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2023-10-25

### HILLSIDE PARK 168 LLC v. ZEPEDA

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CIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF QUEENS: HOUSING PART: SMALL PROPERTY PART

HILLSIDE PARK 168 LLC

PETITIONER,

Index No. L&T 55575-20

- against -

ALMA G. ZEPEDA  
JESSICA MICHELLE ZEPEDA  
"JOHN DOE" & "JANE DOE"  
RESPONDENTS.

SUBJECT PREMISES: 88-15 168<sup>TH</sup> ST., APT. 4C  
JAMAICA, NY 11432

Present: Hon. David J. Bryan  
Judge, Housing Court

-----X  
Petitioner is represented by: Jaypreet Singh Sahni, Esq.

Respondent is represented by: Queens Legal Services

-----X

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

-----X

**Papers**

Petitioner's Notice of Motion, Affirmation, Affidavit, Exhibits	1
Respondent's Cross-Motion, Affirmation, Exhibits	2
Petitioner's Opposition, Reply	3
Respondent's Reply	4

-----X

After argument on the motion, the Court decides as follows:

For purposes of efficiency, the petitioner's cross-motion is designated here as the original motion of the series since it appears the respondent filed two motions for the same relief, the first of which (filed 12/27/22) was not decided. As such, the first motion is denied as moot, and the Court will proceed with the second motion filed on 2/27/23, considering it a cross-motion to the petitioner's motion.

Petitioner moves this Court for an Order requiring respondent Jessica Michelle Zepeda to pay post-litigation rent and use and occupancy commencing August 2020. Respondent cross-moves for dismissal of the proceeding pursuant to CPLR §3211(A)(7) for failing to state a cause of action. Specifically, the respondent argues that since she vacated the subject premises in February 2023, the petitioner's claim for rent/use & occupancy is moot. Respondent also notes that there is no current lease between her and the petitioner. The Petitioner does not dispute that the respondent has vacated the premises but claims she is still liable for past, present, and ongoing rent since the premises have not been returned to them. Other occupants remained on


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the premises who have not surrendered possession. Petitioner also submits a current lease, purportedly including the respondent's signature, that expires in June of 2024.

The Appellate Term, Second Department has recently held that the issuance of a money judgment in a summary proceeding is prohibited when there is no concomitant award of possession to the landlord. *Felsenfeld v. Rogers*, 77 Misc3d 128(A), 2022 NY Slip Op 51143(U). Petitioner's argument that the case at bar is distinguishable from *Felsenfeld* because they have not received possession after respondent's surrender is unavailing. Petitioner is not precluded from seeking monies due pursuant to the contract between the parties in a plenary action, nor are they prohibited from re-gaining possession through the application of a default warrant against any remaining respondents. However, the respondent no longer resides in the premises, and thus, a summary proceeding does not lie against her since they cannot get an award of possession against her. Notably, *Felsenfeld* cites *Javaherforoush v. Sherrard*, 74 Misc3d 137[A], which affirms that a money judgment was improper without a concomitant award of possession against the movant who had vacated while allowing the judgment to stand against another respondent who didn't appear.

Accordingly, the petitioner's motion is denied. Respondent's cross-motion is granted to the extent the petition is dismissed against Jessica Michelle Zepeda only. The petitioner may apply for a default warrant against the remaining respondents.

Date: October 25, 2023

  
David J. Bryan,  
Housing Judge, Civil Court