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UT Z UNITS, LLC. v. WASHINGTON

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Civil Court of the City of New York
County of Kings

Index # **LT-311562-22/KI**



UT Z UNITS, LLC.

Petitioner(s)

Decision / Order

-against-

AVERY L. WASHINGTON; "John" "Doe"; "Jane"
"Doe"

Respondent(s)

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion:

Papers	Numbered
Order to show Cause/ Notice of Motion and Affidavits /Affirmations annexed	<u>1 (NYSCEF 11-15)</u>
Answering Affidavits/ Affirmations	<u>2 (NYSCEF 18-19)</u>
Reply Affidavits/ Affirmations	<u>3 (NYSCEF 21)</u>
Memoranda of Law	_____
Other	_____

Upon the foregoing cited papers, this Decision/ Order grants the motion for the following reason(s):

Respondent moves to dismiss¹ this non-primary residence holdover arguing that both the Golub notice and the Petition/Notice of Petition were mailed using the wrong zip code for the subject premises. Respondent argues that failure to properly address the mailing of the Petition and Notice of Petition is a fatal error that deprives the court of jurisdiction over the respondent pursuant to RPAPL § 735(1). Respondent also argues that the failure to properly address the mailing of the Golub notice requires dismissal because it petitioner fails to meet its obligations under 9 NYCRR 2523.5(a).

Petitioner in opposition does not dispute that the mailings at issue contained the wrong zip code. Petitioner instead argues that the court should overlook the error because respondent received the papers at issue despite the incorrect zip code on the mailing.

¹ Respondent's motion is brought pursuant to CPLR §3212. However, since the motion argues that there is no legal viability for the alleged cause of action and that the court lacks jurisdiction over the respondent, the court will treat the motion as a post-answer CPLR 3211(a)(7) and (8) motion brought under the provisions of CPLR 3211(e).

Service statutes require strict adherence. *Avakian v. De Los Santos*, 183 A.D.2d 687 (2d Dep't 1992) (citing *Macchia v. Russo*, 67 N.Y.2d 592, 496 N.E.2d 680, 505 N.Y.S.2d 591 (1986)); see also *Regency Towers LLC v. Landou*, 10 Misc.3d 994 (Civ Ct. N.Y. County 2006). Proper service is more than just a formality; it is a requirement of due process. Before a court can decide matters that affect a party's rights and obligations, it must be reasonably confident that such party was given notice of the proceeding and afford them an opportunity to present their claims or defenses. *Karlsson & Ng v. Cirincione*, 186 Misc. 2d. 359, 361 (Civ. Ct., N.Y. County 2000). When effecting service by mail, all aspects of the mailing address must correct. See *Avakian, supra*, at 688. Because petitioner used of the wrong zip code in serving the respondents the Petition and Notice of Petition, the court has not acquired personal jurisdiction over the respondent and this matter must be dismissed. *Id.*; 6 RCNY 2-238 ("All process mailed pursuant to the requirements of . . . RPAPL § 735(1) shall include on the envelope as part of the address the proper zip code of the person served.") Likewise, proper service of the predicate notice is a jurisdictional prerequisite in holdover proceedings, and petitioner's failure to include the proper address on the mailing of the predicate notice is fatal to the petition as well. *Regency Towers LLC v. Landou, supra*, at 996.

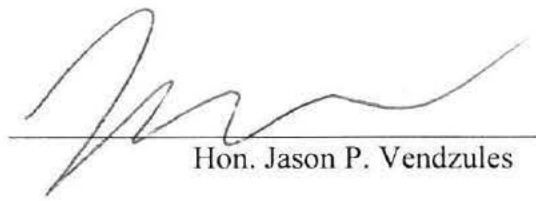
It is of no consequence that respondent received the papers at issue despite the service error. When the requirements of service have not been met, the respondent may still raise jurisdictional issues even if he acknowledges receiving the papers meant to be served. *Raschel v. Rish*, 69 N.Y.2d 694, 504 N.E.2d 389, 512 N.Y.S.2d 22 [1986].

Petitioner's remaining arguments are also without merit. Petitioner argues that the court need not follow *Avakian*, since *Avakian* analyzed the service requirements of CPLR § 408(2) while RPAPL § 735(1) is at issue here. While the service statute at issue in *Avakian* is different

from the one here, this difference does not lead to a different result. To the contrary, the short time the respondent had to answer in this summary proceeding entails that the notice concern addressed in *Avakian* are more pressing here and only reinforce the need to dismiss the petition. *NYCHA v. Fountain*, 172 Misc.2d 784, 788-89 (Civ. Ct., Bronx County 1997); *Karlsson & Ng v. Cirincione*, 186 Misc. 2d. at 361.

ORDERED: Respondent's motion is GRANTED. The Petition is DISMISSED.

Date: 5/9/23
Brooklyn, NY


Hon. Jason P. Vendzules