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138-56 231 St LLC v. Doe

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Civil Court of the City of New York
County of Queens: Housing Part P
138-56 231 St LLC

Petitioner

QL&T# 52415/20

-against-

Decision/Order

John Doe 1-2, Jane Doe 1-2

Respondents

Recitation, as required by CPLR § 2219(a), of the papers considered in the review of this Motion:

Notice of Motion/OSC w/Affidavits Annexed.....	1
Cross Motion/Opposition to Motion/OSC.....	2
Reply to Motion/Opposition to Cross Motion	3
Reply to Cross Motion.....	
Exhibits.....	
Other.....	

Upon the forecited papers, the Decision/Order on this Motion to permit an amended answer and dismissal of the proceeded due to a confusing/ambiguous predicate notice, dismissal for failing to name a necessary party; dismissal due to improper use of a pseudonym and failure to name a necessary party; dismissal due to failing to state Respondent's interest in the premises; and, such other and further relief as this Court may deem just and proper is as follows:

The instant proceeding is a post foreclosure holdover. Petitioner and Respondent, Jane Doe, now identified as Irene Moore were both represented by counsel. Ms. Moore is the former owner of the subject premises and the only Respondent currently involved in this proceeding. A guardian-ad-litem has been appointed for Ms. Moore. Ms. Moore filed/served a *pro se* answer on or about February 24, 2020.

By counsel, Respondent Moore brought this instant motion. Petitioner opposes. That portion of the motion seeking leave to amend the answer is granted as no prejudice has been demonstrated by Petitioner. That portion of the motion seeking to dismiss the proceeding due to the use of pseudonyms is denied. The sworn statement of Petitioner's agent is sufficient to explain why "John Does" and "Jane Does" were used for Respondents. While the Court does not fully understand why Irene Moore, the former owner was not named, and it certainly would have been prudent to name someone who was a party to the underlying foreclosure proceeding, who appeared and sought relief in the underlying foreclosure proceeding, who apparently has an appeal pending relating to the underlying foreclosure proceeding and whose name is on the Referee's Deed, Petitioner did make a good faith effort to learn the identity of the persons occupying the premises.

At the same time, Petitioner has chosen a litigation strategy of not naming a particular individual and must deal with any consequence. One consequence is that the predicate notice does not accurately

describe Ms. Moore's interest in the subject premises. Ms. Moore, as the former owner, is clearly not a person who "obtained possession of the subject premises by virtue of either a written lease agreement or oral month to month rental agreement or a month-to-month rental agreement created by operation of law". Nor is Ms. Moore someone who "obtained possession of the subject premises by virtue of an oral licensor-licensee agreement with the prior owner and said agreement and your right to occupy at the above referenced premises is hereby terminated effective January 31, 2020, upon the grounds that the Landlord seeks to terminate your licensor-licensee agreement". None of the allegations in that entire paragraph apply to Ms. Moore. She is neither a tenant nor licensee. She did not enter possession due to an arrangement with the prior owner, she was the prior owner.

A proper predicate notice is a condition precedent to a holdover proceeding (see *Chinatown Apts. v Chu Cho Lam*, 51 NY2d 786[1980]) Petitioner is bound by its termination notice (*Domen Holding Co. v Aranovich*, 302 AD2d 132 [2003], *mod on other grounds*, 1 NY3d 117[2003]. A predicate notice in a summary holdover proceeding is not amendable. (see *City of Buffalo Urban Renewal Agency v Lane Bryant Queens*, 90 AD2d 976 [1982], *aff'd* 59 NY2d 825[1983] and the petition must be dismissed (see *City of New York v Bullock*, 159 Misc 2d 716 [1993], *aff'd* 164 Misc 2d 1052[1995], *Henry & Baltic Assoc v K & Q Food Corp*, 7 Misc 3d 83(AT 2nd & 11th Jud Dists, [2005]).

Based on this, that portion of the motion seeking summary judgment pursuant to CPLR 3212 and RPAPL 741 is granted and the proceeding is dismissed for failure to adequately state Ms. Moore's interest in the subject premises. The Court declines to address any other arguments raised by Respondent.

This constitutes the decision and order of the Court.

Dated: April 28, 2022
Queens, New York



Hon. John S. Lansden

HON. JOHN S. LANSDEN