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### Hofgur LLC d/b/a Queens Adult Care Facility v. Klubek

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Civil Court of the City of New York  
County of Queens: Housing Part P  
Hofgur LLC d/b/a Queens Adult Care Facility  
Petitioner

-against-  
Petitioner

QL&T# 52681/19  
Decision/Order

Deborah Klubek  
Respondent

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

Notice of Motion and Affidavits Annexed.....	1
Opposition to Motion/Cross Motion .....	2
Reply to Motion/Opposition to Cross Motion .....	3
Reply to Cross Motion.....	4
Exhibits.....	
Other.....	

Upon the foregoing cited papers, the Decision/Order on the motions to dismiss, cross motion to conform the pleadings, accept a late filing of an Affidavit of Service of the Notice of Petition and Petition Holdover, amend the Petition to reflect the current room Respondent is occupying, and amend the petition to substitute “resident” in place of “tenant”, and , cross-cross motion to dismiss is as follows:

In this holdover proceeding, both sides are represented by counsel. A Guardian ad Litem has been appointed for Respondent. While both sides seek relief on many grounds, the Court need only address one.

When the proceeding commenced, Respondent occupied part of Room A324. During the course of this proceeding, Respondent has been moved to other rooms at the facility at least nine (9) other times. These moves were at the request of Respondent’s roommates and with Respondent’s consent. However, regardless of what room she currently occupies, it is not the room listed on the Predicate Notice or Notice of Petition and Petition Holdover.

A proper description of the premises, that is the center of the proceeding, is required under RPAPL §741(3). MSG Pomp Corp. v. Doe, 185 AD 2d 798,800, 586 NYS 2d 965(1st Dep’t. 1992) To satisfy the statutory requirement, the petition must accurately describe the exact location of the premises in sufficient detail to allow a marshal executing a warrant to locate the premise in issue and effect an eviction without

additional information. Sixth St. Community Ctr, Inc.v Episcopal Social Services, 19 Misc 3d 1143(A), 867 NYS 2d 20 (NY Co. 2008) Failure to provide a proper description renders the proceeding defective, requiring dismissal. Clarke v. Wallace Oil Co., 284 Ad2d 492, 727 NYS 2d 139 (2<sup>nd</sup> Dept. 2001)

It is clear that when the proceeding commenced, the description was correct. However, as of the date the matter was sent for trial, that description was no longer accurate. Respondent has another bed in another room at the facility. As was held in Papacostopulos v. Morrelli, 122 Misc 2d 938, 939, 472 NYS 2d 284 (Civ Ct Kings Co, 1984), the description of the premises sought to be recovered “affects the very essence of the proceeding”. One need only look back to MSG Pomp, supra. to understand that summary proceedings are creatures of statute and require strict compliance with the statutory requirements to give the court jurisdiction.

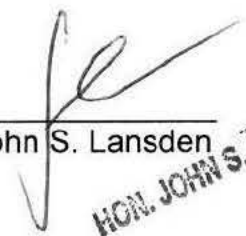
This is not a mis-description of the premises. This is not a scrivener’s error. Respondent has no ability to exercise and control and dominion over the premises sought to be recovered because Petitioner moved her not just once, but many times. Petitioner has ended Respondent’s relationship to the premises sought to be recovered in the predicate notice even though possession of the premises sought to be recovered is at the heart of every landlord tenant.

Petitioner opined that since the description was correct at the start of this proceeding, it should be permitted to continue with the trial and potentially obtain a judgment and warrant for the original premises. Then, in order to properly evict Respondent, Petitioner would require the current occupants to relocate and move Respondent back into the subject premises in time to be evicted. This “three card monty” approach to evictions does not pass the “smell test”.

Based on the foregoing, the proceeding is dismissed. The Court declines to rule on any other issues. The motion, cross motion and cross cross motion are granted/denied to this extent.

This constitutes the decision and order of the Court.

Dated: November 19, 2020  
Queens, New York

  
Hon. John S. Lansden  
**HON. JOHN S. LANSDEN**