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Michaelangelo Preserv., LLC v. Burgos

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Michaelangelo Preserv., LLC v Burgos
2022 NY Slip Op 50424(U)
Decided on May 26, 2022
Civil Court Of The City Of New York, Bronx County
Ibrahim, 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This opinion is uncorrected and will not be published in the printed Official Reports.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 May 26, 2022

Civil Court of the City of New York, Bronx County

<p>Michaelangelo Preservation, LLC, Petitioner,</p> <p>against</p> <p>Juana Burgos, Respondent-Tenant, and "J. DOE," Respondent-Undertenant.</p>

L&T Index No. 307013-22

For Petitioner: Gutman, Mintz, Baker & Sonnenfeldt, P.C.

Shorab Ibrahim, J.

The court has reviewed NYSCEF Docs No. 1-4 in reaching its decision on petitioner's motion.

In this non-payment proceeding, the respondents have not answered the petition or otherwise appeared. Pursuant to current administrative requirements, petitioner moves for entry of a default judgment, issuance of a warrant of eviction, and leave to execute on any issued warrant. [\[FN1\]](#)

Upon the respondents' non-appearance, the motion is granted in part and denied in part.

The application is granted as to Juana Burgos to the extent that petitioner may seek a default judgment and issuance of a warrant of eviction at the warrant clerk. Execution of any issued warrant is stayed (10) days. [\[FN2\]](#)

However, the application is denied, and the petition, pursuant to CPLR 409(b), is dismissed as to "J. Doe." [\[FN3\]](#)

CPLR § 1024 allows the naming of an unknown party "by designating so much of his name and identity as is known." Before resorting to a "John Doe" or "Jane Doe" designation, due diligence must be exercised. ([see *Bumpus v New York City Tr. Auth.*, 66 AD3d 26](#), 29, 883 NYS2d 99 [2nd Dept 2009]). In other words, the use of these fictitious names should be a last resort. ([see *Deutsche Bank Nat. Trust Co. V Turner*, 32 Misc 3d 1202\(A\)](#), 3, 2011 NY Slip Op 51153(U) [Civ Ct, Bronx County 2011]). There is nothing in the record attesting to the efforts made to ascertain the alleged unknown occupant's name. ([see *George Tut & Co. v Doe*, 20 Misc 3d 815](#), 820, 862 NYS2d 428 [Civ Ct, Kings County 2008]).

Furthermore, the designation must be used in such a way as to fairly apprise the person that he or she is the designated respondent. ([see *ICD Group Intern. Ltd. v Achidov*, 284 AD2d 244](#), 726 NYS2d 654 [1st Dept 2001]; [RR Reo II, LLC v Omeje](#), 33 Misc 3d 128(A), 2, 2011 NY Slip Op 51848(U) [App Term, 2nd Dept 2011]). An inadequate description is a jurisdictional defect mandating dismissal. ([see *Thas v Dayrich Trading Inc.*, 78 AD3d 1163](#), 1165, 913 NYS2d 269 [2nd Dept 2010]; [Lebowitz v Fieldston Travel Bureau, Inc.](#), 181 AD2d 481, 482, 581 NYS2d 302 [1st Dept 1992]).

The petitioner here resorts to naming a "J. Doe" without any indication that due diligence was exercised. No identifying information is provided, not even a "John" or "Jane" is specified. Any investigation to ascertain the purported unknown occupant's actual identity should reveal, at a minimum, their sex. These errors cannot be excused, particularly when no one appears to defend the suit. ([see e.g., *Mia Terra Realty Corp. V Sloan*, 57 Misc 3d 141\(A\)](#), 1, 2017 NY Slip Op 51360(U) [App Term, 1st Dept 2017] (No prejudice in John Doe designation where person answers petition and defends on the merits); [see also. *66 Fort Washington Associates, LLC v Acevedo*, 69 Misc 3d 134](#)(A), 1, 2020 NY Slip Op 51270(U) [App Term, 1st Dept 2020]).

The use of "J. Doe" here appears to be a hedge against running afoul of RPAPL § 749,

which limits evictions to "all persons named in the proceeding." The CPLR and case law is clear that such use of fictitious names is improper, and this court will not sanction the ruse.

The court that notes this habitual improper use of "J. Doe" in at least thirty-seven (37) cases on its calendar just this week, each commenced by the same law firm.[\[FN4\]](#)

Consequently, judgment shall enter dismissing the petition as to "J. Doe."

This constitutes the Decision and Order of the court. It will be posted to NYSCEF and emailed to the parties.

Dated: May 26, 2022

SO ORDERED,

Bronx, NY

/S/

SHORAB IBRAHIM, JHC

Footnotes

Footnote 1: See Civil Court of the City of New York Directives & Procedures 222 (DRP-222).

Footnote 2: The earliest execution date is June 7, 2022

Footnote 3: CPLR § 409(b) requires a summary determination be made whenever no triable issues of fact are raised, regardless of the posture of the proceeding. (*see Torres v Sedgwick Avenue Dignity Developers LLC, 74 Misc 3d 1209*[A], 2, 2022 NY Slip Op 50085[U] [Civ Ct, Bronx County 2022]).

Footnote 4: In order of appearance on the week of May 23, 2022: Index # 308866/22; 308323/22; 308242/22; 308305/22; 308316/22; 308862/22; 308152/22; 308320/22; 308692/22; 308678/22; 308724/22; 308145/22; 308147/22; 308542/22; 308156/22; 307013/22*; 302815/22; 305109/22; 308308/22; 308430/22; 308441/22; 308483/22; 308488/22; 308397/22; 308236/22; 308865/22; 308270/22; 308299/22; 308404/22; 308407/22; 308263/22; 308673/22; 308153/22; 308372/22; 304607/22; 308385/22; 307020/22.

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