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2022-07-25

### Continental Management Realty, LLC v. Battipaglia

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#### Recommended Citation

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Civil Court of the City of New York  
County of Richmond  
Part y

Index Number 50126/20  
Motion Cal. #        Motion Seq. # (1)(2)+(3)

**DECISION/ORDER**

Pg 1 of 4

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

Continental Management Realty LLC  
Claimant(s)/Plaintiff(s)/Petitioner(s)  
against  
Robert Battipaglia + Elizabeth Johnson  
Defendant(s)/Respondent(s)

Papers	Numbered
<u>U</u> Notice of Motion and Affidavits Annexed <u>(Seq 1)</u>	<u># 3-9</u>
<u>T</u> Cross-motion <u>(Seq 2)</u>	<u># 12-23</u>
<u>U</u> Answering Affidavits <u>(Seq 3)</u>	<u># 26-30</u>
Replying Affidavits	
Exhibits	
Other	

Upon the foregoing cited papers, the Decision/Order on this Motion after argument / 2 atty to by Landlord to execute (seq 1); Cross-motion by tenant to dismiss (seq 2); + Motion by Landlord to amend petition (seq 3), are decided as follows:

This summary holdover proceeding was settled by stipulation dated 2/7/2020, wherein Respondents appeared pro se, granted petitioner a judgment of possession, & agreed to vacate by 8/31/2020. Due to the delays caused by the COVID-19 pandemic, Petitioner was not able to issue or execute its warrant after Respondents failed to vacate.

Petitioner's 1<sup>st</sup> motion (seq 1) seeks permission to issue & execute its warrant based on DRP requirements. In the interim, Respondent Johnson, now represented by Counsel, brings this Cross-motion (seq 2) seeking dismissal, pursuant to CPLR § 3211(a)(3). Respondent argues 4 main reasons for dismissal (and vacatur of the stipulation).

First, Date that at the time the Judge, Civil Court predicate notice was

Civil Court of the City of New York  
County of Richmond  
Part 2

Index Number 50126/20  
Motion Cal. # \_\_\_\_\_ Motion Seq. # \_\_\_\_\_

**DECISION/ORDER** pg 2 of 4  
Recitation, as required by CPLR §2219 (a), of the papers considered in the review of this Motion:

Cont. Maguit et al  
Claimant(s)/Plaintiff(s)/Petitioner(s)  
against  
Battipaglia + Johnson  
Defendant(s)/Respondent(s)

Papers	Numbered
Notice of Motion and Affidavits Annexed.....	_____
Order to Show Cause and Affidavits Annexed.....	_____
Answering Affidavits.....	_____
Replying Affidavits.....	_____
Exhibits.....	_____
Other.....	_____

Upon the foregoing cited papers, the Decision/Order on this Motion to \_\_\_\_\_

allegedly served, the building was owned by \_\_\_\_\_ is as follows:

"PHLBO 82 LLC" not "Continental Management Realty LLC" (see deed dated 9/13/19, NYSCEF# 15) ~~and~~

~~of service of Petition, dated~~ Second, that the predicate notice was allegedly served while the lease was still in effect (see Respondent's lease copy, NYSCEF# 16). Third, that the file does not reflect the ~~the filing of a~~ predicate notice, or an affidavit of service of such notice. And

Fourth, that Petitioner accepted ERAP payments, & cannot continue this Holdover proceeding pursuant to the ERAP Statute!

Petitioner argues that at the time the petition was served "PHLBO 82 LLC" owned the premises, & ~~case~~ <sup>Petitioner's</sup> second motion seeks

Date \_\_\_\_\_ Judge, Civil Court \_\_\_\_\_

Civil Court of the City of New York  
County of Richmond  
Part y

Index Number 50126/20  
Motion Cal. #                      Motion Seq. #                     

**DECISION/ORDER**

Pg 3 of 4

Recitation, as required by CPLR §2219 (a), of the papers

considered in the review of this Motion:

Cont. Managem.  
et al  
Claimant(s)/Plaintiff(s)/Petitioner(s)  
against  
Battaglia +  
Johnson  
Defendant(s)/Respondent(s)

Papers	Numbered
Notice of Motion and Affidavits Annexed.....	<u>                    </u>
Order to Show Cause and Affidavits Annexed.....	<u>                    </u>
Answering Affidavits .....	<u>                    </u>
Replying Affidavits.....	<u>                    </u>
Exhibits .....	<u>                    </u>
Other.....	<u>                    </u>

Upon the foregoing cited papers, the Decision/Order on this Motion to

to amend the petition to reflect the correct landlord. Petitioner also disputes Respondent's copy of the lease & provides its own copy, which indicates the lease terminated 12/31/19, not 12/31/2020 (see @ petitioner's lease copy, NYSCEF # 30).

However, Petitioner does not provide an argument as to the missing predicate notice and affidavit of service for the notice, nor sufficiently explains its failure to discontinue this case upon acceptance of the ERAP funds. Petitioner does not dispute it accepted the funds and its mere statement that these earmarked funds should be applied to future use & occupancy,

Date

Judge, Civil Court

Civil Court of the City of New York  
County of Richmond  
Part y

Index Number 50126/20  
Motion Cal. # \_\_\_\_\_ Motion Seq. # \_\_\_\_\_

**DECISION/ORDER**

Pg 4 of 4

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

Cont. Managem  
etal  
Claimant(s)/Plaintiff(s)/Petitioner(s)  
against  
Battaglia +  
Johnson  
Defendant(s)/Respondent(s)

Papers	Numbered
Notice of Motion and Affidavits Annexed.....	_____
Order to Show Cause and Affidavits Annexed....	_____
Answering Affidavits .....	_____
Replying Affidavits.....	_____
Exhibits .....	_____
Other.....	_____

Upon the foregoing cited papers, the Decision/Order on this Motion to \_\_\_\_\_

is not supported by the language is as follows:  
or intent of the Statute.

therefore Petitioner's first <sup>(§21)</sup> and second <sup>(§23)</sup>  
motions are denied, and Respondent's  
motion to vacate the Stipulation <sup>(§22)</sup>  
dismiss the case, is granted. This dismissal  
is Due to Petitioner's acceptance of ERA  
funds, and the statute specific provisions  
that "5. Acceptance of payment for rental arrears  
from this program shall constitute agreement by  
the recipient landlord or property owner: ... (c)  
not to evict for reason of expired lease or holdover  
tenancy any household on behalf of whom  
rental assistance is received for one year  
after the first rental assistance payment is  
received." This constitutes the decision order of  
this Court.

Date

Judge, Civil Court

7/25/22

HON. ELEANORA OESHTELN