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2023-04-23

### GREENE ORGANIZATION, LLC v. JONES

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS HON. CAROLYN E. WADE, J.S.C.

-----X  
GREENE ORGANIZATION, LLC,

Plaintiff,

INDEX NO. 508862/2020

-against-

Decision and Order  
MS #1 and #2

JOYCE JONES, TAHJHAE A. JONES,  
DAYONNE JONES, JOHN DOE and JANE DOE,  
representing any and all occupants of the entire premises.

Defendants.  
-----X

The following papers read on this motion

Papers	Numbered
Notice of Motion –	
Affirmation	pages 1-12
Affidavit	pages 1-3
Exhibits	A – K
Reply Affirmation	pages 1 - 9

Upon the foregoing cited papers, and after oral argument, Plaintiff, Greene Organization LLC, moves for an Order granting it summary judgment and a default judgment against the Defendants Joyce E. Jones, Tahjhae A. Jones, Dayonne Jones, John Doe and Jane Doe ("Defendants") (Mot. Seq. No. 1).

Defendant, Joyce Jones, cross-moves to dismiss the complaint, pursuant to CPLR §§ 3211 (a)(1), (2), and (7), and 3211 (e), on the ground that Plaintiff has failed to properly plead a cause of action, and improperly seeks relief in Supreme Court rather than proceeding in the Civil Court, Housing Part (Mot. Seq. No. 2).

The underlying ejectment action was commenced by Plaintiff, the new owner of a two-family dwelling located at 1187 Greene Avenue, Brooklyn ("subject premises"), against the Defendants, who reside at the second-floor apartment of the subject premises.

In support of its motion, Plaintiff contends that Defendants have failed to vacate the subject premises pursuant to a NYC HPD Vacate Order mandating that the basement be vacated; failed to pay \$8,000 in rent/use and occupancy; and have created a nuisance by accumulating garbage.

In support of her cross-motion, and in opposition to Plaintiff's motion, Defendant, Joyce Jones, contends that Plaintiff improperly seeks relief in the Supreme Court by a writ of assistance rather than proceeding in the Civil Court, Housing Part. Defendant notes that she took

2023 APR 27 AM 9:55

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possession of the second-floor apartment of the subject premises on June 2, 2009, subject to a lease (NYSCEF Doc. No. 21, Defendant's Exhibit "A," Lease). Further, Defendant notes that the vacate order only applies to the basement of the subject premises, not her apartment.

"To state a cause of action for ejection, plaintiff must establish that (1) it is the owner of an estate in tangible real property, (2) with a present or immediate right to possession thereof, and (3) the defendant is in present possession of the estate (*Wythe Berry Fee Owner LLC v Wythe Berry LLC*, 73 Misc 3d 1228[A], 2021 NY Slip Op 51140[U], \*4 [Sup Ct, Kings County 2021]).

"The likelihood of the success of plaintiff's ejection action depends on whether plaintiff has an immediate right to possession of the premises." *Id.* "Where a valid landlord-tenant relationship exists, as here, a predicate notice must be served on defendant prior to commencement of an ejection action." *Id.*

Pursuant to RPAPL § 711, "[n]o tenant or lawful occupant of a dwelling or housing accommodation shall be removed from possession except in a special proceeding." "A special proceeding may be maintained [where] ... (1) The tenant continues in possession of any portion of the premises after the expiration of his term, without the permission of the landlord" (RPAPL § 711 [1]).

Here, Plaintiff has failed to establish that it is entitled to a present or immediate right of possession to the subject premises. Defendant submitted an expired lease agreement to establish that she is a lawful occupant of the second-floor apartment, and that a valid landlord-tenant relationship exists. Moreover, Plaintiff does not show that it provided the Defendants with predicate notice prior to commencing this action. Thus, Plaintiff has not established that it is entitled to a present or immediate right to possession of the subject premises. Consequently, an order of ejection is unavailable to Plaintiff, and the matter should be adjudicated in the Civil Court, Housing Part via a special proceeding (*see, 1770 E. 14th St. Assoc. v Harris*, 209 AD2d 390, 391 [2d Dept 1994]).

Accordingly, Plaintiff's motion is **DENIED** (Mot. Seq. No. 1) and Defendant, Joyce Jones' cross-motion is **GRANTED to the extent** (Mot. Seq. No. 2) that this matter is transferred to the Civil Court, Housing Part for a special proceeding, and it is

**ORDERED** that the Clerk of the Supreme Court, Kings County, shall deliver to the Clerk of the Civil Court of the City of New York, Kings County, all papers filed in the action and certified copies of all minutes and entries.

This constitutes the Decision and Order of the Court.

Date: 4/23 2023

ENTER

  
HON. CAROLYN E. WADE, J.S.C.

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