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Pineapple Apartments Inc. v. Kinney

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CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF KINGS: HOUSING PART Q

----- X
PINEAPPLE APARTMENTS INC.,

Petitioners,

Index No. L&T 59126/2020

- against -

DECISION/ORDER

CHRISTOPHER KINNEY,

Respondent.

----- X
Present: Hon. Jack Stoller
Judge, Housing Court

Pineapple Apartments Inc., the petitioner in this proceeding (“Petitioner”), commenced this holdover proceeding against, *inter alia*, Christopher Kinney, the respondent in this proceeding (“Respondent”), seeking possession of what the petition designates as 45-55 Pineapple Street, Apt. 2J, Brooklyn, New York (“the subject premises”) on the basis that Respondent is a licensee whose license has been terminated. Petitioner obtained a judgment after inquest and a warrant issued and executed. Respondent now moves by order to show cause for relief against the judgment, averring that he did not have notice of this proceeding. The Court held a traverse hearing on April 26, 2022.

The affidavit of service in this matter (which is unsigned) is dated August 18, 2020. Yannick Jhugdeo (“the Process Server”), appears to have stated in the affidavit that he made two attempts to serve Respondent with the notice of petition and petition, one on August 15, 2020 at 7:30 p.m., and one on August 17, 2020 at 10:17 a.m. and then mailed the notice of petition and petition on August 17, 2020.

The Process Server testified that he served the notice of petition and petition; that he was assigned this particular case; that he picked the notice of petition and petition up and his office;

that he attempted to serve the notice of petition and petition; and that he knows the process but he would have to refresh his recollection about details.

Petitioner submitted into evidence the Process Server's process server license and pages from the Process Server's logbook. The logbook indicates that on August 15, 2020, the Process Server left 1024 Montgomery, Brooklyn, New York, at 7:24 p.m. and got to the subject premises, identified as "45-55 Pineapple Street" that day at 7:39 p.m. The logbook indicates that on August 17, 2020, the Process Server left 1024 Montgomery Street, Brooklyn, New York at 9:49 a.m. and that he was at "45-55 Pineapple Street" at 10:17 a.m.

The Process Server testified that he has to get the tenant or someone who lives in the subject premises; that he knocked on the door; that no one answered the door; that he taped four copies to the door; then he finished out his service for day and prepared mailings; that he did five copies of certified mail and five copies of regular mail; that he stuffed the envelopes and printed out the slips and went to the post office down the block from the office; that the post office gave him mailing slips; that the post office is at Liberty and 96th Street and down the street from his office.

Petitioner submitted into evidence certified mail slips stamped August 17, 2020 and sent to "45-55 Pineapple Street" to, *inter alia*, Respondent and a notification from the post office indicating that someone signed for the certified mail to Respondent's late mother on August 20, 2020 at 2:38 p.m.

The Process Server testified that he had his GPS device working that day. Petitioner moved the GPS records into evidence.

The Process Server testified on cross-examination that he first learned about this traverse hearing the day before his testimony from his boss; that he has done about five traverse hearings

before; that he reviewed the documents before the hearing, on Thursday or Friday; that he revisited 45 Pineapple Street; that he fills out the logbook at the time of service; that the GPS is an app on his phone; that he always does the mailings himself; that he puts on the postage himself; that he drove to the first service on Greene Avenue, in Bed-Stuy; that he does not remember if he had to drive around; that he does not remember if he got into the building there right away; that the app keeps running once he gets it going; that he does not remember the next service on Montgomery Street in Crown Heights; that that is a big building; that tenants are usually coming in and out; that tenants there know him and let him in; that he is familiar with that building; that the apartment he served there was on the 5th floor; that he does not remember if he took the elevator or the stairs; that sometimes he runs on the stairs; that there are six apartments on that floor; and that he does not know how far that is from Crown Heights to Brooklyn Heights.

The Process Server testified on cross-examination that he does not remember landmarks like Barclays Center, but he probably passed by there; that there are narrow one way streets around the subject premises; that he parked; that he got parking right in front when he was there; that this was during the pandemic so there was no traffic; that the Building has about four or five stories; that he entered the building; that he would have to try the subject premises first, probably; that someone lets him in; that there is a second set of doors through a foyer; that he does not remember if the second set of doors was locked; that he was on the “45” side, not the “55” side; that he took the stairs to the subject premises; that the subject premises is behind the stairs; that he found the subject premises; that he knocked on the door; that he then went to Dekalb Avenue, again in Bed-Stuy; that he did the service at 7:59 pm; that he did a service on Atlantic on 8:18 pm; and that the entirety of the service is an hour and nine minutes.

The Process Server testified on cross-examination that for the second attempt at service he left a building at Greene Avenue at 9:38 a.m.; that he left a building at Montgomery Street at 9:49 a.m.; that he came to the building next; that he cannot remember if he parked in front of the building that day; that he tried to buzz the tenant; that sometimes he does not need to buzz the tenant if the doors are opened by maintenance workers or delivery people; that at the Building you have to scroll through to find the tenant; that he went into the Building; that he posted five copies on the door corrects himself it was four copies; and that he left at 10:17 a.m. that he then went to 510 Atlantic Avenue at 10:40 am ; that this was all of his services on August 15.

Respondent testified that he received a notice on this door that was a fourteen day eviction notice; that he had not received anything prior to that; that he used to live at the subject premises with his mother and his father; that he has lived at the subject premises for all of his thirty-one years; that his family lived there for 12 years before that; that his mother, Ramona Kinney, died May 1, 2018; that his father, Gene Kinney, died February 19, 2020; that in 2020 he lost his father; that within a couple of weeks after that the pandemic started; that in August of 2020 every day he would start his day early because at the time he was unemployed; that he would go to a local library to apply for work; that usually he would start his day early that would not get home until between 5 and 7 p.m.; that the pandemic was devastating; that he lost his job at the start of the pandemic; that he did not receive packages; that he lives in a coop building; that at the end of the block there is another address for 45 Pineapple Street; that the buildings are connected via the courtyard; that there is no building called "45-55 Pineapple Street;" that he is at 55 Pineapple Street; that the hallway outside the subject premises is black and white marble looking floor; that it is on the second floor; that the hallways and walls are painted white; that his door is painted white; that every so often they get a fresh coat of paint; that there is a peephole

and then a smaller one that is connected to it; that he has never received the notice of petition and petition; that no one handed the notice of petition and petition to him; that he did not receive notices by mail; and that he would come to Court to get information if he got a notice.

Respondent testified that he did not get a notice to quit; that he recently got a marshal's notice; that he did not move by order to show cause when he got a marshal's notice; and that he did not receive a postcard from Brooklyn Housing Court;

At Respondent's request, the Court took judicial notice of the website of the Department of Housing Preservation and Development of the City of New York ("HPD"). HPD identifies "45 Pineapple Street" in Brooklyn and states that that building is known as other numbers, although not "55 Pineapple Street." The HPD website also states that "55 Pineapple Street" is another building on the same lot. The HPD entry for "55 Pineapple Street" says that "45 Pineapple Street is another building on the same lot.

The Court had previously entered into an order dated April 21, 2022 that granted Respondent's motion to the extent of setting the matter down for a traverse hearing. Upon such a finding that a traverse hearing is necessary, Petitioner is the party that bears the burden of establishing proper service. Woods v. M.B.D. Community Hous. Corp., 90 A.D.3d 430 (1st Dept. 2011).

The Process Server testified that the address that he attempted service at was "45 Pineapple Street." The mailings were done to "45-55 Pineapple Street." However, Respondent testified that the building that he resides at is "55 Pineapple Street." The problem with any potential finding of equipoise between these two propositions is that the HPD website makes a clear distinction between "45 Pineapple Street" and "55 Pineapple Street." While the HPD website makes clear that "45 Pineapple Street" is known by other addresses, "55 Pineapple Street

is not one of the other identities of “45 Pineapple Street.” “55 Pineapple Street” is identified as a different building on the same tax lot. The HPD website’s information for “55 Pineapple Street” reciprocally identifies “45 Pineapple Street” as another building on the same tax lot.

As Petitioner bears the burden of proving that service was proper, the Court cannot reconcile the Process Server’s testimony that he effectuated service at “45 Pineapple Street” nor the mailings to “45-55 Pineapple Street” with Respondent’s testimony and with the information from the HPD website. Even to the extent that the Court could make factfindings that mailings were done and that the Process Server actually came to 45 Pineapple Street, Petitioner would not have proven that the subject premises, at “55 Pineapple Street” was the address that the Process Server would have come to, nor that mailings were sent to.

Accordingly, it is ordered that the Court sustains the traverse and that the Court did not have personal jurisdiction over Respondent. Accordingly, it is ordered that the Court vacates the judgment and warrant and dismisses this proceeding. It is further ordered that the Court directs Petitioner to restore Respondent to possession of the subject premises forthwith. It is further ordered that this order is without prejudice to the causes of action and defenses of either party in future litigation.

This constitutes the decision and order of the Court.

Dated: April 27, 2022
Brooklyn, New York

HON. JUDGE JACK STOLLER
J.H.C.