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2022-12-01

### Wilmington Trust et al v. Campisi

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CIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF QUEENS: HOUSING PART A  
WILMINGTON TRUST, NATIONAL  
ASSOCIATION, NOT IN ITS INDIVIDUAL  
CAPACITY, BUT SOLELY AS TRUSTEE  
FOR MFRA TRUST 2015-1,

Petitioner,

Index No. L&T 73410/19

**DECISION/ORDER**

-against-

JAMES CAMPISI; JOHN JACKSON,  
IRENE MANG ONYIKE; JOHN DOE 1-10,  
Respondents.

\_\_\_\_\_  
Hon. Jeannine B. Kuzniewski, J.H.C.

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

PAPERS	NUMBERED
NOTICE OF MOTION, AFFIRMATION & AFFIDAVITS ANNEXED	<u>1</u>
ORDER TO SHOW CAUSE AND AFFIDAVITS & AFFIRMATION ANNEXED	____
ANSWER AFFIRMATION	_____
REPLYING AFFIRMATION	_____
EXHIBITS	_____
STIPULATIONS	_____
OTHER	_____

The underlying proceeding is a post foreclosure holdover wherein petitioner seeks possession of the subject premises pursuant to service of a Notice to Quit in November 2019. The adjudication of the case was delayed due to the Covid 19 pandemic and the filing of a Hardship Declaration by respondent.

Respondent now moves to dismiss the proceeding based on petitioner’s alleged failure to exhibit and serve a certified deed as well as the Notice to Quit. They also allege the Notice to Quit is fatally defective in that though it is signed by petitioner’s attorney, there was no proper document provided attesting to the attorney’s authority to sign on behalf of the petitioner. This Court will not entertain respondent’s claim that the petition is ‘false’ or inaccurate because respondent is the rightful owner of the premises. This claim has been litigated in Supreme Court and dismissed *with* prejudice and is beyond the jurisdiction of this Court. *Newhouse Properties Inc. v. McGee*, 139 AD2d 923; *Chun Wah*

*Lee, et al. v. Han*, 39 Misc3d 132(A).

Petitioner opposes the motion in its entirety relying on the submitted affidavits of service as prima facie evidence that both the deed and the Notice to Quit were properly served on respondent. They do acknowledge that the “Limited Power of Attorney” attached to the predicate notices appoints an alternate company “Planet Home Lending LLC” as “its true and lawful attorney-in-fact” for purposes of signing related documents, instead of their actual attorney P. David Seibert, who signed the notice. There was no additional power of attorney attached either from petitioner or Planet Home Lending LLC further granting petitioner’s counsel to execute such documents. Petitioner relies on *U.S Bank Trust, N.A v. Augustine*, 2022 NY Misc. Lexis 421, which considered the predicate notice sufficient even though petitioner’s attorney failed to sign the document with the court advising against too narrow a reading of *Siegel*, supra.

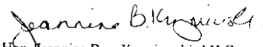
Respondent, by their attorney, argue this is a fatal defect that cannot be corrected. Specifically, they assert that without proper authorization on the notice, respondent is deprived sufficient notice in that they cannot be assured the signatory has authority to act on behalf of the owner. Respondent relies on well settled case law that seeks to avoid confusion as to a signatory’s authority. The *Kesselman v. London Paint & Wallpaper Co., Inc.*, 54 Misc3d 639 court addresses this concern when it states “the issue that often must be resolved is whether the tenant had a basis to doubt the agent’s authority to bind the landlord (*54-55 St. Co. v. Torres*, 171 Misc2d 237).” It further lays out the standard in attempting to resolve the question. “A tenant would or should know an agent is acting of the landlord’s behalf in either of two ways; either the notice states what grants the agent authority to bind the landlord (*Siegel v. Kentucky Fried Chicken of Long Island*, 108 AD2d 218), or the knowledge is imputed based upon past dealings between the tenant and the agent acting on the landlord’s behalf (*Ashley Realty Corp. v. Knight*, 73 AD3d 500). In addition, respondent argues in the Reply that petitioner’s Affirmation in Opposition cannot be considered because it is unsigned by petitioner’s attorney.

The Court agrees that it must disregard the Affirmation in Opposition since it is unsigned and appellant failed to offer a valid excuse for his default, as required by CPLR 5015 (a) (1). It is well established that if the "affirmation" of the attorney assigned to the case was not signed, it is therefore of no force or effect (CPLR 2106, *Am. Sec. Ins. Co. v. Austin*, 110 AD2d 697. Even if the Court did consider the Affirmation, its reliance on *U.S. Bank Trust*, supra, is misplaced. The issues of that case are distinguished by the fact that petitioner’s agent submitted a *proper* Limited Power of Attorney there, but had neglected to sign the notice. Here, legal authority was never imparted to the signatory because the Limited Power of Attorney did not authorize petitioner’s attorney to sign on their behalf. Petitioner did demonstrate the degree to which the signatory had legally binding authority to represent the landlord. *Anastasia Realty Co., v. Lai*, 173 Misc2d 1012. Since they did not provide proof that they had authority at the time the notice was signed, the notice is invalid. A valid predicate notice is a condition precedent to a holdover proceeding. *Chinatown Apts. Inc. v. Chu Cho Lam*,

433 NYS2d 86.

Accordingly, respondent's motion to dismiss is granted to the extent the petition is dismissed without prejudice.

Dated: December 1, 2022

  
Hon. Jeannine Baer Kuzniewski, J.H.C.  
So Ordered

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Hon. Jeannine B. Kuzniewski