

Fordham Law School

FLASH: The Fordham Law Archive of Scholarship and History

All Decisions

Housing Court Decisions Project

2022-11-05

Teitelbaum v. Rand

Follow this and additional works at: https://ir.lawnet.fordham.edu/housing_court_all

Recommended Citation

"Teitelbaum v. Rand" (2022). *All Decisions*. 704.

https://ir.lawnet.fordham.edu/housing_court_all/704

This Housing Court Decision is brought to you for free and open access by the Housing Court Decisions Project at FLASH: The Fordham Law Archive of Scholarship and History. It has been accepted for inclusion in All Decisions by an authorized administrator of FLASH: The Fordham Law Archive of Scholarship and History. For more information, please contact tmelnick@law.fordham.edu.

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

-----X
Basha Teitelbaum

Petitioner

Index No. LT # 316629-22

- against -

DECISION/ORDER

Michael Elimelech Rand
Nina Rand
1550 43rd Street
Basement
Brooklyn, New York 11219

Respondent.

-----X

HON. HANNAH COHEN:

Recitation, as required by CPLR 2219(a), of the papers considered in the review of respondent's motion to dismiss and ensuing opposition and reply.

<u>Papers</u>	<u>Numbered</u>
Notice of Motion	1
Opposition	2
Reply	3

Upon the foregoing cited papers, the Decision and Order on this Motion is as follows:

Petitioner commenced this holdover proceeding by service of a ninety day notice of termination. The premises is located in a building with less than six units and is not subject to any regulation.

Respondent appeared and seeks by motion to dismiss on the following grounds: (1) "never legally served" the notice of termination; (2) respondent does not know who the petitioner is; (3)

incorrect name of the respondent; (4) address on the affidavit of service of the notice of termination has the wrong zip code; (5) service of notice of petition and petition was attempted on March 25, 2022 at 8:48 pm, on the Sabbath and is thus invalid service; (6) no notices were affixed to his door; (7) never received any mailings at either mailing addresses and respondent has no mailbox; (8) managing agent, who is a party placed petition and court notice under his door and this was improper.

Respondent argues that attempted service on March 25, 2022 at 8:48 pm, Friday night, after sundown on the Sabbath was improper service and therefore petitioner only attempted one legal attempt at personal service on March 28, 2022. Petitioner opposed and notes that respondent never stated he was home and submits an affidavit from the agent that he was not even aware respondent observed the Sabbath. In reply respondent attaches numerous text messages between himself and the agent which clearly demonstrates that the agent was aware that respondent is a religious observant person of the Jewish faith who prays regularly at the synagogue. Therefore the agent would have known that respondent observed the Sabbath.

Based upon the text messages, the petitioner's agent, himself an observant Jewish person, was aware that respondent was also an observant Jewish person. This knowledge is imputed upon the process server, by virtue of the agency relationship. "Notice given to one person will generally be imputed to another person if an agency relationship exists between the parties." *Mileasing Co. v. Hogan*, 87 A.D.2d 961, 451 N.Y.S.2d 211, citing 42 N.Y. Jur., Notice and Notices § 4. See also 2A N.Y. Jur.2d Agency and Independent Contractors, § 296; *Hirsch v. Zvi*, 184 Misc. 2d 946, 948, 712 N.Y.S.2d 238, 239-40 (Civ. Ct Kings Co 2000). In determining whether attempts at personal delivery are made with a "reasonable expectation of success", an agent's knowledge will be imputed

to the landlord (see *Center v. Hampton Affiliates, Inc.*, 66 N.Y.2d 782, 784 [1985], *Lesnick and Mazarin v. Cutler*, 255 A.D.2d 367, 367 [2d Dept 1998]), and the landlord has an obligation to convey its knowledge to its attorney, who has an obligation to convey it to the process server (see *id.*; *417 East Realty Associates v. Ryan*, 110 Misc.2d 607, 614 [Civ Ct, N.Y. County 1981]; *60 West 109th St. Corp. v. Taylor*, 95 N.Y.S.2d 763, 766 [Manhattan Mun Ct 1950]); *FPTK, LLC v. Paradise Pillows, Inc.*, 9 Misc. 3d 1125(A), 862 N.Y.S.2d 808 (Civ. Ct. 2005).

General Business Law § 13 provides: “Whoever maliciously procures any process in a civil action to be served on Saturday, upon any person who keeps Saturday as holy time, and does not labor on that day, or serves upon him any process returnable on that day, or maliciously procures any civil action to which such person is a party to be adjourned to that day for trial, is guilty of a misdemeanor.” To establish a violation of General Business Law § 13, malicious intent must be shown (see *Martin v. Goldstein*, 20 App.Div. at 205, 46 N.Y.S. 961; *The Chase Manhattan Bank [USA] N.A. v. Schneider*, 1988 N.Y. Misc. LEXIS 896). “Service on the Sabbath ... with knowledge that the person to be served observes the Sabbath ... constitutes malice” (*Hirsch v. Ben Zvi*, 184 Misc.2d at 948, 712 N.Y.S.2d 238; see *HSBC Mtge. Corp. [USA] v. Myers*, Sup.Ct., Nassau County, McCabe, J., index No. 013868/07; *FPTK, LLC v. Paradise Pillows, Inc.*, 9 Misc.3d 1125[A], 2005

N.Y. Slip Op. 51790[U]). The knowledge of a plaintiff or its counsel is imputed to the process server by virtue of the agency relationship (see *HSBC Mtge. Corp. [USA] v. Myers*, Sup.Ct., Nassau County, McCabe, J., index No. 013868/07; *FPTK, LLC v. Paradise Pillows, Inc.*, 9 Misc.3d 1125[A], 2005 N.Y. Slip Op. 51790[U]; *Hirsch v. Ben Zvi*, 184 Misc.2d at 948, 712 N.Y.S.2d 238).

Respondents contend that the petitioner’s agent was aware that respondents are observant Jewish people who adhere to the Sabbath observances, and thus, the Saturday affixation of process

to the door of their residence was invalid. This court agrees with the other courts that have addressed this issue, which have consistently held that service in violation of General Business Law § 13, or its predecessor statute, is void, and personal jurisdiction is not obtained over the party served (see *Martin v. Goldstein*, 20 App.Div. 203, 205, 46 N.Y.S. 961; *Tenenbaum v. Setton*, 49 Misc.3d 39, 41, 18 N.Y.S.3d 498 [App.Term, 2d Dept., 2d, 11th & 13th Jud.Dists.]; *The Chase Manhattan Bank [USA] N.A. v. Schneider*, 1988 N.Y. Misc. LEXIS 896 [App.Term, 2d Dept, 9th & 10th Jud.Dists.]; *City Natl. Bank, N.A. v. Lake St. 1, LLC*, 38 Misc.3d 1224[A], 2013 N.Y. Slip Op. 50244[U], 2013 WL 625527 [Sup.Ct., Orange County]; *Garner v. Doggie Love L.L.C.*, 2011 N.Y. Slip Op. 30072[U], 2011 WL 197729 [Sup.Ct., Queens County]; *FPTK, LLC v. Paradise Pillows, Inc.*, 9 Misc.3d 1125[A], 2005 N.Y. Slip Op. 51790[U], 2005 WL 2922515 [Civ.Ct., Kings County]; *Hirsch v. Ben Zvi*, 184 Misc.2d 946, 947, 712 N.Y.S.2d 238 [Civ.Ct., Kings County]; *Jewish Ctr. of Baldwin v. Winer*, 216 N.Y.S.2d 153 [Sup.Ct., Nassau County]; but see *Matter of Kushner*, 200 A.D.2d 1, 2, 613 N.Y.S.2d 363 [assuming but not deciding the issue]; see generally McKinney's Cons. Laws of N.Y., Book 1, Statutes § 75; *Matter of Trosk v. Cohen*, 262 N.Y. 430, 435–436, 187 N.E. 566). Moreover, the court finds that the statute applies not only to personal service upon a defendant, but also to the affixation portion of “nail and mail” service pursuant to CPLR 308(4) on the door of a defendant's residence, as occurred here (see *Garner v. Doggie Love L.L.C.*, 2011 N.Y. Slip Op. 30072[U]; cf. *FPTK, LLC v. Paradise Pillows, Inc.*, 9 Misc.3d 1125[A], 2005 N.Y. Slip Op. 51790[U]).

Respondent's text messages with petitioner's agent is sufficient to establish, prima facie, that the agent had knowledge that the respondent's were protected from Saturday service by General Business Law § 13 (see *HSBC Mtge. Corp. [USA] v. Myers*, Sup.Ct., Nassau County, McCabe, J.,

index No. 013868/07; cf. *Matter of Kushner*, 200 A.D.2d at 2, 613 N.Y.S.2d 363; *Jaffe Ross & Light, LLP v. Mann*, 39 Misc.3d 1231[A], 2013 N.Y. Slip Op. 50825[U], 2013 WL 2249616 [Sup.Ct., N.Y. County], superseded on re argument of other issues 2013 N.Y. Slip Op. 32212, 2013 WL 5228095, revd. on other grounds 121 A.D.3d 480, 994 N.Y.S.2d 587).

Based upon the above, petitioner failed to serve respondents pursuant to RPL 735(1) and the petition is dismissed without prejudice. The court need not address respondent's other arguments in light of the dismissal.

This constitutes the decision and order of this Court.

Dated: November 5, 2022

Brooklyn, New York



Hannah Cohen, J.H.C.