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### Mazal Grafton BH LLC v. Power

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#### Recommended Citation

"Mazal Grafton BH LLC v. Power" (2023). *All Decisions*. 1333.  
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[\*1]

<b>Mazal Grafton BH LLC v Power</b>
2023 NY Slip Op 51275(U) [81 Misc 3d 1206(A)]
Decided on November 24, 2023
Civil Court Of The City Of New York, Kings County
Weisberg, J.
Published by <a href="#">New York State Law Reporting Bureau</a> pursuant to Judiciary Law § 431.
This opinion is uncorrected and will not be published in the printed Official Reports.

Decided on November 24, 2023

Civil Court of the City of New York, Kings County

<p><b>Mazal Grafton BH LLC, Petitioner,</b></p> <p><b>against</b></p> <p><b>Mary Power et al., Respondents.</b></p>
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Index No. 320242/22 and 320243/22

Michael L. Weisberg, J.

These are two summary eviction proceedings predicated on a notice of termination served over 90 days before its expiration. The proceedings concern the first-floor apartment and basement, respectively, and were tried jointly. They are consolidated for disposition herein. Although there is no question that Respondents' occupancy is not subject to any form of rent regulation, and although Petitioner served the maximal notice (90 days) that could be required under the Real Property Law and Real Property Actions and Proceedings Law, Petitioner has failed to prove that Respondents are in occupancy pursuant to an agreement, or are squatters, or are licensees/assignees/sublessees, as alleged in the petition.

## FINDINGS OF FACT

A preponderance of the credible evidence establishes the following facts:

The subject building contains two "class A" apartments and a basement. It is registered with the Department of Housing Preservation and Development. Mary Power and Earl Power occupy the first-apartment and the basement.

The building used to be owned by Earl Power. A judgment of foreclosure and sale was issued April 3, 2019 in the foreclosure action *Freedom Mortgage Corp. v Earl P. Power, et al.*, index no. 518591/2016 (Kings County). Pursuant to that judgment a foreclosure sale was held at which Petitioner Mazal Grafton BH, LLC was the highest bidder and Petitioner thus obtained title by referee's deed dated January 29, 2020. By deed dated November 6, 2020, Petitioner transfer titled to Alexandra Miller, with Miller signing as both "authorized signatory" for Petitioner and as the buyer. A few months later, by deed dated January 15, 2021, Miller transferred title back to Petitioner, against with Miller signing for buyer and seller.

In May 2022, Petitioner served a notice of termination by "nail and mail" service on Respondents. The text of the notice, in pertinent part, is reproduced below. The allegations are [\*2]reproduced in the petition.

Please take notice, that pursuant to RPAPL and other applicable law, you have obtained possession of the subject premises by virtue of either a written lease agreement, an oral month to month rental agreement, or a month to month rental agreement created by operation of law, and your tenancy at the above referenced subject premises is hereby terminated effective August 31, 2022 upon the grounds that your Landlord seeks to termination (sic) your month to month tenancy; or you are occupying the subject premises without the consent of the landlord, you have squatted upon the subject premises, and/or have obtained an assignment, license, or sublease without the consent of the landlord.

Please taken further notice, the current landlord purchased the subject property on or about December 5, 2019 out of foreclosure, and the current landlord has been unable to determine how the current occupants came into possession.

The petitions herein do not allege which provision or provisions of the law Petitioner is proceeding under. The predicate notices of termination allege "pursuant to RPAPL and other applicable law ...." At closing argument, in response to the court's questioning, Petitioner claimed that the proceedings were commenced under RPAPL 711: "grounds where landlord-tenant relationship exists."

DISCUSSION

A petitioner in a summary eviction proceeding is only entitled to judgment if it has proved all the elements of its cause of action ([1646 Union, LLC v Simpson, 62 Misc 3d 142](#)[A], 2019 NY Slip Op 50089[U] [App Term, 2d Dept, 2d, 11th & 13th Jud Dists 2019]). So where the petition alleged that an occupant was a squatter who had entered into possession without permission and that he had a license to occupy the premises that had expired, the Appellate Term reversed judgment for the petitioner where "it failed to demonstrate at trial that occupant was in possession either as a squatter or a licensee" ([130-50 228th, LLC v Moseley, 77 Misc 3d 139](#)[A], 2022 NY Slip Op 51372[U] [App Term, 2d Dept, 2d, 11th & 13th Jud Dists 2022] [internal citations omitted]).

Similarly, the court reversed judgment for the petitioner where the petition alleged that the petitioner's mother "entered into possession under an oral agreement made between occupant and petitioner wherein occupant agreed to hold the premises at the will of petitioner" but the petitioner had failed to introduce any evidence of such an agreement ([Pugliese v Pugliese, 51 Misc 3d 140](#)[A], 2016 NY Slip Op 50614[U] [App Term, 2d Dept, 2d, 11th & 13th Jud Dists 2016]; *see also* [Hecsomar Realty Corp. v Camerena, 62 Misc 3d 143](#)[A], 2019 NY Slip Op 50115[U] [App Term, 1st Dept 2019] [affirming dismissal where petition alleged that the occupant was a licensee of the deceased tenant of record, but all of the petitioner's evidence showed that the occupant had not moved into the apartment until after the tenant died]).

In none of the above cases was there any question of rent regulation that would have entitled the occupant to continued occupancy. That is, it wasn't a matter of alleging cause for eviction. Nor was it a matter of having given less notice than was required. In *Pugliese*, termination of a tenancy at will would have required service of a thirty-day termination notice (RPL § 228). Pre-enactment of the Housing Stability and Tenant Protection Act of 2019, thirty days was the maximum notice required for termination of an unregulated tenancy and longer than any time required under RPAPL § 713. In *Hecsomar*, whether the occupant was a licensee or a squatter, they would have been entitled to only ten days notice. In other words, the issue was [\*3] not the length of notice given, it was that the petitioner had not proved what it alleged.

Here, Petitioner alleges various theories of Respondents' occupancy of the premises, but it proved none of them. It neither proved that Respondents obtained possession by virtue of any kind of rental agreement, that it was squatting in the premises, nor any facts regarding an alleged sublet, license, or assignment.

Nor does the petition comply with the requirement of RPAPL 741 to provide sufficient facts upon which the proceeding is based ([see 582 Gates, LLC v Farmer, 65 Misc 3d 156\[A\]](#), 2019 NY Slip Op 51959[U] [App Term, 2d Dept, 2d, 11th & 13th Jud Dists 2019]). In *Farmer*, the respondent was the former owner of the property. The Appellate Term reversed the lower court's decision after trial and dismissed the petition, finding that "the petition and the notice to quit merely allege that occupant was a 'prior owner,' which in conjunction with petitioner's failure to specify a particular section of RPAPL, fails to sufficiently allege a ground upon which the proceeding may be maintained" (*id.*). The petition here is similarly defective.

## CONCLUSION

Accordingly, it is ORDERED that judgment shall enter in favor of Respondents dismissing the petition.

This is the court's decision and order.

Dated: November 24, 2023  
Michael L. Weisberg, JHC

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