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2023-10-02

### WANG v. YELVERTON

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CIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF KINGS: HOUSING PART E

-----X

SHUMING WANG

Petitioner,

Index No: LT-054358-20/KI

-against-

DECISION/ORDER

FLORENCE YELVERTON, JOHN DOE, and  
JANE DOE

Respondents.

-----X

Present

Shantonu J. Basu, JHC

Recitation pursuant to CPLR § 2219(a):

**PAPERS**

**NUMBERED**

Notice of Motion & Affirmation/Affirmation & Exhibits Annexed....	<u>1. NYSCEF # 7-17</u>
Answering Affidavit.....	<u>2. NYSCEF # 18</u>
Affirmation in Reply.....	<u>3. NYSCEF # 19</u>

For the reasons stated below, Respondent’s motion for summary judgment is granted and the proceeding is dismissed.

**FACTUAL AND PROCEDURAL BACKGROUND**

Petitioner commenced the instant holdover proceeding by service of a 90-day notice of termination. The petition alleges that the subject premises is unregulated.

It is undisputed that Respondent receives a Section 8 subsidy administered by the New York City Department of Housing Preservation and Development (“HPD”).

Petitioner acknowledges that it failed to notify HPD prior to the commencement of this proceeding. Instead of notifying HPD, Petitioner notified NYCHA.

In addition, it is undisputed that Petitioner served Respondent with a new lease offer after the commencement of this proceeding.

Respondent has moved for summary judgment.

## LEGAL ANALYSIS

Courts should only grant motions for summary judgment motion when it is clear that there is no triable issue of material fact (CPLR § 3212; *Fernandez v Jones*, 76 Misc 3d 861, 867 [Civ Ct Bronx County 2022]).

If the movant meets the burden of showing entitlement to judgment as a matter of law burden, the opposing party must demonstrate that there is an issue requiring trial (*Zuckerman v City of New York*, 49 N.Y.2d 557, 560 [1980]; *c.f. Realty v Zilelian*, 137 A.D.3d 742, 743 [2d Dept 2016] [holding that if the movant fails to meet its burden, courts must deny the motion even when the motion is unopposed]).

However, neither the shadowy semblance of an issue nor bald conclusory assertions are sufficient to defeat a motion for summary judgment. (*S. J. Capelin Assocs. v Globe Mfg. Corp.*, 34 N.Y.2d 338, 341 [1974]; *Gelb v Bucknell Press, Inc.*, 69 A.D.2d 829, 830 [2d Dept 1979]).

In the instant case the key facts are undisputed.

Petitioner sent Respondent a renewal lease offer in April of 2023 and did not notify HPD of this proceeding. HPD administers Respondent's Section 8 subsidy.

Respondent has moved for summary judgment on the basis that the renewal lease offer vitiated the predicate notice and that Petitioner needed to notify HPD of the instant proceeding.

The court will address each point in turn.

*a. Did the renewal lease offer vitiate the predicate notice?*

If a landlord serves a tenant with a renewal lease offer, the offer will often vitiate a notice of termination (*see, e.g., Realty Co. v Wachtel*, 139 Misc 2d 965 [Civ Ct Queens County 1988]).

There are situations where the rent regulatory laws require a landlord to serve a renewal lease. These lease offers, which are made solely because of a legal obligation to make an offer, do not always vitiate notices of termination. In other words, since the rent regulatory laws require landlords to serve renewal leases, a renewal offer will not vitiate a predicate notice in every type of holdover.

For that reason, the issue of vitiation depends on several factors. These factors include the intention of the landlord, whether the landlord was legally obligated to serve a renewal lease, and the type of holdover the landlord is pursuing since even inadvertent lease offers

will vitiate the predicate notices of certain types of holdovers (*see, e.g., Coleman v Dabrowski*, 163 Misc 2d 763 [App Term 1st Dept 1994] [requiring that courts look to the intention of the landlords in some situations]; *see, generally, 123 W. 15, LLC v Lafayette Compton*, 4 Misc 3d 138[A], 2004 NY Slip Op 50938[U] [App Term 1st Dept 2004]).<sup>1</sup>

However, as Respondent's attorney correctly argues, there is no rule or regulation that requires Petitioner to serve a new lease. Petitioner brought an end-of-lease holdover. Petitioner alleges that the subject premises are unregulated. Therefore, Petitioner was under no obligation to offer Respondent a new lease.

Where a landlord is not under an obligation to serve a new lease, but does so anyway, the offer will usually serve to vitiate any prior predicate notice (*see, e.g., Stepping Stones Assoc. v Seymour*, 8 Misc 3d 138[A], 2005 NY Slip Op 51309[U] [App Term 2d Dept 2005] [observing that a landlord was not entitled to dispossess a tenant because, in part, when the landlord "offered and executed the renewal lease, it was under no legal compulsion to do so"]; *see also Related Broadway Dev LLC v Malo*, 58 Misc 3d 154[A] 2018 NY Slip Op 50175[U], \*2 [App Term 1st Dept 2018] ["In these circumstances, tenant's current right of possession flows from the binding renewal lease, and therefore, tenant cannot be dispossessed pursuant to the prior final judgment."]).

Petitioner offered a new lease to Respondent. This much is clear because Petitioner's affidavit does not dispute that there was an offer, but rather points to the fact that the offer was not signed. Petitioner's argument is that there is no binding contract because Respondent has not signed the lease offer (NYSCEF # 18, ¶ 2).

While that may be so, the offer alone was sufficient to vitiate the predicate notice. Respondent avers that she was "surprised" to learn that, after receiving a new lease offer, Petitioner still wanted to maintain the instant eviction proceeding (NYSCEF # 9, ¶ 6).

Since the lease offer would cause a reasonable person to doubt the finality of the notice of termination, and in fact the offer caused Respondent to doubt the notice's finality, the notice of termination is a nullity. Thus, Respondent's motion for summary judgment is granted on this basis.

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<sup>1</sup> Regardless of a landlord's intentions, a lease offer will vitiate a *Golub* notice. *See Isaly-Liceaga v Pickarski*, 63 Misc 3d 15([A], 2019 NY Slip Op 50802(U) (App Term 2019) (owner's use); *Levin as Tr. for Goldstein v Brust*, – Misc 3d –, 2023 NY Slip Op 23287, 1 (App Term 1st Dept 2023) (nonprimary residence).

b. Was the failure to notify HPD a fatal defect?

Although this court need not reach the merits of Respondent’s other arguments, the court finds that even if the lease offer had been insufficient to vitiate the predicate notice, Respondent would still be entitled to summary judgment.

Petitioner admits to having failed to notify HPD of the instant proceeding.

Contrary to Petitioner’s affidavit (NYSCEF # 18, ¶ 1), HPD needs to be notified of an eviction proceeding.

Service on a Section 8 administrator is an essential element of Petitioner’s *prima facie* case (433 W. Assoc. v Murdock, 276 A.D.2d 360 [1st Dept 2000]). This is true whether the administrator is NYCHA, HPD, DHCR, CVR or any other Public Housing Authority or administrator.

Confusion sometimes arises because of the *Williams Consent Decree* (*Williams v New York City Hous. Auth.*, 81 Civ 1801 [SDNY 1995]).

*Williams* mandates that NYCHA – but not other Section 8 administrators – be served in specific ways.

HPD and other Section 8 administrators do not need to be served by any particular method, nor does proof of service on those administrators have to be filed in compliance with the complex requirements of *Williams*.<sup>2</sup> But the fact that *Williams* is only applicable to NYCHA does not absolve landlords from the requirement of notifying HPD of an eviction proceeding.<sup>3</sup>

The language of the Code of Federal Regulations is not figurative. In relevant part, it states that “[t]he owner must give the [Section 8 administrator] a copy of any owner eviction notice to the tenant” and defines “eviction notice” as “a complaint or other initial pleading used under State or local law to commence an eviction action” (24 CFR § 982.310[e][2]).

Courts have consistently dismissed proceedings where landlords do not follow these regulations.

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<sup>2</sup> For an example of these elaborate, perhaps even byzantine, service requirements see *Alawlaqi v Kelly*, 175 Misc 2d 570, 571 (Civ Ct Kings County 1997).

<sup>3</sup> For an instance of this sort of confusion see *1068 Gerard Partnership L.P. v Laroche*, 76 Misc 3d 1227(A), 2022 NY Slip Op 51062(U) (Civ Ct Bronx County 2022) (observing that the landlord’s position was that there was no need to serve HPD).

For example in *Renaissance HDFC v Vega* the Honorable Stanley faced a situation similar to the one at bar and ruled that:

[I]t is undisputed that petitioner is a recipient of a Section 8 subsidy pursuant to a Housing Assistance Payment contract between petitioner and HPD. Section 982.310(e)(2)(ii) of Title 24 states that [t]he owner must give the PHA a copy of any owner eviction notice to the tenant. An owner eviction notice is defined as a notice to vacate, or a complaint or other initial pleading used under State or local law to commence an eviction action. This federal law mandates that petitioner must give notice to HPD as the PHA prior to commencement of this action. (*FAC Renaissance HDFC v Vega*, 55 Misc 3d 1210[A], 2017 NY Slip Op 50480[U], \* 2 [Civ Ct Kings County 2017] [internal quotation marks omitted]).

Since the petitioner in *FAC Renaissance HDFC v Vega* failed to serve HPD, Judge Stanley dismissed the proceeding.

The reasoning in *FAC Renaissance HDFC v Vega* has been followed by many other courts (*see 1068 Gerard Partnership L.P. v Laroche*, 76 Misc 3d 1227[A], 2022 NY Slip Op 51062[U] [Civ Ct Bronx County 2022] [“Petitioner’s failure to notify [HPD] of this eviction proceeding is also fatal.”]; *see also Clinton-178 Towers LLC v Chapple*, 58 Misc 3d 198, 202 [Civ Ct Bronx County 2017] [noting that failure to give notice to the Section 8 administrator is a defense “which, if proved at trial or on a motion to dismiss or for summary judgment, could result in the dismissal of the proceeding” but finding that DHCR was in fact served]; *Grote St. Apartments, LP v Philip*, 2023 NY Slip Op 30755[U], \* 2 [Civ Ct Bronx County 2023] [“Failure to notify HPD is a fatal defect to a summary eviction proceeding.”]; *Bennett v Brooks*, 73 Misc 3d 1206[A], 2021 NY Slip Op 50943[U] [City Ct Mt. Vernon 2021] [dismissing a petition for failure to serve CVR, which is a Section 8 administrator in Westchester County]).

Therefore, even if the lease renewal offer had not vitiated the predicate notice, Petitioner’s failure to notify HPD of the instant proceeding would be fatal.

#### CONCLUSION

For the reasons stated above, service of a renewal lease vitiated the predicate notice and Petitioner’s failure to notify HPD of this proceeding was a fatal defect.

Thus, Respondent’s motion for summary judgment is granted, and this proceeding is dismissed.

This constitutes the decision/order of this court.



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Hon. Shantonu J. Basu, JHC

Dated:           October 2, 2023  
                    Brooklyn, NY