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2024-10-04

### JPMorgan Chase Bank, National Association v. Carrasquillo

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**Motion Seq. No. 1**

Civil Court of the City of New York  
County of Queens: Housing SPP

Index # **LT-321140-23/QU**



JPMORGAN CHASE BANK, NATIONAL ASSOCIATION

Petitioner(s)

**Decision / Order**

-against-

SHELIA CARRASQUILLO, SHERRON HINES,  
JANEL SMITH, REGINA TOOMER,  
CARLOS PEREZ,  
ERIN LAWSON, JOHN DOE (REFUSED NAME),  
"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	1 _____
Answering Affidavits/ Affirmations	2 _____
Reply Affidavits/ Affirmations	3 _____

Upon the foregoing cited papers, the Decision/Order on the motion is granted.

*Procedural and Factual History:*

Petitioner commenced this holdover proceeding to recover possession of the 1<sup>st</sup> Floor at 2206 Regina Avenue, Far Rockaway, New York 11691. Petitioner states that it is the owner of the subject property pursuant to a Referee’s Deed. Petitioner issued a 10-day notice to quit and relies upon RPAPL Section 713(5) to maintain this proceeding. The petition provides that “none of the occupants are believed to be bona fide tenants as defined by the Protection Tenant at Foreclosure Act (PTFA) and the New York State Real Property Action and Proceedings Law §1305.

The 10-Day Notice to Quit is dated November 20, 2023. The Affidavit of Service filed to NYSCEF Doc. No.5, provides that a “Notice to Quit with Alternative Ninety (90) Day Notice to Quit” was served by “nail and mail” on November 27, 2023. The Petition was filed on or about December 14, 2023, and served by “nail and mail” on February 22, 2024. The proceeding was assigned the first court date of March 4, 2024. The matter was adjourned for Respondent to meet with a legal services provider. On April 11, 2024, Respondent Carlos Perez appeared by counsel, the New York Legal Assistance Group.

Petitioner also filed a separate holdover proceeding for the 2<sup>nd</sup> Floor at 2206 Regina Avenue, Far Rockaway, New York 11691 under Index No. LT-321142-23/QU. In the LT-321142 Petitioner named the same Respondents, including Carlos Perez. The legal services provider had also filed a Notice of Appearance for Mr. Perez regarding LT-321142-23/QU.

Respondent, Carlos Perez, now moves by Notice of Motion to dismiss this proceeding. Respondent argues that the predicate notice is defective, and as such Petitioner fails to comply with the statutory requirements.

In the companion case, LT-321142-23/QU, Respondent’s counsel has now filed an Order to Show Cause to be relived as counsel for Mr. Perez in that proceeding as he does not reside in the 2<sup>nd</sup> Floor premises. The Order to Show pursuant to CPLR §321(b)(2) is granted as per the Decision/Order filed to NYSCEF.

*Discussion and Conclusion of Law.*

Respondent Perez argues that the predicate notice is defective. A defective predicate notice cannot be amended and to that end, the petition would need to be dismissed. *Chinatown Apartments, Inc. v. Chu Cho Lam*, 51 NY2d 786 [1980].

Petitioner issued a 10-day notice to quit and the Affidavit of Service states that the “Notice to Quit with Alternative Ninety (90) Day Notice to Quit” was served. There is no dispute that if a 90-day notice was conditionally issued, it was vitiated by the act of filing and commencing the holdover proceeding before the 90-days had passed.

Respondent Perez states that he has been living at the subject premises for nearly 9 years. NYSCEF Doc. No. 20 at ¶20. He is not named on the Referee’s Deed, which would indicate and give some support to a claim that he was a former owner. There are more named Respondents in this proceeding, as well as the companion proceeding under LT-321142-23/QU, than the names that appear on the Referee’s Deed.

Pursuant to RPAPL Section 1305(3)

Notwithstanding any other provision of law, and consistent with subdivision two of this section, a successor in interest of residential real property shall provide written notice to all tenants in the same manner as required by subdivision four of section thirteen hundred three of this article: (a) that they are entitled to remain in occupancy of such property for the remainder of the lease term, or a period of ninety days from the date of mailing of such notice, whichever is greater, on the same terms and conditions as were in effect at the time of entry of the judgment of foreclosure and sale, or if no such judgment was entered, upon the terms and conditions as were in effect at the time of transfer of ownership of such property; and (b) of the name and address of the new owner.

Notwithstanding RPAPL Section 1305, the holdover proceeding was filed short of the 90 days it claimed to be alternatively providing and as such rendered the 90-day a meaningless and ineffectual notice provision. Moreover, a summary proceeding based upon RPAPL Section 713.5 provides it is “subject to the rights and obligations set forth in section [1305] of this chapter.”

Similarly, pursuant to the Protection Tenants at Foreclosure Act (PTFA) a person is a "bona fide tenant" if: (1) neither the mortgagor nor his family member is the tenant; and (2) the tenancy was the result of an arm's length transaction; and (3) the monthly rent (unless it is subsidized rent) is not substantially less than the property's fair market value. The PTFA provides that all "bona fide tenants" residing in foreclosed residential real property are entitled to at least 90 days advance notice of their obligation to vacate the premises before they can be evicted. See PTFA §702 [a]; *Cascade Funding RMI Alternative Holdings LLC v. Giannetto*, 2022 NY Slip Op 51132(U) 2022 N.Y. Misc. LEXIS 6740 [Town Ct, Westchester Co. 2022] See also *Wilmington Trust, N.A. v Holmes*, 68 Misc.3d 1220 (A), 2020 NY Slip Op 51033(U) [Civ Ct, Queens Co 2020].

The discussion of whether the burden is upon the bona fide tenant to show that they are entitled to 90 days or upon the Petitioner to investigate who are the occupants residing in the subject premises, has been reviewed and discussed. See, *Bank of Am., N.A. v. Owens*, 28 Misc3d 328, [Rochester City Court 2010] In *Owens*, the court wrote that "the PTFA does not require bona fide tenants to prove their status before they are entitled to receive 90 days' advance notice to vacate from a successor property owner." *Owens*, 28 Misc3d at 333, 334. Discussed at *Wilmington Trust, N.A. v Holmes* (supra).

Here, whether the burden was upon the Respondent Perez or the Petitioner, it does not change that the predicate notice has been rendered void and null by Petitioner disregarding the very time frame stated in the notice. The alternative time frame of ninety days contained in the 10-day notice was not honored, and simply ignored. Petitioner filed this proceeding in less than 90 days, and as such did not give Respondent the 90 days alleged in the notice. Petitioner has vitiated its predicate notice, and it has rendered the notice defective by its own doing. Filing the proceeding less than 90 days before the “alternative” time stated as provided in the notice rendered the notice in conflict with RPAPL §1305 and PTFA §702, and dismissal is required.

Here, the Respondent Perez would have reasonably relied upon having a time frame of 90 days to show his status to the Petitioner. The case, however, was filed on December 14, 2023, approximately 2 weeks after the predicate notice was served by “nail and mail.” The ambiguity created in the predicate notice, having two different time frames and Petitioner selecting which of the two timelines to honor renders the predicate notice confusing and defective. Cf. *Kew Gardens Portfolio Holdings, LLC v Bucheli*, 69 Misc.3d 129(A), 2020 NY Slip Op 51137(U)[App Term, 2d, 11<sup>th</sup> & 13<sup>th</sup> Dists, 2d Dept 2020] In *Bucheli*, the 10 days in the notice was applicable to both the licensee and the squatter proceeding. Unlike the matter here, where the predicate notice provides for two different time frames “alternatively.” Petitioner selects which one it will follow. The lack of clarity in the predicate notice cannot be denied; its vagueness confirmed by the act of filing the proceeding in 2 weeks instead of after 90 days.

The Court has examined Petitioner’s opposition and does not find that there is a question of fact which precludes dismissal. The predicate notice cannot be amended. Petitioner has acted upon the 10-day predicate notice, and it cannot now argue that it potentially offered 90 days.

Accordingly, it is,

ORDERED that Respondent’s Motion Seq. No. 1 is granted, and the case is dismissed without prejudice.

This Decision/Order will be filed to NYSCEF. Petitioner is directed to mail to each unrepresented Respondent, via First Class Mail, a copy of this Decision/Order and file proof thereof to NYSCEF.

This constitutes the Decision/Order of the Court.

Dated: October 4, 2024  
Queens, New York

SO ORDERED,

\_\_\_\_\_  
Hon. ENEDINA PILAR SANCHEZ  
J.H.C.

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