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Serlin Bldg. L.P. v. Little

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Serlin Bldg. L.P. v Little
2020 NY Slip Op 50124(U) [66 Misc 3d 1219(A)]
Decided on February 5, 2020
Civil Court Of The City Of New York, Kings County
Gonzales, J.
Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431.
As corrected in part through February 10, 2020; it will not be published in the printed Official Reports.

Decided on February 5, 2020

Civil Court of the City of New York, Kings County

<p>Serlin Building Limited Partnership, Petitioner</p> <p>against</p> <p>Joan Little, Lovell Green, Jerome Little, "John Doe," "Jane Doe," Respondents.</p>
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61523/19

Petitioner's attorney: James Kasdon, Esq., Law Office of James Kasdon

Respondent's attorney: Samy Dorgham, Mobilization for Justice

Cheryl J. Gonzales, J.

Petitioner commenced this non-payment proceeding on March 29, 2019. Respondent, Joan Little, appeared pro se and interposed an answer asserting a general denial. Subsequently, respondent retained counsel and moved for leave to file an amended answer. The motion was granted in an order dated November 15, 2019. The matter was then set down for traverse on the rent demand and trial.

At the traverse hearing, petitioner's process server, Johnson Nazaire, who has been employed by Zellner Wood Process Serving Agency for the past six years, testified that he visited the subject building on March 15, 2019 at 9:53 am, took a photograph of the building and then rang respondent's buzzer and a few other buzzers to gain access to the building. After being buzzed into the building, Mr. Nazaire went upstairs and knocked on respondent's door. A gentleman opened the door and responded affirmatively to Mr. Nazaire's inquiry as to whether he lived in the apartment. The gentleman also stated that his name was Jerome Little, and Joan Little was not at home. Mr. Nazaire testified that he explained the documents to the gentleman and gave the documents to him. Mr. Nazaire then entered the gentleman's description into an app on his mobile phone and uploaded the information and photograph to Independent Server. This was the only service Mr. Nazaire attempted at the subject building that day, and he made the relevant entries into his logbook when he returned to his vehicle. Later that day, Mr. Nazaire mailed two copies of the papers to Ms. Little, one by certified mail and one by regular mail. Respondent, Joan Little was the only person named on the rent demand.

Mr. Nazaire also testified that he could not locate his logbook, which he kept in his car, and he last saw the logbook on December 20, 2019. Mr. Nazaire only had scanned copies of the relevant pages [*2] from his log book that he obtained from his agency.

On cross-examination, Mr. Nazaire testified that he could not recall how many buzzers he rang to gain access to the building and he did not know if he was buzzed into the building or if someone opened the door for him. Further, Mr. Nazaire stated that he could not recall this service without his records and he could not recall if he knocked on respondent's door or rang a bell at respondent's door. Mr. Nazaire acknowledged that he did not take his logbook into the building with him, and testified that he sometimes enters the information on services that he completes when he returns to his vehicle and sometimes when he gets home after 10 pm.

Respondent, Joan Little, testified that she has lived in the subject apartment since 2007 with her twenty five year old son, Lavelle Little. According to Ms. Little, on March 15, 2019, she left the apartment with her son at approximately 8:00 am to visit the Department of Education office at 55 Hanson Place to register her son, who is disabled, for vocational classes. Ms. Little testified that she works until 11:00 pm and her son stays with a caregiver until she returns home at approximately 12:00 am. Further, Ms. Little testified that her brother, Jerome Little, passed away on June 3, 2003 and produced a death certificate which states that information. Ms. Little added that her brother never lived with her, and there was

no one in the apartment with the description given on Mr. Nazaire's affidavit of service. Ms. Little described the buzzers for the building as being on the left side of the first entrance door which is locked. There is also a second entrance door which is locked and entry to both doors can only be obtained with a key or by the buzzer. The buzzer releases both doors, and must be held long enough for a person to enter both doors. Ms. Little testified that she does not receive visitors or packages and as far as she knows, the buzzer works. In addition, Ms. Little stated that besides her, no one except her son, who has a key to the bottom lock of the apartment door, has keys to the apartment.

Petitioner bears the burden of proving by a preponderance of the evidence that service was properly effectuated, ([Aurora Loan Services, LLC v Revivo](#) , 175 AD3d 622 [2nd Dept 2019]). In traverse hearings, the credibility of the process server is critical to issue of service. GBL sec 89cc(1) and 6 RCNY sec 2-233 (a) require process servers to keep detailed precise records, and 22 NYCRR sec.208.29 requires a process server to bring all records related to service at issue to court for the traverse hearing.

The process server, Mr. Nazaire, produced copies of two pages of his logbook to court and testified that he could not find his logbook. Therefore, it is not possible to assess if Mr. Nazaire maintained his records in a bound paginated volume as required under 6 RCNY sec2-233(b)(1). Further, 6 RCNY sec 2-233a requires process servers to maintain records in an electronic format as required under NYC Administrative Code sec 20-406.3 by scanning the records contained in the bound volume into an image file with the date of service recorded in the bound volume and the process server's license number. In addition, the scanned image must be date and time stamped with the date and time the image was created (6 RCNY 2-233a(1)(i)). Mr. Nazaire's scanned copies contain none of the information required under this section.

There is a " clear regulatory mandate that [t]he licensee shall at all times strictly and promptly adhere to all laws, rules, regulations and requirements*** relating to the conduct of licensees and the service of process in the State of New York (New York City Department of Consumer Affairs, reg IV)"; *Matter of Barr v Dept. of Consumer Affairs*, 70 NY2d 821 [1987]. The record keeping details are especially important when there is doubt about the identity of the person who was served (see, Siegel NY Practice sec 79). Petitioner's process server has no independent recollection of the facts of service on respondent and his records fail to comply with the requirements under the aforementioned regulations. Further, respondent's testimony that Jerome Little has been deceased since 2003 and no one of that [*3]description resides in the apartment raises questions of fact about the propriety of the

service which petitioner failed to rebut based on the unreliable records produced by the process server.

Based on the foregoing, traverse is sustained, and the petition is dismissed.

Date: February 5, 2020

Cheryl J. Gonzales, JHC

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