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[*1]

Borinquen Rlty LLC v Cruz
2024 NY Slip Op 50479(U) [82 Misc 3d 1235(A)]
Decided on March 4, 2024
Civil Court Of The City Of New York, Bronx County
Gurung, J.
Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431.
This opinion is uncorrected and will not be published in the printed Official Reports.

Decided on March 4, 2024

Civil Court of the City of New York, Bronx County

Borinquen Rlty LLC, Petitioner-Landlord,

against

**Jennifer Cruz, Joseph Isarro a/k/a Joseph Pizarro,
"John" "Doe," "Jane" "Doe," Respondents-Occupants.**

Index No. L&T-330713-23/BX

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Rina Gurung, J.

Recitation, as required by CPLR §2219(a), of the papers considered in the review of respondent's motion:

Papers Numbered [FN1](#)

Respondent's Notice of Motion, Affirmation of Support,
Memo of Law, and Exhibits 10-20

Petitioner's Affirmation or Affidavit in Opposition, and Exhibits 22-25

Respondent's Affirmation in Reply 28

Court File Passim

Upon the foregoing cited papers, the Decision and Order on this motion is as follows:

This is respondent, Jennifer Cruz's ("respondent") motion to (i) dismiss the underlying holdover proceeding pursuant to CPLR §3211(a)(5), CPLR §5013, and RPAPL §713(7) and (ii) in the alternative, extend respondent's time to serve an answer until ten days after service of notice of entry of the order disposing this motion. For the reasons stated *infra*, respondent's branch of the motion to dismiss is granted and respondent's branch of the motion seeking time to serve an answer is denied as moot.

It is undisputed that on or about January 6, 2020, petitioner commenced a holdover proceeding ("prior holdover proceeding") against respondent (*See* NYSCEF Document No 62, Decision/Order by J. Garland dated January 30, 2023). In the prior holdover proceeding, petitioner plead that respondent was a licensee and sought to recover the subject premises pursuant to RPAPL §713(7) (*Id.*). Parties proceeded to a trial of the prior holdover proceeding (*Id.*). At the close of the petitioner's case, respondent moved for a judgment dismissing the proceeding pursuant to CPLR §4401 (*Id.*). Respondent argued that petitioner had not proven its prima facie case for respondent's status as a licensee (*Id.*). On January 30, 2023, the court dismissed the prior holdover proceeding and held, "the petitioner failed to establish its claim" (*Id.*).

On July 27, 2023, petitioner commenced this holdover proceeding against respondent and Joseph Isarro a/k/a Joseph Pizarro, "John Doe," and "Jane Doe" ("collectively respondents"). This holdover proceeding was predicated upon a Notice to Quit dated June 13, 2023. This proceeding was also brought under RPAPL §713(7), which allows a landlord to bring a special proceeding against an occupant who was granted a license by the person or persons entitled to possession of the property at the time of the license, but that license has either expired or been revoked. In its petition, petitioner

states that respondent was granted permission to live there by the former tenants of record (Melanie Fabus and/or Annette Cruz). The tenants of record vacated the apartment on or about November 22, 2019, thereby revoking that license.

Respondent now seeks dismissal of this new petition pursuant to CPLR §3211(a)(5) under the theory of *res judicata*. CPLR §3211(a)(5) states, "a party may move for judgment dismissing one or more causes of action asserted against him on the ground that: the cause of action may not be maintained because of arbitration and award, collateral estoppel, discharge in bankruptcy, infancy or other disability of the moving party, payment, release, *res judicata*, statute of limitations, or statute of frauds." The doctrine of *res judicata* or "claim preclusion" provides that "a valid final judgment bars future actions between the same parties on the same cause of action" (*See Parker v. Blauvelt Volunteer Fire Co.*, 93 NY2d 343 [1999]). In order to claim a defense of *res judicata*, the respondent must demonstrate that the case brought against them currently has already been decided on the merits (*Id.*). Under New York State's transactional approach to *res judicata*, once a claim is brought to a final conclusion, all other [*2] claims arising out of the same transaction or series of transactions are barred, even if based upon different theories or if seeking a different remedy (*See Josey v. Goord*, 9 NY3d 389 [2007]; [U.S. Bank, N.A. v. GreenPoint Mtge. Funding, Inc.](#), 105 AD3d 639 [1st Dept. 2013]). The rule applies not only to claims actually litigated but also to claims that could have been raised in the prior litigation or those that share such a measure of identity that a different judgment in the second would destroy or impair rights or interests established by the first (*See In re Hunter*, 4 NY3d 260 [2005]; [IG Second Generation Partners, L.P. v. La Motta](#), 133 AD3d 415 [1st Dept. 2015]).

Here, respondent argues this instant proceeding is premised solely on a cause of action pursuant to RPAPL §713(7), even though this court dismissed the prior holdover proceeding that plead the exact same cause of action. Respondent further avers that the petition alternatively pleads respondents are squatters, but the predicate notice makes no reference to alleged squatting by the respondents. Respondent argues *res judicata* and seeks dismissal of the instant proceeding. Petitioner opposes and argues that CPLR §3211 motion must fail if from the four corners of the petition, factual allegations are discerned, which taken together, manifest any cause of action cognizable by law. Petitioner argues that in the prior holdover proceeding, the court did not issue a decision with any definitive rulings regarding respondent's status in the apartment.

This instant holdover proceeding is nearly identical to the prior holdover proceeding. It evokes the same theory of licensee as the prior holdover proceeding, during the same timeframe, and is

against the same respondent, Jennifer Cruz. The claim that respondent is a licensee is precluded from re-litigation because the prior holdover proceeding was decided on its merits when the court issued a Decision/Order granting respondent's motion to dismiss under CPLR §4401 after petitioner rested their case. The claim in both the prior holdover proceeding and this instant holding proceeding is that respondent is a licensee. The court's Decision and Order dated January 30, 2023, dismissed the prior holdover proceeding and held, "the petitioner failed to establish its claim." Since a court of competent jurisdiction particularly found that petitioner failed to establish its claim, petitioner is barred from re-litigating the same claim in this proceeding.

While petitioner states an alternate theory in its petition, "if not a licensee, then respondents have intruded into and squatted upon the subject premises without permission or authorization," the same is insufficient to sustain this holdover proceeding. Petitioner's predicate notice, namely Notice to Quit, is devoid of any statement that pleads squatter proceeding. A defective predicate notice cannot be amended (*See Chinatown Apartments Inc. v. Chu Cho Lam*, 51 NY2d 786 [1980]). While the Petitioner is not able to bring another holdover case under the theory of licensee, it is not barred by *res judicata* from bringing a new holdover case under a different theory, a theory that petitioner did not have a full and fair opportunity to litigate in the prior proceeding.

For the reasons stated *supra*, respondent's branch of the motion to dismiss is granted and respondent's branch of the motion seeking time to serve an answer is denied as moot. This instant holdover proceeding is hereby dismissed.

A copy of the Decision and Order shall be uploaded to NYSCEF.

The foregoing constitutes the Decision and Order of the Court.

Bronx, New York
Dated: March 4, 2024
Hon. Rina Gurung
Judge, Housing Court

Footnotes

[Footnote 1](#):NYSCEF Document Number

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