

Fordham Law School

FLASH: The Fordham Law Archive of Scholarship and History

All Decisions

Housing Court Decisions Project

2022-10-07

Squillace Irrevocable Family Trust v. Settouti

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

Recommended Citation

"Squillace Irrevocable Family Trust v. Settouti" (2022). *All Decisions*. 753.
https://ir.lawnet.fordham.edu/housing_court_all/753

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

Squillace Irrevocable Family Trust By
Josephine Mannino Trustee,

Petitioner

Index No. LT # 306189-22

- against -

DECISION/ORDER

Sarit Settouti
Abdel Settouti
"John Doe"
"Jane Doe"
1764 West 1st Street
1st Floor Front
Brooklyn, New York 1223

Respondent(s).

-----X

HON. HANNAH COHEN:

Recitation, as required by CPLR 2219(a), of the papers considered in review of respondents motion to vacate default judgment pursuant to CPLR 5015(4) in that the court lacks personal jurisdiction and ensuing opposition.

<u>Papers</u>	<u>Numbered</u>
Motion	1
Opposition	2

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

Petitioner commenced this holdover proceeding after service of a ninety day notice to vacate with a petition dated and filed March 30, 2022 with a date to be determined. The court assigned a court date on April 14, 2022, with an intake date of May 20, 2022. Petitioner completed service upon the respondent on April 21, 2022. The respondent failed to appear on May 20, 2022 and the

case was reassigned to the resolution part on June 14, 2022. On June 14, 2022 respondent failed to appear and the case was adjourned to July 11, 2022 wherein a default judgment was entered into after an inquest.

Respondent by order to show cause with counsel now seeks to vacate the default judgment arguing that petitioner failed to comply with RPAPL 733(1) as the court lacked jurisdiction over the respondent and mandates vacatur of the default judgment. Respondent argues that as service was complete on April 21, 2022, more than 17 days from the date the petition was noticed to be heard on May 20, 2022, the court lacks jurisdiction over the respondent. Respondent points to the several recent decisions by the courts in the first department.

Petitioner notes the CCM-210 order indicated that due to the Covid-19 pandemic, the court could not schedule court dates.

RPAPL 733(1) as amended by the Housing Stability Protection Act of June 2019, holds that the notice of petition and petition must be served at least ten days and not more than seventeen days before the return date. In this matter service was completed on April 21, 2022, 29 days before the court date, and not seventeen days. The court notes that several cases in the first department have recently dealt with the herein issue herein. In *Bronx 2120 Crotona Avenue L.P. v Gonzalez*, the court held that per the holding in *Riverside Syndicate Inc. v Saltzman*, 49 AD3d 402 [1st Dept 2008] which reversed an appellate term decision, reversing a lower courts decision dismissing the proceeding as the petition was filed one day late. The appellate division noted that it adhered to the “strict compliance” line of cases in the first department regardless of any prejudice to the parties (See *Berkeley Assoc Co v Di Nolfi*, 122 AD2d 703 [1st Dept 1986]; *MSG Pomp Corp. v Doe*, 185 AD2d 798 [1st Dept 1992]). The object of the RPAPL 733(1) service requirement is to ensure that respondents receive adequate notice and an opportunity to prepare *35 any defenses that they may

have (see generally Berkeley Assocs. Co., 122 A.D.2d 703, 505 N.Y.S.2d 630 [1980]).

Wherein, the Second Department takes a practical approach in situations like this finding failure to file timely “a technical defect that does not prejudice any party”. In the case of Friedlander v. Ramos, 3 Misc.3d 33, 779 N.Y.S.2d 327 (App. Term 2004), the Appellate Term allowed for the filing of proof of service nunc pro tunc to meet the provisions of RPAPL 735(2). As stated in Ramos, “The object of RPAPL 733(1) service requirement is to ensure that respondents receive adequate notice and an opportunity to prepare any defense they may have.” The second department has also noted that the holding of MSG Pomp Corp. v. Doe, supra, upon which the Appellate Division, First Department, relies in reaching its decision in Saltzman is no longer followed in this Department. See Paikoff v. Harris, 185 Misc.2d 372, 713 N.Y.S.2d 109 (A.T. 2 & 11).

However, this court is still bound by the holding in Saltzman, as such holding appears to still be binding authority statewide. See Abakporo v. Gardner (22 Misc. 3d 1101[A], 875 N.Y.S.2d 818 [Civ. Ct. Kings Co. 2008]) (“this court is bound by the precedent set forth by the First Department in Riverside Syndicate which is the only decision on this issue which was made by any court of statewide jurisdiction”), citing Mountain View Coach Lines v. Storms (102 A.D.2d 663, 664, 476 N.Y.S.2d 918 [2nd Dep't 1984]) (“The doctrine of stare decisis requires trial courts in this department to follow precedents set by the Appellate Division of another department” until the Court of Appeals or the same Division announces a contrary rule); see also, (D'Alessandro v. Carro, 123 A.D.3d 1, 992 N.Y.S.2d 520 [1st Dep't 2014]; Bronx 2120 Crotona Ave. L.P. v. Gonzalez, 2022 N.Y. Slip Op. 22148, ¶¶ 2-3, 75 Misc.3d 753, 168 N.Y.S.3d 674 [Civ. Ct. Bx. Co. 2022]); see also (208 W 20th St. LLC v. Blanchard, Misc.3d , N.Y.S.3d , 2022 N.Y. Slip Op. 22226, 2022 WL 2899372 [Civ. Ct. N.Y. Co. 2022])(dismissing holdover proceeding under RPAPL § 733(1) as

amended by HSTPA where “conspicuous” service was completed nine days in advance of return date); *518 Valane v Cruz (2018 NYLJ LEXIS 2629 [Civ Ct Bx Co 2018] (dismissing holdover proceeding under pre-HSTPA version of RPAPL § 733(1) where “substituted” service was completed thirteen days in advance of return date).

Based upon the above, this court hereby vacates the judgment pursuant to CPLR 5015(4) and dismisses the petition for lack of personal jurisdiction.

This constitutes the decision and order of this Court.

Dated: October 7, 2022

Brooklyn, New York

Hannah Cohen, J.H.C.