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2023-07-12

### 775 Greene Ave HDFC v. Thomas

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#### Recommended Citation

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Civil Court of the City of New York

County of Kings

Part 7

Index Number 58170/20  
Motion Cal. # \_\_\_\_\_ Motion Seq. # 2

DECISION/ORDER

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

Papers	Numbered
Notice of Motion and Affidavits Annexed.....	<u>2</u>
Order to Show Cause and Affidavits Annexed ....	<u>1</u>
Answering Affidavits .....	<u>6,7</u>
Replying Affidavits.....	<u>3,5,8,12</u>
Exhibits .....	<u>3,5,8,12</u>
Other.....	<u>          </u>

775 Greene Ave HDFC

Claimant(s)/Plaintiff(s)/Petitioner(s)

against

Aronda Thomas  
John Doe Defendant(s)/Respondent(s)  
Jane Doe

Upon the foregoing cited papers, the Decision/Order on this Motion to for summary

judgment on respondent's first alternative defense laches is, as follows: granted

Respondent moves for summary judgment stating that the pet. in this non-payment case seeks rent from May ~~2016~~ 2016 through February 2020. In opposition petitioner states that he commenced a non-payment case in 2015, a non-payment case in 2016, a holdover <sup>case</sup> in 2017 and a non-payment case in 2020. Petitioner states that the holdover <sup>case</sup> in 2017 sought unpaid rent and/or use and occupancy and that the proceeding was discontinued by the parties in December 2017. In reply respondent's <sup>atty</sup> states that the 2015 and 2016 non-payment cases were dismissed because petitioner did not appear for court appearance. Respondent's atty also states that the holdover case in 2017 was settled without a money judgment.

Date

Judge, Civil Court

*[Handwritten signature/initials on right margin]*

Civil Court of the City of New York

County of Kings  
Part 1

Index Number 58170/20  
Motion Cal. # \_\_\_\_\_ Motion Seq. # (2)

**DECISION/ORDER**

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

Papers	Numbered
Notice of Motion and Affidavits Annexed.....	<u>1, 2</u>
Order to Show Cause and Affidavits Annexed....	<u>6, 7</u>
Answering Affidavits .....	<u>3-5, 8-12</u>
Replying Affidavits.....	
Exhibits .....	
Other.....	

775 Greene Ave. HD FC  
 Claimant(s)/Plaintiff(s)/Petitioner(s)  
 against  
Aronda Thomas  
John Doe Defendant(s)/Respondent(s)

Upon the foregoing cited papers, the Decision/Order on this Motion is for summary judgment is as follows:

The standard for summary judgment is clearly articulated in CPLR 3212 which provides that summary judgment is appropriate where the movant claims by tender of evidentiary proof sufficient to warrant the court as a matter of law to direct judgment in its favor. Friends of Animals, Inc v. Associated Food Manufacturers, Inc., 46 NY2d 320 [1986]. The evidence must be considered in the light most favorable to the party opposing the motion, and the motion must be denied where conflicting inferences may be drawn from the evidence. Nawacki v. MetLife, 242 AD2d 265, 266 [2nd Dept 1997].

In opposition petitioner offers no explanation for the delay but states <sup>that the delay</sup> is not intentional. Petitioner does state in opposition <sup>that</sup> he sent a text in voice each and every month to respondents.

Date \_\_\_\_\_ Judge, Civil Court \_\_\_\_\_  
 \_\_\_\_\_  
2 of 4

Civil Court of the City of New York

County of Kings  
Part 1

Index Number 58170/20

Motion Cal. # \_\_\_\_\_ Motion Seq. # (2)

DECISION/ORDER

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

Papers	Numbered
Notice of Motion and Affidavits Annexed.....	<del>_____</del>
Order to Show Cause and Affidavits Annexed....	_____
Answering Affidavits .....	_____
Replying Affidavits.....	<del>_____</del>
Exhibits .....	<del>_____</del>
Other.....	_____

775 Greene Ave HDFFC

Claimant(s)/Plaintiff(s)/Petitioner(s)  
against

Janet Thomas  
John De Defendant(s)/Respondent(s)

Upon the foregoing cited papers, the Decision/Order on this Motion to \_\_\_\_\_

is as follows:

and that he did not purposefully delay seeking the collection of the arrears from respondent with the intent to force respondent into a position where she would be unable to pay accumulated arrears in order to secure an eviction against her

On these papers, respondent is granted summary judgment on her laches affirmative defense for the period of May 2016 through December 2019.

The four elements in the defense of laches are present. These elements are: a valid claim by petitioner, a delay asserting a claim without good cause, lack of notice to respondent that petitioner would pursue the claim, and respondent must be prejudiced. The burden now shifts

~~\_\_\_\_\_~~

Date

Judge, Civil Court

3 of 4

Civil Court of the City of New York  
County of Kings  
Part T

Index Number 58170/20  
Motion Cal. # \_\_\_\_\_ Motion Seq. # 2

**DECISION/ORDER**

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

775 Greene Ave HDFC  
Claimant(s)/Plaintiff(s)/Petitioner(s)  
against  
Arunda Thumkis  
Schn Dae Defendant(s)/Respondent(s)

Papers	Numbered
Notice of Motion and Affidavits Annexed.....	_____
Order to Show Cause and Affidavits Annexed....	_____
Answering Affidavits .....	_____
Replying Affidavits.....	_____
Exhibits .....	_____
Other.....	_____

Upon the foregoing cited papers, the Decision/Order on this Motion to \_\_\_\_\_

is as follows:

to petitioner, petitioner can defeat the claim w/ laches by showing a reasonable excuse for the delay. See Kadriguez v. Torres, 1/22/2003 N.Y.L.J. 22, Col.7 (Civ. Ct. Kings Co.) Here, petitioner does not state any reasonable excuse for the delay. Petitioner may seek a non-~~possessory~~ <sup>possessory</sup> judgment for rents due and owing from May 2016 through December 2019. This is without prejudice to seeking additional months/years, at trial, that will result in ~~only~~ a non-possessory judgment only.

The case is restored to the Part T calendar on 7/31/23 @ 11:30

7/12/23  
Date

[Signature]  
Judge, Civil Court  
Hon. Elizabeth Donoghue  
Judge, Housing Court