cross Motion with Affirmation	<u>3</u>
Respondent’s Reply with Affirmation & Exhibits	<u>4</u>

The underlying proceeding is a holdover petition wherein petitioner seeks possession of subject premises after terminating respondents’ licenses by service of a Ten Day Notice to Quit. Petitioner allegedly purchased the premises from JP Morgan Band who had obtained the property in a post foreclosure auction. The named respondents, Susan Jarrett and Michael Gillin, are allegedly the prior owners of the premises and are represented by counsel.

Petitioner moves this Court for a default and inquest. Respondents oppose the motion and cross move to dismiss the proceeding. Petitioner’s motion is denied as moot since respondents

have now appeared with counsel.

Respondents seek dismissal asserting, among other jurisdictional claims, that petitioner has failed to state a cause of action in that they allege respondents are licensees, which respondents dispute. Respondents allege that as prior owners they are not nor have they ever been, licensees. Since they had not been granted a license they argue, none can be revoked. They cite the petition which states that “Ms. Jarrett is in ‘possession of the Premises under a license which has expired or been revoked.’” (Petition, paragraph 3). They therefore argue petitioner’s notices are defective as per RPAPL §741(2), since they erroneously relied on RPAPL §713(7) as the grounds for this holdover.

Petitioner opposes respondent’s cross motion in its entirety. Specifically, petitioner argues that it is common practice designating remaining respondents post foreclosure as licensees. Petitioner acknowledges that respondent is a former owner and contends that a former owner can be considered a licensee for purposes of commencing an action under RPAPL §713(7). They assert that while the statute fails to define who qualifies as a “licensee” they offer the definition that “a licensee in a landlord/tenant context is generally defined as someone who is granted permission, express or implied, by the owner to use and/or occupy the subject premises”, citing *Minors v. Tyler*, 137 Misc2d 505, 521 NYS2d 380, quoting *Rosentiel v. Rosentiel*, 20 AD2d 71, 245 NYS2d 395.

This court agrees with petitioner that this section of the RPAPL does not explicitly define the parameters of who qualifies as a license. It may be inferred that this omission was purposeful to provide a ‘catch all’ for non-landlord tenant occupiers of real property who were not otherwise expressly designated. *Drost v. Hookey*, 25 Misc3d 210. However, even in light of such expansion, the court has not changed the fundamental definition of a license in that it involves a grant or permission to occupy, express or implied, of some kind. Petitioner chose to specifically designate respondent as a licensee despite pleading in the Notice of Termination that they are occupying the premises without the permission of the subject premises. Stating that they are licensees, they are therefore required to prove they are indeed licensees and that their license expired which they are admittedly unable to do. *Cheung v. Li*, 148 Misc2d 55. RPAPL §741(1)&(2) requires every petition to “state the interest of the petitioner in the premises from which removal is sought” and “state respondent’s interest in the premises and his relationship to petitioner with regard thereto.” It must set forth a proper basis upon which a summary proceeding may be maintained. *People ex rel. Sheridan v. Andrews*, 52 NY 445. Respondent was not granted permission to occupy the premises by license and there is no license to revoke. It is incumbent on the landlord to establish that at the time of the institution of the summary proceeding, they are entitled to possession of the premises on the ground stated. *Bensaman v. Bedrosian*, 123 Misc146, 204 NYS2d 198. Petitioner is also required to prove the allegations in the petition which they clearly cannot. CPLR 3013; *Foley v. D’Agostino*, 21 AD2d 60, 248 NYS2d 121.

For these reasons, respondent’s motion is granted to the extent that the petition is dismissed without prejudice. Petitioner’s motion is denied as moot.

This constitutes the Decision and Order of the Court.

Dated: September 29, 2022

Jeannine Baer Kuzniewski
Hon. Jeannine Baer Kuzniewski, J.H.C.

So Ordered

Hon. Jeannine Baer Kuzniewski, J.H.C.