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2023-12-19

1900 CAPITAL TRUST II v. JOHNSON

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Civil Court of the City of New York
County of Richmond

Index # **LT-301284 and 5-23/RI**

1900 CAPITAL TRUST II, BY US BANK TRUST
NATIONAL
ASSOCIATION, NOT IN ITS INDIVIDUAL CAPACITY
BUT SOLELY AS
CERTIFICATE TRUSTEE

Decision / Order

Petitioner(s)

-against-

Rehan N. Khawaja AS ADMINISTRATOR AD LITEM FOR
THE ESTATE OF
CARRIE MAE JOHNSON; Silas Johnson; Annie Lue
Johnson; Lillie
Johnson Alexander; Sarah Johnson Terry; Isaiah
Johnson;
James W. Johnson; Valerie Dudley Outlaw; John
Solis; Janine
Kittel; "John" "Doe"; "Jane" "Doe"

Respondent(s)

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

| Papers | Numbered |
|--|----------|
| Order to show Cause/ Notice of Motion and Affidavits /Affirmations annexed | 21-37 |
| Answering Affidavits/ Affirmations | _____ |
| Reply Affidavits/ Affirmations | _____ |
| Memoranda of Law | _____ |
| Other | _____ |

For purposes of this decision index numbers 301284 and 301285/23 are consolidated as they present the same arguments in favor of dismissal and require the same analysis. Both petitions were commenced post foreclosure and each recites that it is brought pursuant to RPAPL 713 “(post foreclosure action; no landlord tenant relationship and no money is being sought from occupants)” (NYSCEF 1).

RPAPL 713 provides: [a] special proceeding may be maintained under this article after a ten-day notice to quit has been served upon the respondent in the manner prescribed in RPAPL 735, upon the following grounds: (5) Subject to *the rights and obligations set forth in section 1305* of this chapter, the property has been sold in foreclosure and either the deed delivered pursuant to such sale, or a copy of such deed, certified as provided in the civil practice laws and rules, has been exhibited to him.”

Here, despite the various arguments made by respondents the only arguments that needs to be addressed to resolve this motion relates to service of the termination notice pursuant to RPAPL Section 713, the statute under which this petition is assertedly commenced (See petition, NYSCEF 1, paragraph 7). This statute unambiguously requires the service of a notice in compliance with Section 735 and, as

there is no pretense or suggestion that such service was made, the notices that were served do not support these petitions and they are accordingly dismissed.

RPAPL 735 provides as relevant:

“Service of the notice of petition and petition *shall* be made by personally delivering them to the respondent; or by delivering to and leaving personally with a person of suitable age and discretion who resides or is employed at the property sought to be recovered, a copy of the notice of petition and petition, if upon reasonable application admittance can be obtained and such person found who will receive it; or if admittance cannot be obtained and such person found, by affixing a copy of the notice and petition upon a conspicuous part of the property sought to be recovered or placing a copy under the entrance door of such premises; and in addition, within one day after such delivering to such suitable person or such affixing or placement, by mailing to the respondent both by registered or certified mail and by regular first class mail, (a) if a natural person, as follows: at the property sought to be recovered, and if such property is not the place of residence of such person and if the petitioner shall have written information of the residence address of such person, at the last residence address as to which the petitioner has such information, or if the petitioner shall have no such information, but shall have written information of the place of business or employment of such person, to the last business or employment address as to which the petitioner has such information...”

While petitioner argues that respondent has waived her objections to service by the filing of a notice of appearance by their attorney, this court disagrees. At the first conference on this matter the respondent requested a motion schedule which this court routinely denies, instructing the parties instead to make the motion prior to or at a date of trial which is then assigned. This was timely done. For further elaboration on this point this court adopts the analysis in respondent’s reply at paragraphs 4-7 passim.

The remaining issues are rendered moot by the foregoing.



Kimberly Sleds
Judge, Housing Court