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[*1]

MTGLQ Invs., LP v Meikle
2023 NY Slip Op 50161(U) [78 Misc 3d 1205(A)]
Decided on March 8, 2023
Civil Court Of The City Of New York, Bronx County
Lutwak, J.
Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431.
This opinion is uncorrected and will not be published in the printed Official Reports.

Decided on March 8, 2023

Civil Court of the City of New York, Bronx County

MTGLQ Investors, LP, Petitioner-Owner,

against

**Veronica M. Meikle INDIVIDUALLY AND AS HEIR AND
DISTRIBUTE OF THE ESTATE OF LAURA T. MEIKLE;
FREDERICK CREARY; SINDA CHARLES; CHRISTINE
FRAZIER; AKEL CHARELS; ALVIN PATRICK A/K/A PATRICK
ALVIN; CRISSY CHARLES; ANGELIQUE MEIKLE; AFFIA
PATRICK; THE UNKNOWN HEIRS AND DISTRIBUTEES OF
THE ESTATE OF LAURA T. MEIKLE, Respondents,
"JOHN DOE" - "JANE DOE", Respondent-Undertenants.**

L&T Index No. 334278/22

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Diane E. Lutwak, J.

PROCEDURAL HISTORY

In this holdover proceeding, Petitioner seeks to evict the prior owners and/or occupants and/or tenants of 2943 Yates Avenue, Upper Floor, Bronx, New York, following a mortgage foreclosure and sale of the building to Petitioner. The petition is dated November 2, 2022 and is based on a "Ninety (90) Day Notice to Quit With Exhibition of Deed" dated June 13, 2022. The petition seeks a final judgment of possession, issuance of a warrant of eviction and a money judgment for the "use and occupancy" of the premises plus costs and disbursements. The case was noticed and calendared for an initial virtual appearance in Intake Part 2 on December 7, 2022, then transferred to Resolution Part C and adjourned first to January 31, 2023 and then to March 6, 2023. The court mailed notice to Respondents of each court appearance with information about how to appear. No Respondents appeared, filed an answer to the petition or otherwise contacted the court. Upon Respondents' failure to appear on March 6, 2023 the court [*2]proceeded with an inquest.

THE INQUEST

At the inquest, the court admitted into evidence as Petitioner's Exhibit 1 a certified copy of a Referee's Deed in Foreclosure dated March 10, 2020 which transferred 2943 Yates Avenue to Petitioner, MTGLQ Investors, LP. The court heard the sworn testimony of Yara Annechiarico, who testified that she works as broker and property manager for Petitioner; that she visits 2943 Yates Avenue weekly and is familiar with the Upper Floor occupants, none of whom are elderly, disabled, in the military or dependent upon anyone in the military; and that Petitioner has accepted no "ERAP" (Emergency Rent Assistance Program) funds or rent from any occupants.

At Petitioner's request, the court took judicial notice of the following documents Petitioner filed with the court: Notice of Petition; Petition; "Ninety (90) Day Notice to Quit" with annexed certified copy of the Referee's Deed in Foreclosure; and affidavits of service of the Notice of Petition, Petition and "Ninety (90) Day Notice to Quit". The affidavits of service of the Notice of Petition and Petition reflect service on November 21, 2022 by personal delivery to Respondent Veronica M. Meikle and by "substituted" service on the other Respondents. The affidavits of service of the "Ninety (90) Day Notice to Quit" reflect service on all named Respondents on July 26, 2022 by first class mail and certified mail, return receipt requested; the Notice was served by first class mail only on the Respondents identified as "John Doe", "Jane Doe", "Unknown Heirs and Distributees" and "Occupants".

DISCUSSION

RPAPL § 713 authorizes special proceedings to recover possession of real property where no landlord-tenant relationship exists. *See generally Fed Nat'l Mortg Ass'n v Simmons* (48 Misc 3d 24, 12 NYS3d 487 [AT 1st Dep't 2015]). All but two of the eleven types of proceedings permitted under this section require service of a predicate 10-day notice to quit [\[EN1\]](#), with service as prescribed by RPAPL § 735: either by personal delivery or, if personal delivery cannot be effectuated upon "reasonable application", either by "substituted" service upon a person of suitable age and discretion or by affixing to a "conspicuous" part of the property followed by additional copies sent by both registered or certified mail and first-class mail.

A post-foreclosure holdover proceeding is authorized by RPAPL § 713(5), one of the nine types of eviction proceedings where no landlord-tenant relationship exists requiring a predicate 10-day notice. RPAPL § 713(5) applies where, "the property has been sold in foreclosure and either the deed delivered pursuant to such sale, or a copy of such deed, certified as provided in the [CPLR], has been exhibited to him." RPAPL § 713(5) is "[s]ubject to the rights and obligations set forth in [RPAPL § 1305]". RPAPL § 1305, found in RPAPL Article 13 ("Action to Foreclose a Mortgage"), is entitled "Notice to tenants" and requires a building owner who acquires title as a result of a judgment of foreclosure and sale to serve a specified 90-day notice to all "tenants" as defined in the statute, advising them of certain rights and protections, and to serve it pursuant to RPAPL § 1304: "by registered or certified mail and also [\[*3\]](#)by first-class mail".

While the 90-day notice under RPAPL § 1305 is not required in all RPAPL § 713(5) proceedings, *see, e.g., Wilmington Tr; Nat'l Ass'n v Holmes* (68 Misc 3d 1220[A], 130 NYS3d 630 [Civ Ct Qns Co 2020]), the 10-day notice under RPAPL § 713 is. A 10-day notice to quit is indispensable to a proceeding under RPAPL § 713(5) and serves a different purpose than does the RPAPL § 1305 "Notice to tenants". *US Bank Nat'l Ass'n v Ferguson* (2015 NYLJ LEXIS 5944 [Civ Ct Bx Co 2015]). While the two notices can be combined in one that contains the language required by each statute, *see, e.g., Wilmington Tr; Nat'l Ass'n v Holmes, supra; Cascade Funding RMI Alt Holdings LLC v Giannetto* (77 Misc 3d 1204[A], 177 NYS3d 471 [Town of Bedford, Westch Co 2022]), service of the 10-day notice must comply with RPAPL § 735, both because the statute says so and because such service is required to meet the deed exhibition requirement of RPAPL § 713(5). *Plotch v Dellis* (60 Misc 3d 1, 75 NYS3d 779 [AT 2nd Dep't 2018]).

Here, at the inquest, the evidence established that Petitioner is the owner of the subject

building and is entitled to bring this post-foreclosure holdover proceeding under RPAPL §§ 721(1) and 713(5). The Notice of Petition and Petition were properly served under RPAPL § 735. However, no 10-day notice quit as required by RPAPL § 713(5) was served, and the 90-day notice that was served was neither drafted as a combined notice that includes the standard language of a 10-day notice to quit nor served pursuant to RPAPL § 735. This is a fatal defect in the proceeding, warranting its dismissal. *Wilmington Tr, Nat'l Ass'n v Holmes, supra*.

CONCLUSION

Based on the above, it is hereby ORDERED that this proceeding is dismissed, without prejudice. This constitutes the Decision and Order of the Court, copies of which are being uploaded on NYSCEF and mailed to Respondents at the premises.

Diane E Lutwak, HCJ
Dated: Bronx, New York
March 8, 2023

Footnotes

Footnote 1: The two exceptions where no predicate 10-day notice to quit is required are where (1) there has been a "forcible or unlawful entry or detainer", RPAPL § 713(10); and (2) the person in possession moved in as an incident to employment by petitioner, RPAPL § 713(11).

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