2022-06-27

Vinegar Hill Asset LLC v. Jones

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Vinegar Hill Asset LLC v Jones
2022 NY Slip Op 50527(U)
Decided on June 27, 2022
Civil Court Of The City Of New York, Kings County
Weisberg, J.
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Decided on June 27, 2022

Civil Court of the City of New York, Kings County

Vinegar Hill Asset LLC, Petitioner,

against

Narcherri Jones, Respondent.

Index No. 304639/21

Michael L. Weisberg, J.

The following e-filed documents, listed by NYSCEF document numbers 28-35 (motion no. 3), were read on this motion to amend the petition to add a party-respondent, and for other relief.

By decision/order dated March 29, 2022 (NYSCEF Doc. 17) this court granted Petitioner's motion for a default judgment against Respondent Narcherri Jones. Non-party movant Javian Jones then moved to vacate the default judgment, which motion the court denied by decision/order dated May 6, 2022 (NYSCEF Doc. 26). Petitioner has now moved to join Javian Jones as a party-respondent to this proceeding. No one appeared in opposition to the motion or filed any papers in opposition thereto.

Personal jurisdiction over Respondent Narcherri Jones was obtained via substitute service made on June 7, 2021 (NYSCEF Doc. 3). The affidavit of the process server alleges

service on an individual whose description resembles that of Javian Jones. In other words, Petitioner was aware that there might be another individual residing in the apartment at the time of commencement, yet it did not move for leave to join another party until nearly a year later. Only three weeks later, on June 28, 2021, Ryan Colbert, member of Petitioner, alleges that he spoke to Narcherri Jones at the apartment, regarding whether she was in the military (NYSCEF Doc. 7). Apparently, Colbert did not inquire as to the identity of the individual who had recently accepted service of process.

The above notwithstanding, Colbert acknowledges in his affidavit in support of the instant motion that Petitioner was aware that the tenant had vacated the apartment (Section 8 subsidy payments had been received "until June 2021") and that her son was living in the apartment, but he further alleges that Jones' name was unknown (NYSCEF Doc. 29). Colbert does not allege that any investigation was undertaken to ascertain Jones' name (*see Bumpus v New York City Transit Auth.*, 66 AD3d 26, 30 [2d Dept 2009] [noting that before resorting to the use of CPLR 1024, permitting a party to be named as a "John Doe," a party must first exercise "due diligence" to identify the defendant by name]; *see, also Michaelangelo Preserv., LLC v Burgos*, 75 Misc 3d 1209[A], 2022 NY Slip Op 50424[U] [Civ Ct, Bronx County 2022]). Nor [*2]does Colbert explain why, after exercising due diligence (had that occurred) and failing to obtain Jones' name, Petitioner could not have sought months ago to join him, by describing his physical appearance, as described by the process server who apparently served him papers in June 2021 (*see Bumpus*, 66 AD3d at 30 ["A second requirement unique to CPLR 1024 is that the "[John] Doe" party be described in such form as will fairly apprise the party that [he] is the intended defendant"]).

Instead, Petitioner decided to take its chances. Contrary to the claim of Petitioner's counsel (NYSCEF Doc. 28, ¶ 5), in its order denying Jones' motion the court did not "restate[ ] the warrant was only against Narcherri Jones and the marshal would not be able to evict the occupant," at least not explicitly. It did, however, note that the Housing Stability and Tenant Protection Act of 2019 amended section 749 of the Real Property Actions and Proceedings Law to delete the requirement that the warrant of eviction command the marshal to "remove all persons" and to replace it with the commandment that the marshal "removal all persons named in the proceeding" (L 2019, ch 36, part M, § 19).[FN1] Counsel was surely aware of this already,[FN2] but it was apparently this recitation of the law that prompted Petitioner to seek to join Jones as a party, albeit nearly a year after first learning about his occupancy.

Under the circumstances, the court sees no reason why, even at this late hour, Petitioner should not be granted leave to join Jones as a party-respondent (*but see Henry v Almanacid,*

13 Misc 3d 132[A], 2006 NY Slip Op 51878[U] [App Term, 2d Dept, 9th & 10th Jud Dists 2006] [entry of judgment "unequivocally terminated" the proceeding, so as to preclude landlord's request to join an additional party-respondent]). However, Petitioner seeks not just an order joining Jones as a party-respondent, but also judgment against him. The latter cannot be granted, because personal jurisdiction has not yet been obtained over Jones by service upon him of the supplemental notice of petition and amended petition (*Kaplan v Kaplan*, 94 AD2d 788 [2d Dept 1983]).

Accordingly, it is ORDERED that the motion is granted to the extent set forth below and otherwise denied; and it is further

ORDERED that Petitioner shall serve all parties with a copy of this decision/order with notice of its entry; and it is further

ORDERED that the caption shall be amended to reflect that Javian Jones has been added as a party-respondent; and it is further

ORDERED that Petitioner is granted leave to serve the supplemental notice of petition and amended petition on Javian Jones.

This is the court's decision and order.

Dated: June 27, 2022
Michael L. Weisberg, JHC

Footnotes

Footnote 1: After RPAPL § 749 was amended, the language of the warrant of eviction was dutifully changed to reflect the requirement of the statute. Whereas before the warrant would command removal of the specific individual against whom judgment was entered "and all other persons," now that all-encompassing phrase has been removed. However, the language commanding the marshal "to put said petitioner(s) in full possession [of the premises] still remains in the warrant.

Footnote 2: The HSTPA was a significant piece of legislation that wrought many major changes to landlord-tenant law, and which has been discussed extensively in court decisions (*e.g. Matter of Regina Metro. Co., LLC v New York State Div. of Hous. & Community Renewal*, 35 NY3d 332 [2020]) and periodicals (*e.g. New York's Housing Stability and Tenant Protection Act of 2019: What Lawyers Must Know*, Gerald Lebovits, John S. Lansden, & Damon P. Howard, 91 Oct NY St B J 35 [2019]). The court assumes that all practitioners who regularly practice in Housing Court are aware of those changes. "An attorney is

obligated to know the law relating to the matter for which he/she is representing a client and it is the attorney's duty, 'if he has not knowledge of the statutes, to inform himself, for, like any artisan, by undertaking the work, he represents that he is capable of performing it in a skillful manner" (*Fielding v Kupferman*, 65 AD3d 437, 440 [1st Dept 2009] [internal citations omitted]).

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