

# Lewis v. Jordan, L&T Index #78153/16

April 19, 2017

- Civil Court, Queens County, Housing Part O
- L&T Index 78153/16
- Judge Clifton A. Nembhard
- For Plaintiff: For Petitioner: Law Offices of Augustin Tella.
- For Defendant: Attorneys for Respondent: Priam Saywack, Queens Legal Services.

Cite as: Lewis v. Jordan, L&T Index #78153/16, NYLJ 1202783907315, at \*1 (Civ., QU, Decided March 23, 2017)

Decided: March 23, 2017

## Decision/Order

### Background

\*1

Petitioner commenced this holdover proceeding by notice of petition and petition to recover possession of the first floor apartment located at 114-17 166 Street, Jamaica, Block 12330, Lot 83. Respondent Andrea Jordan moved to dismiss on the grounds that petitioner lacks standing to bring the case. The motion was denied for failure to timely serve petitioner and the case was sent out for trial.

After trial the Court makes the following findings of fact and conclusion of law.

### Trial

Petitioner Doret Lewis introduced a deed dated August 16, 2010 transferring title of the premises from AMIR Properties and Development to her. She also introduced a lease between herself and the respondents for a one year term beginning October 1, 2013. The monthly rent was \$1,800.00 however, with the exception of \$3,600.00 they were ordered to pay by the Court, respondents have not paid rent since 2015.

During cross-examination, Lewis was shown two other leases which were entered into evidence. The first, dated March 6, 2013, transferred title from H.T.A. Equities, Inc. to 52nd Avenue LLC The second, dated July 16, 2010, transferred title from REO Properties Corporation to AMIR Properties and Development Inc. Lewis testified that she is not familiar with H.T.A. Equities and that she may have signed another lease with respondent for the same term as the one she introduced. After being shown a lease between herself and Andrea Jordan ("respondent") with a monthly rent of \$1,750.00, she explained that it was given to help Jordan obtain financial \*2 assistance. She further testified that she pays her property taxes through the mortgage she has on the premises. Lewis was then shown a certified Department of Finance tax assessment form which listed 52nd Avenue LLC as the owner of Block 12330 Lot 83. Certified copies of a Department of Buildings' ("DOB") Notice of Violation and Hearing and Overview for Complaint were also introduced. Both documents listed 52nd Avenue LLC as the owner of the premises.

On redirect Lewis testified that the \$1,750.00/month lease was prepared by a real estate agent. When she informed the agent of the proper rent amount, the agent prepared the \$1,800.00/month lease. She also testified that she's had no dealings with 52nd Avenue LLC She pays the water bill on this two family investment property and her mortgage is with Bank of America.

Andrea Jordan then testified that she moved into the subject apartment on November 30, 2013. The house is on a large oversized lot. She acknowledged signing both leases and stated that she was a Section 8 tenant prior to moving in. She introduced a lease dated December 2, 2004 which transferred title of the premises from Amanda Copeland, Rosie Fowler, Pamela Copeland and Ernest Parker to H.T.A. Equities, Inc. She became aware that there may be an issue with the deed in October 2014 when Section 8 informed her that petitioner was not the owner.

Respondent also testified that the conditions in the apartment were so unbearable that she stopped paying rent in 2015 and sent her kids to live elsewhere. She then brought an HP action in which the court issued a default order against petitioner.<sup>1</sup> She then introduced a series of pictures depicting the conditions which caused her to bring the HP case. DOB made some repairs and paid the utility bills and the Department of Housing Preservation and Development ("HPD") made about ten major repairs including abating mold, fixing the leaky roof, knocking down walls and removing raw sewage from the basement. She had to pay over \$2,400.00 to Con Edison because of a shared meter and received notices from the utility company addressed to 52nd Avenue LLC.

During cross-examination Jordan couldn't recall when in 2015 she stopped paying the rent. She also averred that petitioner understood that she was seeking assistance from Section 8 to pay the rent. The utility bills are now under 52nd Avenue LLC and she was told that she was seeking assistance from Section 8 to pay the rent. The utility bills are now under 52nd Avenue LLC and she was told that the house was to be boarded up and that no one was supposed to be living there. Finally, she testified that she didn't recall alleging that the violations were corrected during an HP case.

On re-direct respondent testified that she has been offered a lease by 52nd Avenue LLC since being told by Section 8 that petitioner is not the landlord.

On rebuttal Lewis testified that respondent didn't give her notice of the conditions. She only learned of them when HPD issued violations. She made repairs almost immediately after the \*3 violations were issued.

During closing statements respondent's attorney argued that petitioner has not established standing in light of the last recorded deed. He explained the conflicting deeds by asserting that petitioner actually has title to the adjacent lot while 52nd Avenue LLC owns the subject premises. Petitioner's counsel countered that respondent acknowledged his client's standing by naming her as a respondent in the HP proceedings. Furthermore, petitioner is the mortgagor and there is a landlord tenant relationship between the parties as evidenced by the leases.

## Discussion

Questions of title and ownership cannot be decided as an affirmative claim in a summary eviction proceeding. *Nissequogue Boat Club v. State of New York*, 127 AD 79 [2nd Dept 2005]. However, such questions can properly be raised as a defense to the proceeding. RPAL §743; CCA §905; *Chopra v. Prusik*, 9 Misc3d 42 [2nd Dept 2005]. Thus, "[e]ven though title cannot be determined in the context of a summary proceeding, an allegation that the petitioner is not the owner of the subject property may be properly interposed as a defense to the proceeding." *Decaudin v. Velazquez*, 15 Misc 3d 45 [App Term 2nd Dept 2007]; RPAPL §743.

Here Jordan raises the same defense. According to the Office of The City Register's Automated City Register Information System ("ACRIS"), petitioner acquired title of subject property from Amir Properties & Development, Inc. by deed recorded on August 25, 2010. Amir Properties obtained title from REO Properties Corporation who had gotten title in 2009 from Catherine Glover. Respondent's contention that petitioner only has title to the vacant lot is refuted by the deed from Glover to REO Properties. A correction is made on that deed to reflect that lots 82 and 83 (the lot with the vacant land and the lot with the house respectively) were both transferred. ACRIS however also shows that a deed was recorded on April 5, 2013 transferring title from H.T.A. Equities, Inc. to 52nd Avenue LLC. This, plus the fact that the Department of Finance and the DOB both recognize 52nd Avenue LLC as the owner of the subject premises, puts into question petitioner's standing to maintain this case. Her attorney's argument that the HP action and lease are dispositive is unavailing. Lewis was named as a respondent in the former because she is the individual Jordan believed to be the owner. The leases are equally unpersuasive. It is implicit in every lease that the lessor has in fact the right or authority to transfer the estate to another. *Redhead v. Henry*, 160 Misc2d 546 [Civ Ct Kings 1994] however, the leases here were signed after 52nd Avenue LLC's deed was recorded. Finally, the Court notes that petitioner was aware that there has been a question as to her title for several years but, to date, has taken no action to resolve it.

## Conclusion

Based on the foregoing, the Court finds that petitioner has not established by the preponderance of the evidence that she has standing to maintain this proceeding. Accordingly, the petition is dismissed. This determination is without prejudice to any remedy petitioner may have to \*4 challenge 52nd Avenue LLC's deed and quiet title in the appropriate forum.

This constitutes the decision and order of the Court.

Date: March 23, 2017

Queens, New York

SO ORDERED

1. HP Index No. 20/17 was one of four HP cases respondent brought against petitioner. The other three (Index Nos. 6328/16, 1179/15 and 1078/15) resulted in a withdrawal, discontinuance and default judgment respectively. The default judgment was subsequently vacated and the case discontinued upon Jordan's representation that the repairs were made.

