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UNIQUE PEOPLE SERVICES, INC. v. DOE

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CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF QUEENS: HOUSING PART D

-----X Index No.:300666/22

UNIQUE PEOPLE SERVICES, INC.,

Motion Cal. # ____ Motion Seq. #001 & 002

Petitioner- Landlord

DECISION/ORDER

-against-

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

JANE DOE, JOHN DOE,

Papers

Numbered

Respondents-Licensees,

Notice of Motion & Affidavit & Exhibits ...NYSCEF Doc. # 10-15
Cross-Motion, Opp. & Affirm & Exhibits.....NYSCEF Doc.#17-23
Opp. To Cross-motion & Reply.....NYSCEF Doc. # 24
Reply.....NYSCEF Doc. # 25

-----X
HON. MARIA RESSOS, J.H.C.

Respondent moves herein for an Order: a. Granting summary judgment on Respondent’s First Affirmative Defense and dismissing the proceeding pursuant to CPLR§ 3211 (a)(7) as the Petition resorts to improper use of a pseudonym; or, in the alternative b. Granting summary judgment on Respondent’s Second and Third Affirmative Defense and dismissing the proceeding pursuant to CPLR §§3211(a)(7) as the Notice to Quit and Petition are defective; or, in the alternative, c. Granting such other and further relief as the Court may deem just and proper. Petitioner in opposition cross-moves for an Order denying the motion and amending the Petition and Notice of Petition *nuc pro tunc* to add and/or reflect the true name of Respondent as Elizabeth Martin.

CPLR§ 3211 provides that a party may move for judgment dismissing one or more causes of action asserted against him on several grounds. Respondent alleges that she lived in the premises with the tenant of record, Mr. George Leeper as his partner for seven years and the cases should be dismissed as Petitioner improperly used a fictitious name to identify her. Respondent argues that CPLR§ 1024 requires that Petitioner make a diligent effort to learn an unknown party’s name before resorting to the use of the fictitious names “John Doe” or “Jane Doe”

CPLR §1024 provides:

A party who is ignorant, in whole or in part, of the name or identity of a person who may properly be made a party, may proceed against such person as an unknown party by designating so much of his name and identity as known. If the name or remainder of the name becomes known all subsequent proceedings shall be taken under the true name and all prior proceedings shall be deemed amended accordingly.

"A diligent effort to learn the party's name is a condition precedent to the use of CPLR §1024, which should therefore be turned to only as a last resort." *Netherland Properties LLC v. Karalesis*, 63 Misc. 3d 1235(A), (Civ. Ct. NY Co.,2019) citing *George Tut & Company v. Jane Doe*, 20 Misc. 3d 815 (Civ. Ct. Kings Co., 2008). The use of a fictitious name is not authorized where Petitioner fails to demonstrate that diligent efforts were made to learn a party's name and the petition will be deemed "fatally defective as to that party." *Pinnacle Bronx East v. Bowery Resident's Committee Inc.* 2006 NY Misc. LEXIS 4025; 235 N.Y.S. 60 (Civ. Ct. Bronx Co.,2006)

In support of the motion, Ms. Elizabeth Martin submitted an affidavit in which she alleged that she moved into the apartment seven years ago and that the tenant of record, Mr. Leeper was her partner. She further alleges that after he died, the superintendent and building manager came to change the locks on the apartment and when she objected, they simply stopped, and no one inquired of her identity. She further stated that on April 5, 2021, she received a Notice to Quit and the person who handed her the notice did not ask her what her name was.

Petitioner in opposition submitted an affidavit from Joseph Telfer, the Housing Manager for the Scatter Site Program. He alleges that in the nine years the former tenant, George Leeper occupied the premises, he personally visited the apartment twice per year and never encountered any female residing there. He states that within a week of Mr. Leeper's death he went to the premises and encountered a woman occupant. When he asked her name and how she came to be in the premises, she refused to answer and threatened to kill him.

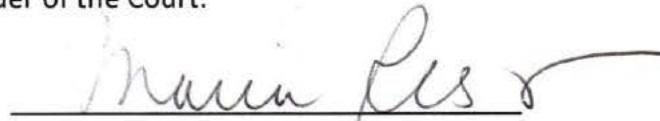
The affidavit of service for the Ten-Day Notice indicates that on Saturday, April 10,2021 the licensed process server, Bradley Kasten, went to the subject premises and found a person of suitable age and discretion, "Elizabeth Martin, Resident" at the premises and left a copy of the notice with her. NYSCEF Doc. # 4 &5. Even if Petitioner did not know the respondent's identity prior to serving the Ten-Day Notice, the affidavit from its own process server should have put Petitioner on notice as to the identity of the occupant of the subject premises. Armed with this information, Petitioner could have re-served the Ten-Day Notice with the name Elizabeth Martin and include her name on the notice of petition and petition. However, Petitioner failed to do so. As Petitioner knew or should have known, Ms. Martin's name prior to commencing this proceeding resorting to using the pseudonym, "Jane Doe" to identify her was improper and a fatal defect to this proceeding.

Accordingly, branch of the motion seeking summary judgment on Respondent's First Affirmative Defense is granted. (Motion#001) The proceeding is dismissed without prejudice. The Court need not address the other branches of the motion. The Cross-motion seeking to amend the caption is denied as moot. (Motion #002).

Respondent shall serve a copy of this order with notice of entry upon Petitioner within ten (10) days.

This constitutes the decision and order of the Court.

Dated: July 27, 2022
Queens, NY



Hon. Maria Ressos, J.H.C.

Petitioner's Attorney
Christopher W. Edwards, Esq.
3049 Eastchester Avenue
Bronx, New York 10469
cwedwardspc@gmail.com

Respondent's Attorney
Michael Kang, Esq.
The Legal Aid Society
120-46 Queens Blvd.
Kew Gardens, NY 11415-1204
MKang@legal-aid.org