

CASES and LAW

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Acceptance of Rent

Schwartz v. Power Conversion, 115 Misc2d 217 (Mt Vernon City Ct, Westchester Cty, 1982), Tenant could not withhold rent to offset security deposit, participation in proceeding conferred personal jurisdiction discussion

Gummerson v. Strecker and O'Connell, 8 Misc 3d 1030a (Auburn City Ct 2005), tenant claims he paid in cash and LL never gave receipts: when only evidence is contradictory statements, doubt regarding payment is resolved in favor of tenant

810 West End Ave, 113 Misc 338 (App Term 1st Dept 1920), rent is payable only when it is due, assignee of rent cannot bring a dispossess proceeding

609 Holding Co v. Burke, 202 Misc 790 (Special Term, Bronx, 1952), discussion re whether deposit of rent w/o costs effectuates stay of eviction (not clear)

Associated Realties v. Gloria Brown; 146 Misc2d 1069; acceptance of rent prior to commencement waives right to rely on notice of termination.

Walter Wager et al v Jacob Haberman; 85 Misc. 2d 314; lease prepared by landlord construed against landlord for any ambiguities. Termination of lease turns into monthly tenancy with acceptance of rent.

201 W 136 St Realty vs Roman; 36 Misc. 3d 1215(A); summary proceedings are in derogation of common law, cannot evict for non-payment of future rent

220 West 42 Associates v Cohen; 60 Misc 2d 983 (App Term 1st Dept 1969); retention of check constitutes payment, assent to continuation of tenancy.

Mobil Oil Corp v Lione; 66 Misc 2d 599 (Suffolk 1971); retention of check for payment is deemed acceptance also references Gen. Oblig. Law 5-905 re: tenants duty to renew lease.

Olivero v Duran; 70 Misc. 2d 882; acceptance of rent after knowledge of violation equals waiver of violation, must state with particularity in petition and notice facts upon which proceeding based

Roxborough Apartment Corp. v. Bruce Becker; 176 Misc.2d 502; 1998 N.Y. Misc. LEXIS 141; LL's failure to promptly return checks or explain failure to do so (in 3 mo) amounts to acceptance of rent, sufficient to vitiate predicate notice.

Mannie Joseph vs. George Cheeseboro; 43 Misc. 2d 702; must know whether tender of rent was made before issuance of warrant

Wade B. Albany vs. Jake White; 46 Misc. 2d 915; LL who refuses rent before issuance of a warrant not entitled to issuance of warrant

Roosevelt Nassau Operating Corp. v Camy Holding Corp; 50 Misc. 2d 906; 751(1) defense, tenant deposited rent with court, case dismissed.

Isburn J. Young et al. v. Mary Lucas et al.; 1 A. D.2d 754, 4th Dept.; payment in full to Court makes warrant invalid.

Atkin's Waste Materials v. May; 34 N.Y.2d 422; acceptance of rent = waiver of default

* Seminole Housing v. M & M Garages 78 Misc 2d 755 , when tenant holds over and rent is accepted, acceptance creates a new tenancy

* Max Morris et al, d/b/a M&L Associates v Local 804 Delivery and Warehouse Employees Health and Welfare Fund; 116 Misc. 2d 234; back rent under prior lease cannot be demanded thru summary proceeding

New York City Housing Authority v Luis Torres et al; 90 Misc. 2d 575; when failure to pay rent not deliberate and good cause shown, default can be vacated

New York City Housing Authority v Luis Torres et al; 61 A.D. 2d 681; not great case for tenants. Must pay rent before issuance of warrant

New York City Housing Authority v Luis Torres et al; 89 Misc. 2d 404; overruled

Statute of Frauds

Chaffee v. Carroll; 84 N.Y. S.2d 42; housing case consistent with GOL "from the making thereof".

Elsie M. Strahlmann v. Neil Anderson; 58 Misc.2d 963; lease for 2 years that did not state rent, time of payment was defective, but still fell under Statute of Frauds.

Halberstam v. Kramer; 27 Misc.3d 1206(A); comparison of 5-701 and 5-703 of GOL contract for longer than 1 year void unless in writing.

Beach Haven Apartments No. 6 v. Steven Levy et al; 103 Misc.2d 747; lease signed only by tenant satisfies SOF if returned to LL.

Jack L. Stulsaft v. Mercer Tube and Manufacturing Co.; 288 N.Y. 255; court of appeals letter of employment not void under SOF.

Carlyle Record Warehouses Corp. v. Murray Scherlo; 94 Misc.2d 226; part performance of lease sufficient to overcome SOF.

Taylor v. Creary; 5 A.D.2d 876; alleged oral agreement for 3 year lease not taken out of SOF.

Reuben Rosenwald, d/b/a Notes Sales Co. v. Stanley F. Goldfein et al; oral agreement not good enough to take out of SOF.

28 Mott St Co. v. Summit Import Co., 28 NY2d 508 (1971) oral lease for 10 yrs barred by SOF, holdover for year to year tenancy requires 6 mo notice

Rent Demand

Zenila Realty v. Masterandrea, 123 Misc 2d 1 (NYC Trial Term 1984) analysis of how long a rent demand remains active: amount of rent due and time period must bear a reasonable relationship to that claimed in lawsuit, delay not in good faith is a misuse of the remedy of a summary proceeding

Wycoff v Frommer; 12 Misc 149 (common pleas ct, NYC 1895); should have proof of authority to demand rent, consent to trial/litigation waives objection that precept not definitive.

Richard M. Schwartz, Atty for Iltis Associates v. Weiss-Newell; 87 Misc.2d 558; proper demand for rent - affords tenant alleged amount due and particular period for which claim is made.

Parkview Gardens LP v. Lamont; 2008 N.Y. Misc. LEXIS 5208; 240 N.Y. L.J. 31; inaccurate, incorrect breakdown of rent, Section 8, demand not in good faith, defects in a predicate notice are not amenable, refers to Schwartz, 87 Misc. 2d 558.

200 East 74 Corp. v. Hunt Dallas, 164 Misc2d 417 (NY Cty 1995), 3 day demand jurisdictionally defective because it asked for charges other than rent

Solack Estates v. Goodman, 102 Misc2d 504 (1st Dept 1979), petition that alleged personal demand when none was made was fatally flawed

Stier v. President Hotel, 28 AD2d 795 (3rd Dept 1967), no rent demand noticed in petition renders petition jurisdictionally defective

Fazal Realty v Paz, 151 Misc 2d 396 (NY Cty Ct 1991) , rent demand with typewritten company name not sufficient

Proper Petitioner

Woodlaurel v. Wittman, 163 AD2d 383 (2nd Dept 1990), improper petitioner (LL's atty) did not invoke subject matter jurisdiction for purposes of reopening default judgment

Gilman o/b/o Manheim v. Kipp; 136 Misc. 2d 860; attorney in fact cannot represent principal as legal counsel in court of record.

96 Misc.2d 707; 1550 Broadway Associates v. El-Pine Drinks, Inc.; LL atty cannot be petitioner as agent, POA not good.

Monte Carlo, L.L.C v Willie Yorro et al; 195 Misc. 2d 762; cannot shield LLC and at same time avoid responsibility to hire lawyer, case stayed

Michael Reilly Design, Inc. v Mark Houraney et al; 40 A.D. 3d 592; LLC must appear by attorney, LLC's are created to shield members from liability

Robert Evans v Steven M. Conley; 124 A.D. 2d 981; pro se person for corporation violated CPLR 321, default judgment sustained

People by Lefkowitz v. Therapeutic Hypnosis; 83 Misc.2d 1068; cannot represent corp if not licensed, thus no appearance by respondents, certificates cancelled, dissolution.

Ira Soller et al., by Robert W. Purzan v. Ira Bloom; 91 Misc.2d 884; atty cannot execute petition, causes problems with judgment.

1550 Broadway Associates v El-Pine Drinks; 96 Misc. 2d 707; attorney cannot initiate proceeding, in own name, cannot retroactively amend nunc pro tunc

Key Bank v Becker; 88 N.Y. 2d 899; assignee and attorney in fact could not have standing to bring summary proceeding - Court of Appeals

Sudarov vs Ogle; 149 Misc. 2d 906; assignee of rents had no right to possession and was not a landlord within RPAPL 721(1)

City Enterprise v. Posemsky, 184 Misc2d 287 (App Term 2nd Dept 2000) Petitioner does not have standing to evict licensee under RPAPL 713(7)

Newell Funding LLC v. Tatum, 24 Misc3d 597 (Kings Cty 2009), Lender does not have standing to bring summary proceeding via RPAPLL 721(3).

Dulberg v. Ebenhart, 68 AD2d 323 (1st Dept, 1979), receiver cannot act without special order from the court to evict because not included in RPAPL 721

Kohl v. Fusco, 164 Misc 2d 431 (NYC Civ. Ct, Bronx, 1994) upon sale of premises, receiver no longer has standing to maintain eviction.

Joinder of Petitioner

Trama v. Trama, 15 Misc 3d 1146a (Nassau County Dist Ct2007)-stipulations favored by ct, not lightly cast aside. Spouse, even co-owner and Tenant by entirety is not a necessary party, either one of 2 co-owners may maintain summary proceedings in their own name as petitioner

Panzica v. Cimino, 21 Misc2d 1076 (Westchester, 1959), LL can bring action for possession w/o naming wife as necessary party despite being tenants by the entirety, petitioner could be let into possession with tenant

Carruthers v. Jack Waite Mining Co., 306 NY 136 (NY 1953), nonjoinder of indispensable party not ground for dismissal

Amsterdam Electric Light Heat and Power v. Rayher, 43 AD 602 (2nd Dept 1899), must object to non-joinder of party

Caprer v. Nussbaum, 36 AD3d 176 (2nd Dept 2006) rights of a tenant in common do not extend to suing individually for damages to the common interest (at *184) , tenant in common may bring ejectment/summary proceeding for possession individually.

Java Lake Colony v. Institute of the Sisters of St. Joseph, , Sister Victorine, 262 AD 808 (4th Dept, 1941) co-tenants are necessary parties in action for damages

Pugliese v. Pugliese, 276 AD 794 (3rd Dept 1949) co-owner should have joined other co-tenant (overruled by Martin v. Shields)

Martin v. Shields, 285 AD 106 (3rd Dept), One of 2 co-owners may bring summary proceeding in own name

Smith v. Dairyman's LeagueCo-operative, 186 Misc 82 (Livingston Cty 1945), proceeding could be maintained by one co-owner only (dicta)

Lyon v. Sheldon, 63 Misc 20 (Madison Cty, 1909), not raising joinder by answer is fatal, deemed waived

Kahn v. Kahn, 43 NY2d 203, upon divorce or official separation, tenancy changes from tenancy by entirety to tenancy in common

Friedman v Creative Lightingm 2009 NY Misc LEXIS 4335 (Nassau Cty Surrogates Ct 2009), deed stating a disposition to a husband and wife creates tenancy by the entirety

Baker v. Westfall, 30 Misc2d 946 (Montgomery Cty 1961), Wife entitled to bring summary proceeding against husband's tenant, wife entitled to joint possession

Taylor v. Creary, 5 AD2d 876 (2nd Dept 1958), action should not have been dismissed for non-joinder of co-tenant

Blumenthal v. Allen, 46 Misc2d 688, (NY cty special term) party complaining of non-joinder must initially move for joinder

Burack v. Burack Inc., 128 Misc2d 324 (Yonkers City Ct, 1985), lessee and non-consenting co-tenant become tenants in common, cannot evict lessee because leesee entitled to non-exclusive equal and joint possession of premises

Federal Jurisdictional Requirements

Lamlon Development Corp. v. Verma Owens; 141 Misc. 2d 287; must send termination notice to PHA, explanation.

Olean Urban Renewal Agency v. Herman; 50 A.D.2d 1081; failing to allege federal compliance, and not complying = jurisdictional defect.

Housing Choice Voucher Program; 24 CFR 982.310; owner termination of tenancy.

Defective Petition

Lana Estates v. National Energy Reduction Corp, 123 Misc2d 324 (NY Civ Ct, Queens 1984); Levesque v. Sharp, 106 Misc2d 432 (Peekskill City Ct, Westchester, 1980); Harris v. Timecraft Industries, 132 Misc2d 386 (NY County, 1986); Ansonia assoc v. Pearlstein, 122 Misc2d 566 (NY County 1984): Simultaneous holdover and non-payment proceedings

Pezner v Schumeyer; 133 Misc 2d 1018 (Suffolk 1986); general SMJ is a question of law specific SMJ may involve facts.

201 W 136 st Realty MNGMNT v. Roman, 6 misc 3d 1215a, 2012 NY Misc LEXIS 3419 (NYC Civ Ct 2012) Cannot evict based on future rent, only 1 tenant evicted.

Bristed v. Harrell, (NY Sup Ct., Appellate term 1897) Petition not founded upon giving proper statutory notice, jurisdictional defect (see 20 misc 348).

Bristed v. Harrell 20 misc 348 (NY Sup Ct., App Term 1897) Petition signed before 3 days were up, jurisdictional defect.

Cheung v. Li, 148 Misc2d 55 (Kings Cty 1989), alternative causes of action for two distinct holdover grounds not permitted, notice failed to properly apprise of specific grounds is fatally deficient

Levesque v. Sharp, 106 Misc2d 432 (Peekskill City Ct, Westchester Cty 1980), Part 1 and Part 2 of RPAPL 711 mutually exclusive

Hutchins v. Lauzon, 25 Misc 3d 1231(a), (Town of Niagra Justice Ct 2009), lack of first class mailing a jurisdictional defect, cannot bring both holdover and rent demand summary proceeding, holdover petition sworn to before holdover occurs is fatally deficient.

Reich v. Cochran, 201 NY 450 (NY 1911), petition that does not set forth petitioner's interest is NOT fatally defective

Woodridge v. Proyect, 18 Misc 2d 623 (Sullivan Cty ct, 1959), petition that does not describe property and does not allege notice to vacate is jurisdictionally defective

Stier v. President Hotel, 28 AD2d 795 (3rd Dept 1967), no rent demand noticed in petition renders petition jurisdictionally defective

Parkview Gardens LP v. Lamont; 2008 N.Y. Misc. LEXIS 5208; 240 N.Y. L.J. 31; inaccurate, incorrect breakdown of rent, Section 8, demand not in good faith, defects in a predicate notice are not amenable, refers to Schwartz, 87 Misc. 2d 558.

Goldman Bros. v. Laura Forester; 62 Misc.2d 812; completely defective petition, LL not owner, petition not filed in 3 days, defective verification, 741 defense.

Yvonne Papacostopulos v Anthony Morrelli et al; 122 Misc. 2d 938; typos in address makes petition jurisdictionally defective

3170 Atl. Ave Corp vs Jereis; 38 Misc. 3d 1222(A); okay to bring non-payment petition verified two days before demand notice terminates

John Fitzgerald vs Rebecca Washington; 80 Misc. 2d 861; petitioner failed to specify or clarify form of demand relied upon, (petitioner should have cross moved to amend but did not) No cause of action, case dismissed

Solack Estates v. Goodman, 102 Misc2d 504 (1st Dept 1979), petition that alleged personal demand when none was made was fatally flawed

Disputed Rent Payments

* Palmieri v Hernandez; 127 Misc. 2d 369; landlord violated RPL 235-e by not providing receipts, testimony by tenant favored, landlord co-mingled security, temporary stay of warrant

* Brinkman v Cahill; 143 Misc. 2d 1048; failure to provide receipts violation of RPL 235-e, testimony by tenant favored

Robinson v. Robles, 28 misc 3d 868 (Rochester City Ct 2010), analysis of failure to give receipts

Defective Service

Main St. Mall v NR Store; 155 Misc. 2d 118 (NYC 1992); failure to serve at premises cannot by agreement vitiate 735.

JP Morgan Chase Bank v. Birica, NYLJ 1202642487451, Jan 9, 2014, testimony of process server who did not bring logbook and relied on affidavit of service not sufficient to rebut allegation of improper service

News Syndicate Co v. Gatti Paper Stock Corp 256 NY 211 (NY 1931), mailing creates a presumption that item reached its destination.

SPSG v. Collado, 113 Misc2d 167 (NY Cty 1982), comparison of reasonable application std (RPAPL 735) and due diligence std (CPLR 308), service must be done when one reasonably expects tenant to be home, verification should be made by party, not atty

Foster v. Piasecki, 259 Ad2d 804 (3rd Dept 1999), service on Sunday ineffectual

Glenball v. TLY Coney LLC, 57 AD3d 843 (2nd Dept 2008), service of lease termination notice on Sunday valid

Di Perna v. Black, 187 Misc 437 (App Term 1st Dept 1946), service of notice of termination on Sunday void in NYC because supposed to be served in same manner as precept in summary proceeding

NY GBL sec 11- all service or execution of legal process (except crim procs or authorized by statute) on first day of week void

Mangano v. Ikinko, 28 Misc3d 1223(a) (Ossining Justice Ct, Westchester, 2010), LL can serve written demand for rent

Frank v. Ange, 82 Misc 2d 465 (Rochester City Ct, 1975) petition served 13 days before return date, too late.

Marrero v. Escoto, 145 Misc2d 974 (1990 App Term 2nd dept), failure to send squatter petition by certified mail deprived court of jurisdiction

Parkview Apartments Corp. v. Donovan Guy; 15 Misc. 3d 1106(A); LL did not mail petition to tenants address.

Columbus Prop. v. I S K S Realty Corp.; 163 Misc.2d 446; failure to do first class mailing is a fatal defect; 2 separate mailings, 1 regular & 1 reg/certified.

World's Busiest Corner Corp v Cine 42nd Street Theater Corp; 134 Misc. 2d 281; personal jurisdiction over tenants not accomplished by service of a single notice of petition and petition

Raschel v Rish; 120 A.D. 2d 945; personal jurisdiction over separate defendants not obtained by services of a single summons and complaint; unity of interest only when vicarious liability

Zajackowska v. Zeranska; 2007 N.Y. Misc. LEXIS 7819; 238 N.Y.L.J. 90; nail & mail certification not complete within 5 days of return date.

Berkeley Associates Co. v. Di Nolfi; 122 A.D.2d 703; client prejudiced by 4-day miscalculation of return date (less than 5 days of return date).

D. Seymour Garrison v. Eleanor Abrams; 57 Misc.2d 417; petition served greater than 12 days before return date, must file proof of service 3 days after service

Frank v. Agne; 82 Misc.2d 465; petition served 13 days before return date.

Alfred Barnes v. City of New York, et al; 51 N.Y.2d 906; no due diligence when unsuccessful attempts at service should have indicated that defendants were working.

Empress Manor Apartments v. Sonde Levenson; 115 A.D. 2d 586; process server should have ascertained that tenant would not be home at 12:58pm on a weekday.

Brooklyn Heights Realty Co. v. William Gliwa and Marcia Rogal; 92 A.D. 2d 602; service effort must have some expectation of success (Monday at 3:40, no good).

Metropolitan Life Ins. Co. v. Scharpf; 124 Misc. 2d 1096; service must be made at a time when server could reasonably expect someone to be home (generally 8-6, no good).

Wein v Thomas; 78 A.D. 2d 611; service by party invalid

In the Matter of Lou Wein, a/k/a Louis P. Wein v. Louise Thomas et al; 51 N.Y. 2d 862; affirmed, petitioner cannot serve

In re Smith; 204 A.D. 248; no evidence of service of precept, must have strict construction, must dismiss, 4th Dept case

Seminole Housing v. M&M Garages, 78 Misc2d 755 (Queens Cty Ct 1974), timing of days means to exclude the first day and include the last day

Beverly E. v William H.; 53 A.D. 2d 891; petition dismissed when service by party.

Ifin Co. v. Benec Industries, Inc.; 114 Misc. 2d 411; service to non-employee invalid, unreasonable

Kleinfeld v Woodbury Rd. Cleaners, Inc.; 38 Misc. 3d 1228(A); petition served 20 days before proceeding dismissed. Also, oral demand not pleaded to in petition not addressed, mailing done by CPLR 2103 instead of RPAPL 235

Linda Mangano vs. Aberie Ikinko; 28 Misc. 3d 1223(A); oral demand can be delivered personally by a landlord

City of New York vs. Wall Street Racquet Club, Inc.; 136 Misc. 2d 405; RPAPL > 35 supplies a complete regime for service as indicated in 1965 by legislative intent

Hendrickson vs Lexington Oil Co.; 41 A.D. 2d 672; lease provision stating must serve 10-day notice by registered mail strictly construed

Metropolitan Life Ins Co vs Scharpf; 124 Misc. 2d 1096; process serving between 8am and 6pm insufficient without explanation

Foster v. Piasecki, 259 Ad2d 804 (3rd Dept 1999), service on Sunday ineffectual

Strict Construction

Perrotta v. Western Regional Off-Track Betting Corp.; 98 A.D.2d 1; strict construction of RPAPL condition and conditional limitation discussion.

Cotignola v Lieber; 34 A.D. 2d 700; must have strict construction, cannot adjourn more than 10 days without consent.

Lease Construction

Bazin v. Walsam 240 Owner LLC, 18 misc 3d 290 (2007) ambiguities of lease construed against the drafter, see 23 Misc 3d 1103a, 72 AD3d 190 (1st Dept 2010)

Wager vs Haberman; 85 Misc. 2d 314; lease prepared by landlord construed for ambiguities against landlord

Brady vs Central Excavators; 316 Mich. 594; must have a completely integrated written contract for parol evidence rules to hold

PAK Realty Associates v. RE/MAX Universal, 157 Misc 2d 985, (NYC Civ Ct, 1993) parties may give themselves more rights by way of lease but not less than statutory requirements

Gouveneur Gardens Housing Corp v. Yam Lee, 2 Misc3d 525 (NY County 2003), must raise font size in answer

In Rem Proceeding

Allyn v. Markowitz; 83 Misc.2d 250; summary proceeding, In Rem and purely possessory, construed strictly, purpose is to provide expeditions, simple, inexpensive adjudications of disputes over rights to possession.

Tivoli Associates v. Wing; 122 Misc.2d 901; atty fees not rent, late fees, etc. not rent, 3 months maximum for summary proceeding.

Radlog Realty Corp. v Sophie Geiger; 254 A.D. 352; continued possession or no tenant claim to possession essential to jurisdiction

Unlawful Practice of Law

130 Cedar Street Corp. v. Court Press, Inc.; 267 A.D. 194; LL cannot base claim for rent upon a judgment tainted by landlord's illegal conduct.

Conklin v Mezzano; 46 NYS 2d 281 (Ulster 1974); an "association" must have a president or treasurer (re LP)

Michael Reilly Design v Houraney; 40 A.D. 3d 592 (2d Dept 2007) ordered that LLC retain an attorney to represent case

Matter of Van Patten, 1988-2966.2 NYLJ 1202643818563 Feb 24, 2014, Lay person cannot represent estate if other beneficiary exists

People v. Alfani; 227 N.Y. 334; practice of law includes drawing of legal documents, holding out as authorized to do so.

Matter of Petition of Kimberly Tanami as administrator of the Estate of Laura Geraci, NYLJ 1/13/2012, administrator is doing the unauthorized practice of law by representing estate pro se if not sole beneficiary and/or if there are creditors

Guest v. Hansen, 603 F3d 15 (US Ct of Appeals, 2nd Cir 2010) Administrator may represent estate pro se, as long as there are no creditors or beneficiaries

Austrian v Hastings; 87 Misc. 2d 25 (NYC 1976); professional service of attorneys can represent themselves since they are licensed.

Maso Holding Corp. v. Einstein; 17 N.Y.S. 2d 655; “marshal” drafting documents is unauthorized practice of law.

Garro v Republic Sheet Metal; 284 A. D. 660; Utica City marshal duties are those set forth in statutes relating to city court of Utica.

Monte Carlo v. Yorro, 195 Misc2d 762 (Nassau County District Court of NY, 2003)- cannot benefit from protections of LLC as a shield and then disclaim status to avoid hiring atty

Evans v. Conley, 124 AD2d 981 (4th Dept 1986), appearance by president for corporation a nullity

Yeh v Seakan; 119 Misc. 2d 681; Utica city marshal without authority to levy property execution outside jurisdiction of city court

Utica City Charter Sec. 4.011; marshal appointed by and serves at the pleasure of chief judge

Presidential Management Co. Vs Sheila Farley; 78 Misc. 2d 610; marshal’s premature eviction did not affect validity of judgment


NYSBA opinion #613 (9/24/1990)-advising and counseling pro se litigant-disclosure to court of pleading preparation

Petition Verification

3170 Atl. Ave Corp. v. Jereis; 38 Misc.3d 1222(A); petition verified before rent demand becomes due is not dismissed.

Bldg Management Co. v. Vision Quest of Flatbush et al; 1 Misc. 3d 681; petition based on attorney verification attesting to information and belief, without evidentiary value.

Spring Creek Associates v. Thomas; C.D. 2d Housing Part 18-E Section 741; lack of verification can be brought up sua sponte.


 Hirent Realty Corp v Mosley; 64 Misc. 2d 1011; petition required to be verified by petitioner - case dismissed

Fisch v. Chason, 99 Misc2d 1089 (NY Cty 1979), LLs failure to strictly comply with RPAPL 741 by having atty verify petition w/o having personal knowledge warrants dismissal

Cook v. Escobar, 134 Misc2d 1091 (1987) Syracuse City Ct., Petition verified by a person not authorized under RPAPL 721 does not confer jurisdiction

Zisser v. Bronx Cigar 91 Misc2d 1025, (1977 Bronx Trial ct.) atty cannot bring petition, verify, simply because corporate officers were out of town

Genesee Gateway Houses v Khalid; 2003 N.Y. Misc. LEXIS 468; verification must be done in careful compliance with CPLR 3021 - case dismissed

 Red Roof Inn v Penninipede; 2007 N.Y. Misc. LEXIS 8830; verification by incorrect person or no verification fatally defective

Proper verification article by Patric Connors in NYCJ 2/22/14

Galetta v. Galetta- 5/30/2013, Ct of appeals, prenuptial agreement with defective acknowledgment is invalid

Reasonable Accommodation

USDOJ and USHUD joint statement on reasonable accommodations under the Fair Housing Act, May 17, 2004.

Sinigallo v. Town of Islip Housing Authority, 865 F. Supp. 2d 307 (EDNY 2012)(federal injunction granted for stay of state district court eviction proceeding pending federal disability discrimination complaint, case includes good info re procedure (Art 78 and de novo review after administrative hearings) as well as what medical info is reasonably necessary to support accommodation request).

Douglas v. Kriegsfeld Corp. 884 A.2d 1109 (Dist Columbia Ct. Of Appeals 2004)(eviction case remanded for new trial because interactive process of requesting accommodation was not fully realized, great info on clean and keep clean accommodations and the problems associated with asking for this type of accommodation, definition of "handicap", standards involving interactive process, standards involving proving connection between disability (mental illness) and accommodation).

Rutland Court Owners v. Taylor, 997 A.2d 706 (Dist Columbia Ct. Of Appeals 2010)(follows Douglas v. Kriegsfeld, demonstrates the medical evidence used to show disability and connection with accommodation).

RCG-UA Glenwood v. Young, 9 Misc. 3d 25 (App. Term, 2nd Dept. 2005)(eviction case dismissed because the FHA requires tenant be accommodated to the extent of being able to continue to reside in apt, where tenant with mental disorder followed thru with treatment, had apt cleaned, was no longer a threat).

Shapiro v. Cadman Towers, 844 F. Supp. 116 (EDNY 1994)(where “discrimination includes not just mistreating another because of the difference of her outward appearance but also assuming others are the same because of their appearance, when they are not.” and where Board of apt complex did not affirmatively request additional medical info to seriously consider disability).

Pimentel v. Citibank, 29 AD3d 141, 149 (1st Dept. 2006)(where disability discrimination statutes in general envision an interactive process in arriving at a reasonable accommodation).

Cleveland v. Policy Management Systems, 526 U.S. 795 (1999)(where person is disabled under ADA when SSA decides person qualifies for disability benefits).

Weisner v. 321 West 16th St., 2000 U.S. Dist. Lexis 12000 (SDNY 2000)(where cl does not prevail in nuisance proceeding because he did not violation of FHA, but case includes FHA stds).

Hirschmann v. Hassapoyannes, 11 Misc.3d 265, 269-270 (NY County SC. 2005)(where FHA does not require person to first disclose need for a reasonable accommodation until after he needed accommodation).

Wilson v. Phoenix House, 2013 NY Misc. Lexis 5657, 64 (Kings Cty Sup Ct. 2013) (where NY state and Federal courts have found “substantial identity” between the language and purposes of executive Law sec. 296(5) and FHA).

Warranty of Habitability

Deese v. Gray 111 Misc 2d 924 (NY Civ Ct, Monroe, 1981); Whitehouse Estates v. Thomson, 87 Misc 2d 813(NY Civ ct, Bronx 1976); Park West Management Corp, 47 NY 2d 316 (Ct of Appeals 1979); Century Apts v. Yalkowsky, 106 Misc 2d 762 (NY County Civ Ct., 1980)

100 W 174 LLC v Haskins, 45 Misc3d 1222a (Bronx Cty, 2014)-40% abatement, deficiencies described

Latches

Gamford Realty Corp. v. Alfredo Valentin, Juan Garcia and Juan Bergein; 71 Misc 2d 784; chief characteristic of summary proceeding is urgency, discovery non-existent. By excessive delay, landlord has forfeited right to summary proceeding.

Maxwell v Simons; 77 Misc. 2d 184; causes of action for rent greater than 3 months in arrears not permitted in summary proceeding

Antillean Holding Co. V Lindley; 76 Misc. 2d 1044; 3 month rule not set in stone, shifts burden to landlord to show reasonable diligence

Unrenewed Lease

Charles T. Mateikis v. Albert Rebmann; 2010 N.Y. Misc. LEXIS 4226; unrenewed lease turns into month-to-month tenancy, reasonable use wear and tear, burden on landlord.

Deceptive Practices/FDCPA

Ariana Myerson v. Prime Realty Services et al; 7 Misc. 3d 911; landlord required form filled out with social security numbers otherwise eviction = deceptive practice.

Amelia B. Bartolomeo v. Mario Runco et al; 162 Misc. 2d 485; willfully failing to rent a legal apartment (certificate of occupancy violation) = violation of 369 and fraudulent misrepresentation.

Claude E. Frazier v. Carol Priest; 141 Misc. 2d 775; 349 applies to leases and contracts.

Ken Caldwell and Lisa Caldwell v. Gutman, Mintz, Baker & Sonnenfeldt, P.C. et al; 701 F. Supp. 2d 340; LL/T FDLPA, Fair Credit Reporting Act, mail fraud, etc..

Andrea Sorrentino et al v. ASN Roosevelt Center et al; 579 F. Supp. 2d 387; landlord did not disclose mold and water infiltration problems, liable binder 349.

Betty Cater vs. Debra Saunders; 2002 N.Y. Misc. LEXIS 1281; denial of rent based on explicit peaceable enjoyment clause in lease and no certificate of occupancy

Jennifer Romea vs Heiberger & Assoc.; 163 F. 3d 111; 3 day notice falls under guidelines of Fair Debt Collection practices act. 3 day did not inform of 30 day validation, did not give 30 days, failed to disclose collection of debt, contained threats to take actions that could not be legally taken

ABA General Practice: Attorney Liability under the Fair Debt Collection Practices Act 5/12/2010
–Law Trends and News

Romea v. Heiberger, 163 F. 3d 111 (2nd Cir 1998), demand for back rent invokes FDCPA

Zic v. Smith, 2012 NY Misc LEXIS 5179 (Ossining Justice Court), LL breached sec 8 contract and violated HUD regs by charging rent for attic

USA ex rel Taronda Wade v. DBS Investments LLC and John Joseph, (USDC Southern Dist Florida, case # 11-cv-20155 8/29/2012), LL submitted false claims by charging additional rent

US Dept of HUD v. Turner and Turner, HUDALJ 92-1832-PF (9/30/1992) LL submitted false claims for sec 8 rent

USA ex rel June Smith v Gilbert Realty, 840 F. Supp 71, USDC Eastern Dist Mich, 12/9/1993 LL made false claims by 7 statements to HUD and by endorsing 51 rent checks

USA ex rel Sutton v. Reynolds, USDC Oregon, 6/7/2007, Sec 8 LL violated false claims act by misrepresenting amount of rent accepted from tenants

Emmanuel v American Credit Exchange; 870 F. 2d 805 (ct of appeals 2nd cir 1989); rent is a “debt” and falls under FDCPA.

Objectional Behavior

Levesque v. Sharpe; 106 Misc. 2d 432; no covenant for objectionable behavior in oral lease, cannot bring non-payment and objectionable behavior action simultaneously.

Lana Estates Inc. v National Energy Reduction Corp; 123 Misc. 2d 324; petition jurisdictionally defective failed to specify either holdover or non-payment RPAPL 735 controls over lease provisions unless lease gives tenants more rights. Conflicts resolved in favor of 735

Levesque v Sharpe; 106 Misc. 2d 432; non-payment and objectionable behavior require mutually exclusive remedies

Stay of Proceeding

203 E. 13th Street Corp. v Mary Lechycky and Anna Sivec; 67 Misc. 2d 451; summary proceeding remains pending until execution of warrant

Joseph N. Canigiani v Mary K. Deptula; 59 Misc. 2d 401; warrant can be stayed pursuant to CPLR 2201 in interests of justice for PA recipient with 3 kids

Michael Errigo vs. Dominick Diomedede; 14 Misc. 3d 988; Stay of warrant against 94 yr old granted based on equity

Felder v. Bently, 20 misc3d 1140a (Nassau Cty, 2008), burden lies with tenant to inform sheriff of stay of warrant

Papp v Maffei; 64 Misc. 2d 739 (NYC 1970); execution of warrant does not per se deprive court of jurisdiction.

467 42nd St. v. Decker 179 Misc 2d 67 (NYC Civ Ct 1998) Vacature of warrant ok 6 wks after judgment and issuance where DSS paid more than judgment amount, written agreement in full satisfaction of judgment, petitioner accepted at least 1 mo rent payment thereafter

Transfer of Title, Atornment, and Tenant Rent Payment

Morris v. Local 804, 116 Misc2d 234 (Queens Cty 1982), LL cannot use summary proceeding to collect back rent under prior terminated lease

World Challenge v. 39 Food Inc., 163 Misc2d 1081 (NY Cty 1994), Purpose of RPL 248 is to protect tenant when no assignment notice has been given and tenant pays rent to prior owner, cannot obtain possession judgment for assigned rents when no notice of assigned rents and rent demand gave no notice.

Getty Realty v. 2 East 61 St Corp, 171 Misc 101 (App Term 1st Dept 1939), LL had no right to rents due at time of passing of title unless in deed (compare to RPL Sec 223).

810 West End Ave v. Frankel, 113 Misc 338 (App Term 1st Dept 1920), Rent is payable only to one who was landlord at the time the rent became payable

Acceleration clause, Duty to Mitigate damages

Holy Properties v. Kenneth Cole Products, 87 NY2d 130 (NY 1995), no duty to mitigate damages due to breach of lease

50 States Management v. Pioneer Auto Parts, 46 NY2d 573 (NY 1979), acceleration clause in lease is valid

Ross Realty vs V&A Iron Fabricators; 5 Misc 3d 72; where lease does not require landlord to mitigate damages, accelerated rent is an unenforceable penalty.

Ross Realty v V&A Fabricators; 42 A.D. 3d 246 (2nd Dept 2007); accelerated rent is “not rent due” when acceleration clause exists.

Attorneys Fees

Russell Place Associates v Maria Hernandez; 30 Misc. 3d 1216(A); petitioner who settled not entitled to attorneys fees

Termination Notice

Chen v. Villacis, 2008 NY Misc LEXIS 5223 (Queens Cty 2008), notice to terminate inadequate because atty not named in lease, did not present proof of authority

Siegel v. Kentucky Fried Chicken, 108 AD2d 218 (2nd Dept 1985), notice to terminate that is signed without proof, authentication of authority legally insufficient

Escalera v. NYC Housing Authority, 425 F.2d 853 (2nd Cir 1970), one sentence notices to terminate insufficient to inform tenant so to allow rebuttal (at 862).

Reckson Operating Partnership LP v. LJC Corp., NYLJ 24 col 3 2007 (landlord bound by 10 day notice requirement in lease despite being in excess of statutory requirement

Petti v. Gross, 62 NYS2d 13 (Special Term NY Cty 1946), agreement between all parties to vacate valid, RPL 228 does not exclude voluntary terminations by other means

Angel v. McInerney, 182 Misc 412 (Syracuse City Ct, 1943), service of NOP does not terminate tenancy, tenant must be served in manner calculated to attain end vis notice to tenant

Monaghan v. Kane, 186 Misc 698 (Erie cty ct 1946), True test of sufficiency of notice is has LL/tenant notified other

Smith v. Scott, 190 Misc 600 (New Rochelle City Ct 1948), all that is required is proof that tenant received notice

Boland v. Beebe, 186 Misc 616 (Syracuse City Ct., 1946), by common usage, notify means to make known

Maria Zagari and Vincent Zagari v Terry Ann Gleason; 2002 N.Y. Misc. LEXIS 1285; outside of NYC, notice to terminate must involve tenants awareness of the election to terminate

Hutchins vs Lauzon; 25 Misc. 3d 1231(A); holdover petition may be maintained only after expiration of term

3170 Atl. Ave Corp vs Jereis; 38 Misc. 3d 1222(A); okay to bring non-payment petition verified two days before demand notice terminates

Fazal Realty Corp v Ana Paz; 151 Misc. 2d 396; typewritten demand with corporate name only legally insufficient

Robert E. Monaghan v Joseph Kane; 186 Misc. 698; notice of termination, has landlord notified tenant of termination, receipt not denied

Jesse Angell et al, d/b/a Schopfer Court v Alice McInerney; 182 Misc. 412; notice must be served in manner calculated to attain the end

Anna L. Boland v Lloyd Beebe; 186 Misc. 616; definition of the word "notify" sufficiency of notification

Seminole Housing Corp v M&M Garages, Inc.; 78 Misc. 2d 755; when tenant holds over, and rent is accepted, acceptance creates new tenancy

✓ ~~*~~ Avalonbay Cmtys v Betts; 4 Misc. 3d 133(A); must terminate at expiration of tenancy

✓ ~~*~~ Ferro v Lawrence; 195 Misc. 2d 529; termination of tenancy on 6th of the month a nullity, must terminate on renewal date, attorney cannot initiate proceeding

~~*~~ Chinatown Apartments, Inc. v Chu Cho Lam; 51 N.Y. 2d 786; termination notice due to lease violation strictly construed

~~*~~ People ex rel. Botsford v Darling; 47 N.Y. 666; Witherbee, Sherman & Co. V Wykes; 159 A.D. 24; ~~*~~ Avalonbay v Betts; 4 Misc. 3d 133(A); ~~*~~ Hunt v Hart; 188 Misc. 534:: case law for terminating tenancy 1 day under end of term

Necessary Party

Emanuel Rodack and Sarah Rodack v New Moon Theatre; 121 Misc. 63; assignee in possession is necessary party to eviction

~~*~~ Ralph Balducci v Leon G. Preston; 126 Misc. 356; landlord never released tenants from lease, thus in possession, many relevant cases cited

201 W 136 st Realty MNGMNT v. Roman, 6 misc 3d 1215a, 2012 NY Misc LEXIS 3419 (NYC Civ Ct 2012) Cannot evict based on future rent, only 1 tenant evicted.

100 West 72nd St Assoc. v. Murphy, 144 Misc 2d 1036 (1989 NYC Civil ct), landlord could not evict licensee of deceased tenant without first evicting tenant's representative

Wagner v. Haberman, 85 misc 2d 314 (NY Sup Ct. Special Term 1975), wife as co tenant must be served regardless of who pays rent

C&D Car Wash, Inc. v Andrzej Mroczkowski; 94 A.D. 3d 935; assignment plus no collateral property involved means no necessary party

Westway Plaza Associates v Cleo "Doe" and Ginetta Berloso; 179 A.D. 2d 408; necessary party defense, must serve deceased tenant's estate

Stanford Realty Assoc. v Charles Rollins; 161 Misc. 2d 754; necessary party with independent claims must be served

Stahl Assoc. v Goodstadt; App. Term 1st Dept Jan. 13, 1984 NYLJ p. 6 col. 2; missed tenant

508 West 172nd St v Infante NYLJ June 15, 1990 at 21 col 2 App term surviving spouse not served

Mobile Homes

Robert Hankin, d/b/a Ba Mar Basin & Mobile Home Park v Joseph Armstrong; 109 Misc. 2d 709; landlord under duty to submit to tenant copy of lease in mobile home park

Maria Lanz et al d/b/a Pine Grove Mobile Home Park v Richard Lifrieri; 104 A.D. 2d 400; oral, written offers for 1 yr lease were not accepted, time for mailing extended due to weekend, general construction law, petition that lacked statement regarding manner of service not jurisdictionally defective

Frontier Management v. Holmgren, 154 Misc2d 526 (2nd dept 1992), fees as rent in rules and regs not enforceable since not in lease.

Hillcrest Homes v. Albion Mobile Homes, 117 AD3d 1434 (4th Dept 2014), purchaser of mobile home properly invoked conversion claim when park owner prevented purchaser from removing home.

Excess Fees

Spring Valley Gardens v Felmin Earle; 112 Misc. 2d 786; \$50 late fee unconscionable, as interest disproportionate as there is no damage fee considered liquidated damages, cannot stand

Teodoro Travieso, Francisca Travieso, Gloria Valentin, Luz Travieso, Tikandas Dudani, Shanti Dudani, and Sabrina Jones on behalf of themselves and all others similarly situated, vs. Gutman, Mintz, Baker & Sonnenfeldt, P.C., Grenadier Realty Corp., Sea Park West Houses, Inc., Sea Park East Houses, Inc., and Bay Park One Company; 1995 U.S. Dist. LEXIS 17804; _____, _____, law firm & realtor were debt collectors pursuant to FDCPA, * tenants have COA against housing company where rent demands and unlawful fees are made and commence unlawful eviction proceedings.

Failure of Consideration

H.B.A. Realty Co. v Wendell H. Miller; 14 A.D. 2d 607; failure of consideration when landlord does not have a property interest

Burr vs. Stenton; 43 N.Y. 462; tenant not entitled to surplus funds after LL is foreclosed upon. "If lessor has no title at the time of giving the lease, and does not acquire any, it is perfectly obvious that the lessor never has any estate" just like selling a house with bad title

Cohn v. US Trust Company as Executors of Sidonia Graham, 127 AD2d 523 (1st Dept 1987) cannot contract if no letters testamentary issued

EPTL 11-1.3 executor has no power to dispose of estate until letters testamentary issued, she can preserve estate however.

Lead Paint

Chase v. Pistolese, 190 Misc2d 477 (Watertown City Ct. 2002) presence of lead based paint violated warranty of Habitability

Joyner v. Durant, 277 AD2d 1014 (4th Dept 2000) parent could not rely on alleged breach of warranty of Habitability for personal injury with apt with lead(LL must have constructive notice)

Chapman v. Silber, 97 NY2d 9 (NY 2001), LL liable for lead in apt if he assumed duty to make repairs, retained rt of entry, knew apt was built before 1978, aware of peeling paint, knew of lead hazards, knew young child lived in apt

Land Contract

Hornsby vs. Christopherson; 160 Misc. 2d 78; court will not merge a LL/T contract with a land contract

Hadlick vs. DiGiantommaso; 154 A.D. 2d 338; tenants action for specific performance denied, land contract unambiguously declared parties intentions to maintain LL/T relationship

Gorbrook Assoc vs. Silverstein; 37 Misc. 3d 141(A); RPAPL 713(9) issue
Gorbrook Assoc vs. Norman Fishman; 30 Misc. 3d 1218(A); RPAPL 713(9) issue

Bean v Walker; 95 A.D. 2d 70; defendants acquired equitable title due to land purchase contract, cannot be dispossessed without foreclosure action

Heritage Art Galleries vs Joseph Raia; 173 A.D. 2d 441; ejection improper because purchasers had equitable title, must foreclose

Barbarita vs Shilling; 111 A.D. 2d 200; medley of factors involved in whether to merge rental relationship with vendor-vendee relationship.

Militello vs Chilvas; 12 Misc. 3d 1180(A); land contract did not specifically state that LL/T relationship would survive, thus cannot bring summary proceeding

Arroyo vs DiPasquale; 31 Misc. 3d 1224(A); parties may avoid merger of LL/T relationship with vendor/vendee relationship by express terms

Lind vs Lind; 203 A.D.2d 696; agreement unambiguously declared intent to pressure LL/T relationship thus ok to do summary proceeding

James Davis vs Rent-A-Center; 150 Misc. 2d 403; rent to own law abhors forfeitures

Fair Hearings

FH# 5997132Q - not clear: if appellant received notice, appellant prevails.

FH# 5192856Q - matter of the appeal of VQ, timely notice means notice that is mailed at least 10 days before date proposed action becomes effective.

FH# 3976629P, matter of MD, 12/15/03, reporting changes to "agency" does not require reporting changes to specific unit.

FH # 6231629P – case re prucol (3/14/2013)

FH # 4438001Y Agency must assist with obtaining documents (9/15/06)

FH # 3976629P (9/11/2003), only have to notify agency about change of address, cannot require notification to a specific department

FH #4968682L (Feb 2008); adequate notice must be timely and contain specific reasons for action so that recipient can defend themselves including time period of alleged failure to act.

FH #5821492N; timely notice must be mailed at least 10 days before proposed action (contains other requirements for notice also) (2011).

Real Estate

Marilyn Seyfarth vs Bi-County Electric Corp; 73 Misc. 2d 363; creditor cannot execute lien against creditor's wife who was estranged

Benjamin Corbin vs Paul Litke; 105 Misc. 2d 94; reconveyance of property to wife fraudulent, thus homestead exemption irrelevant

MERSCORP vs Edward P. Romaine et al; 8 N.Y. 3d 90; RPL 291 and 316-a imposes on county obligation to file instruments affecting real property.

Robert Moore, et al vs Keith Whittaker, et al; 142 Misc. 2d 708; homestead exemption cannot be applied to mechanics lien

First National Bank of Long Island vs Robert Brooks; 1 Misc. 3d 905(A); discussion re 10 year and 20 year SOL regarding unpaid judgments

Wyoming County Bank vs Kiley; 75 A.D. 2d 477; person sued on non-purchase money mortgage cannot claim homestead exemption

Charles & Ann Badding vs Bruce Inglis et al; 112 A.D. 3d 1329; doctrine of merger extinguishes claim regarding contract of sale

Contempt

Eastern Concrete Steel Co. Vs Bricklayers' & M.P. International Union; 200 A.D. 714; criminal contempt must be wilful

King vs King; 124 Misc. 2d 946; cannot be punished for contempt for violation of a stipulation entered in open court

NY Jud Law Sec. 753; power to punish for contempt

Contradicting Prior Sworn Statements

Kistoo v. City of New York, 195 A.D.2d 403 (N.Y. App. Div. 1st Dep't 1993) "Here, the IAS Court improperly relied on plaintiff's self-serving affidavit, which directly contradicted her prior deposition testimony that she did not see her assailant enter the building *citing Mack v United States*, 814 F2d 120, 124)."

Meditrust C/O Conifer Park v. Fahey, 226 A.D.2d 999, 1001 (N.Y. App. Div. 3d Dep't 1996) "Moreover, as Supreme Court pointed out, petitioner cannot defeat summary judgment by interposing self-serving allegations contradicting its own prior sworn statements."

Greene v. Osterhoudt, 251 A.D.2d 786, 788 (N.Y. App. Div. 3d Dep't 1998). "Plaintiff failed to meet his burden of demonstrating the existence of a triable issue of fact and, as noted by Supreme Court, could not avoid summary judgment by alleging issues of fact created by self-serving affidavits contradicting prior sworn deposition testimony."

Baum v Leviev Development, LLC, 2008 N.Y. Misc. LEXIS 7819, 5-6 (N.Y. Sup. Ct. Feb. 13, 2008) “Plaintiff’s statements in his sworn affidavit as to the alleged terms of the alleged oral agreement are not enough to create a material issue of fact, as these statements contradict his earlier sworn deposition [*6] testimony that no material terms had been discussed. [A party] cannot “avoid summary judgment by alleging issues of fact created by self-serving affidavits contradicting prior sworn deposition testimony. Citing *Greene v. Osterhoudt*, 251 A.D.2d 786, 673 N.Y.S.2d 272 (1998).”

Right to Counsel

People of State of NY v Russo, 149 AD2d 255 (2nd Dept 1989), Rt to counsel does not attach to traffic infraction where personal liberty is not at stake

Davis v. Shepard, 92 Misc2d 181 (Steuben Cty Sup Ct. 1977), Petitioner entitled to assistance of counsel for violation via CPL 170.10 (3)(c), also even if traffic infraction, if there is possibility of imprisonment that is not waived, must have counsel

People v. Van Florcke, 120 Misc2d 273 (App Term 2nd Dept 1983), when charged with violation, must be assigned counsel if eligible

Conversion of Property, Abandonment

Wilson v. CRL Management, 14 Misc3d 231 (Rochester City Ct, 2006)-Tenant (who was incarcerated) was evicted from apt and LL dumped her things onto the curb. Ct awarded tenant damages under UCCA 1804 and 1805(a). Practice of city marshal and storage issues discussed.

Gale v. Morgan and Brother Storage Co., 65 AD2d 529 (1st Dept 1978), owner entitled to possession of personal property after eviction pursuant to CPLR 7102

Flaherty v. MidTown Moving and Storage, 2014 Misc LEXIS 2106 (NY County Sup Ct 2014), order of eviction does not operate as a legal surrender of tenant’s right to possession of personal property

Abandoned Property Law 1310-voluntary disposition of misc property

Abandoned Property Law 102-abandoned property used to benefit all people

Price v. Hoyle, 82 Misc2d 174 (Rockland County ct 1975), LL had no rt to tenant’s personal property based on alleged non-payment of rent

Houston Management v. Houston Essex Realty, 2008 NY Misc LEXIS 7666 (NY County Sup Ct. 2008), possible viable claim for reimbursement for the conversion of items that LL retained.

Miscellaneous

NYSBA Journal Feb 2011, Joseph Castiglione, "The Implications of Responding to Pleadings if a Motion to Dismiss is Denied" P. 46-52

Ludwig v. City of Jamestown, 518 F. Supp 2d 484 (WDNY 2007), 14th amendment claim for utility discontinuance

425 Realty Co v. Herrera, 146 Misc2d 790 (App Term 1st Dept), RPL 235-f analomy re # of occupants and legislative intent

Hannon v. Keller, 2 Misc 2d 927 (Sullivan Cty 1956), costs in summary proceeding must be legally (by statute) incurred

AG Opinion No. 91-69 – Complete lockout is violation of RPL 235 and a violation according to NY Penal Law sec 10.00

Satchell v. Nickelson, 39 Misc 3d 217 (NY Civ Ct 2013);

Rostant v. Swersky, 79 AD3d 456 (1st Dept 2010)

no jurisdiction to hear RPAPL 853 treble damages claim in summary proceeding because summary proceeding is in rem, cannot claim for damages

People v. Munoz, 240 P3d 311 (Co Ct of Appeals, 2009) "should" v. "must" analysis in crim law

USA Appelle v. Aris Maria, 186 F.3d 65 (US Ct Appeals 2nd Cir 1999) "should" in common meaning does not mean "shall"

Yagan v. Onondaga County 2010 NY Misc LEXIS 5298 (Onondaga Cty Sc Ct. 2010) re vexatious and harassing litigant

Laskey v. Tillotson, 16 Misc 3d 1124a (Lockport Cty cy 2007) analysis regarding whether money judgment can be awarded after default where substituted/alternate service was used (answer = its ok).

38 Clearinghouse review 734 (2004-2005) "Using Sec 1983 to Raise Constitutional Claims in Garden Variety Housing Cases, Robert Capistrano

9554 NY Apartment Assoc. vs Richard Hennessy; 184 Misc. 2d 527; missing witness, when party fails to appear as witness, court may draw strongest inference against that party (re: material issues) (LL/T case)

Minjak Co. vs Diane Rudolph; 140 A.D. 2d 245; award for punitive damages okay for partial constructive eviction when LL's actions deliberate, intentional

Board of Ed v. Allen, 29 Ad2d 24 (3rd Dept 1967), issue involves which school district is responsible for payment for non-resident pupil

NYSBA Journal, Feb 2011, Joseph Castiglione, "The Implications of Responding to Pleadings if a Motion to Dismiss is Denied."

NYSBA opinion #613 (9/24/1990)-advising and counseling pro se litigant-disclosure to court of pleading preparation

Garro v Republic Sheet Metal; 284 A.D. 660 (App. Div. 4th, 1954); Utica City Marshal duties are those set forth in statutes relating to Utica City Court.

Anders v Anders; 6 A.D. 2d 440 (1st Dept 1958); Oral stipulations in open court can be enforced by motion.

Parker v Paton Associates; 128 Misc 2d 871 (Fulton 1985); Notice of petition can be "indorsed" by petitioners attorneys.

John A. Shields, as agent for Patrick E. Inclema v. Benderson Development Co., as successor in interest to Hen-Jeff, Inc.; 76 Misc. 2d 322; filing of court papers, filing with the judge, GCL 20.

Various Law

18 NYCRR 351.8-determination of eligibility (decision to accept/deny PA application must be made in 30 days/45 days for ADC/HR respectively)

18 NYCRR 352.3 Rent Allowances (note not current with SSLaw)

18 NYCRR 385.2; exemptions from work requirements

18 NYCRR 385.9- PA and FS employment program requirements

18 NYCRR 385.12- failure to comply with FS and PA employment requirements

18 NYCRR 385.19(e); work sanctions for PA recipients

18 NYCRR 397.5, SS Law 303, Granting of EAA

NY UCCA 1801, 1804-small claims amount max is \$5K, substantial justice evidentiary requirements

UCCA Sec 701; direction and execution of mandates and processes.

UCCA 105; powers and duties of non-judicial personnel.

UCCA 1906; Costs allowed by court

UCCA 1901; amount of costs in an action

UCCA 1911; fees payable to clerk, (11) issuing notice of petition

UCCA 1906-a, 1903-costs in a summary proceeding

UJCA 1903(d), (m)-costs additional provisions

UJCA 1911(a)(1)(j)- fees payable to clerk include \$20 for issuing a notice of petition

UJCA 1902 –allowance of costs
UJCA 1904 (a) limitation of costs = \$50

GOL § 5-1301- How interest calculated
GOL § 7-103 Money deposited or advanced for use or rental of real property; waiver void security deposit shall not be co-mingled, bank deposit rules.
GOL 7-105; must notify tenant about transfer of security deposit when change in ownership
GOL 5-702-lease must be in plain language, written in clear coherent manner using words with common and everyday meanings

GCL § 20- Counting days
30 day notice proper by counting last day, excluding first day: See Seminole Housing 78 Misc. 2d 755 (also includes acceptance of rent)
GCL 20 filing of court papers shields v. Benderson Development, 76 Misc 2d 322

CPLR § 5004- Rate of interest = 9%
CPLR 2307 - subpoena served on library, dept or bureau of municipal corporation
CPLR R 4518 - business records admissibility
CPLR Rule 5107 - sheriff can be directed to convey property by executing quitclaim deed. See Tarberh Realty 134 Misc. 2d 607
R 322 CPLR P 322.01 Proof of authority of Plaintiff's attorney
CPLR 2218; issue of fact raised on a motion shall be separately tried.
CPLR 321(b) change/withdrawal of atty
CPLR 4544-contracts in small print, not clear, may not be received into evidence in any trial, hearing or proceeding on behalf of party who printed it.
NY CPLR 321(b) change/withdrawal of atty

Method of commencing action or special proceeding: § 400 UCCA (by filing), §400 UJCA (by service, CPLR does not apply), § 304 CPLR

CPLR v. Art 4 v. RPAPL Seigel's NYP § 550, CPLR § 103 (c) (Improper form) and Seigel's NYP § 547, Goldman v. McCord (NYC Civ Ct 1983) (where CPLR Art 4 § 406 motion practice rules apply until RPAPL addresses this, unless motion returnable at same time as petition); Arnold v. Lyons, 2003 NY Slip Op 50766U (Nass Cty Dist Ct. 2003) (CPLR 103(b), RPAPL §735, and CPLR Art 4 cpr). Allyn v. Markowitz; 83 Misc. 2d 250; summary proceeding is In Rem, RPAPL controls over CPLR, the Matter of Application of Geico General Insurance Company; 34 Misc. 3d 1201A; Supreme court is obligated to apply appellate authority absent court of appeals decision or split appellate decisions

case alleges UCCA trumps RPAPL, also discusses Nunc pro tunc filing, argues that there is no strict construction in 2nd dept: Zot v. Watson, 20 Misc3d 1113a (kings Cty, 2008)

POMS DI 28085.125 - Disability Coding Lists

POMS GN 00302.020; proof of age
POMS GN 00302.580; proof of age and military records.
POMS GN 00302.900; proof of age and DHS records
POMS GN 00302.930; immigration records
POMS RS 00201.001; retirement benefits

Housing Choice Voucher Program; 24 CFR 982.310; owner termination of tenancy.

8 USC 1645 Restricting Welfare and Public Benefits for Aliens General Provisions-
spouse/parent quarters can be counted by alien for purposes of qualifying for benefits

General Business Law Section 349; deceptive acts and practices unlawful, damages.

NY Residence Law Article 40 (old dwellings) Section 174 - owner shall keep dwelling free from
vermin, tenant liable for willful act, assistance, negligence.

GIS 10 OLTC/006 - order for personal care services form DSS-4359

Uniform Civil Rules for NYS trial courts Sec. 210.9; motion procedure request for oral
arguments

NY SS Law 131(3)- as far as possible, families should be kept together (cannot separate for
reasons of poverty alone).

NY SS Law 133- If in immediate need, assistance shall be granted pending completion of
investigation, any denial shall be in writing

02 ADM 2: Meeting Emergency Needs of TA applicants/recipients

Uniform Rules for NYS Trial Cts Outside NYC Part 210.9 Unless otherwise directed by ct,
answering and reply affidavits and all other papers required to be furnished via CPLR 2214c
must be filed no later than the time of argument or submission of the motion, judge may direct
that moving and responding papers be filed prior to time of argument, party requesting oral
argument on a motion via OSC shall do so as soon as practicable before the time the motion is
heard.

31 CFR 285.4 Offset of Fed benefit payments to collect past due debts