

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF KINGS: HOUSING PART H

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622A PRESIDENT STREET OWNERS CORP.,

Petitioners,

- against -

BRETT WYNKOOP and KATHLEEN KESKE,

Respondents,

- and -

“JOHN DOE” and “JANE DOE”,

Respondents.

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REMY SMITH, JHC:

DECISION/ORDER

Hon. Remy Smith, J.H.C.

Index No. 81708/18

81709/18

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

Papers:	Numbered
Respondent’s Order to Show Cause (81708/18)	1
Respondent’s Order to Show Cause (81709/18)	2
Petitioner’s Notice of Cross Motion (81708/18)	3
Petitioner’s Notice of Cross Motion (81709/18)	4
Respondent’s Verified Affidavit in Reply (81708/18).	5
Respondent’s Affidavit of Service, et al (81708/18)	6

Respondents move to vacate default judgment, vacate all prior orders of this court, to award costs, and dismiss this non-payment proceeding¹ for lack of jurisdiction, and for other and further relief as is warranted. Petitioner cross-moves to consolidate the above non-payment cases, to amend the caption to reflect consolidation, for an order granting petitioner’s Request for Final Order, for a default judgment with issuance of the warrant and eviction, and for other such

¹81708/18 seeks possession of the first floor apartment. 81709/19 seeks possession of the second floor apartment. The cases were consolidated as per stipulation dated December 11, 2018.

relief as is just and proper. Petitioner's cross-motion is denied in its entirety and respondents' motion is denied in part and granted in part. Respondents have not asserted a counterclaim for costs and therefore this element of their motion is denied. While respondents did fail to answer timely in order to obtain a court date there exist no judgments to vacate and respondents have not asserted a counterclaim for costs in this proceeding and therefore those elements of their motion are denied. In addition, based on the above, there is no basis to vacate prior orders as the case is dismissed as set forth below.

Respondents are shareholders in petitioner cooperative apartment and have been litigating a Supreme Court shareholder dispute bearing Index No. 507/156/2013 for over 5 years, with three upcoming appearances on February 1, February 14 and March 29, 2019 in the compliance part. As the building has only 4 shareholders, 2 of whom are respondents in this case, each of them are involved in the Supreme Court case, one of whom, Vice President Kyle Taylor, signed the pleadings and predicate notice at issue. Ostensibly, all matters involving these particular shareholders and the spaces they occupy have been, and continue to be, litigated in that case. Notwithstanding the above, petitioners commenced this non-payment case seeking years' worth maintenance and assessment arrears. It is predicated upon a ten-day notice to cure with "REJECTED NO AUTHORITY" written on it.

It is precisely Mr. Taylor's verification (or lack thereof) of the Petition that serves as the basis for dismissal pursuant to RPAPL §741. Kyle Taylor, Vice President and Secretary of 622A President Street Owners' Corp., signed the ten day notice to cure and signed the petition and verification thereof. The verification reads as follows:

STATE OF NEW YORK)

COUNTY OF NEW YORK)

KYLE TAYLOR, being duly sworn, deposes and says:

(body)

(signature)
KYLE TAYLOR

Sworn to before me this
28th of August, 2018

NOTARY PUBLIC
Daphne H. Hooper

Respondents allege that the court lacks jurisdiction based on Kyle Taylor’s signature on a verification of petition purporting to be acknowledged in the State and County of New York. First, the court notes that the acknowledgment by one Daphne Hooper does not contain the license number or commission expiration date. The court also notes that petitioner attempted to resuscitate the defective acknowledgment dated August 28, 2018 by filing a Certificate of Conformity on October 2, 2018 reflecting that Ms. Hooper notarized Taylor’s signature in Ontario, Canada, where she is a notary. The Certificate, dated September 26, 2018, contains her notary identification number. The certificate is dated after respondents served an “Affidavit Rejection of Petition” on petitioner’s counsel on September 17, 2018.

RPAPL §741 requires that a Petition be verified. It can be verified by the attorney of record, but, if verified by the landlord, or, as here, the vice-president of the proprietary lessor, the verification is proper only if it is sworn or affirmed under oath before a person authorized to administer oaths, for example, a notary. CPLR §§3020 and 2309; Plycon Transp. Group, LLC v.

Kirschenbaum, 36 Misc.3d 1232(A). The notary's signature must be followed by her registration number and expiration date of said commission. N.Y. Executive Law §137; Omansky v. Penning, 2011 N.Y. Misc. LEXIS 6998 (Sup. Ct. N.Y.Cty. 2011). In this case, neither the verification falsely stating that same was acknowledged in New York nor the Certificate of Conformity admitting that same was taken in Ontario, Canada contain the expiration date of the commission and only the latter contains the registration number.

CPLR §3022 states that "a defectively verified pleading shall be treated as an unverified pleading. Where a pleading is served without a sufficient verification in a case where the adverse party is entitled to a verified pleading, he may treat it as a nullity, provided he gives notice with due diligence to the attorney of the adverse party that he elects to do so." Due diligence is reliant on particular circumstances of the case. Fort Holding Corp. v. Otero, 157 Misc.2d 834 (Civ. Ct. N.Y.Cty. 1993). Also, letter-type rejections of pleadings such as the Affidavit of Rejection served by respondents suffice as notice insofar as same contains the reasoning for the rejection and is duly executed by Wynkoop. Cook v. Freight Force, Inc., 139 Misc.2d 459 (Sup. Ct. Nassau Cty. 1988).

Petitioner allegedly served the pleadings on respondents on September 14, 2018. Respondents served an "Affidavit Rejection of Petition, Rejected Notice of Petition and Rejected Petition" on petitioner's counsel on September 17, 2018, three days later. Wynkoop states in his affidavit that he researched notary Daphne Hooper and found that she was not on the roll of commissioned notaries of the State of New York. Petitioner did not contest this but rather filed the Certificate of Conformity revealing that she is a notary in Ontario, Canada and that the verification was acknowledged in Ontario, not New York, as it originally stated. This constitutes

due diligence in that the rejection was served on petitioner's counsel on the business day following alleged service of the pleadings. This is especially so in light of the bare information provided on the verification allowing for minimal meaningful research of her credentials, specifically her ability to notarize Taylor's signature and the likelihood that same was done in New York as so stated².

Finding the court's reasoning in Salahuddin v. Le Fevre, 137 A.D.2d 937 (3rd Dept. 1988), this court likewise finds that dismissal is warranted based on non-verification of the petition in this case. Petitioner's counsel could have verified the petition, or the original verification could have, and should have, revealed that same was signed and notarized in Ontario, Canada with the appropriate certificate of conformity annexed. See also Otero, *supra*, wherein the court dismissed the proceeding for want of proper verification. As they have requested all other relief that is just and proper, and the above argument has been thoroughly addressed by all parties, respondents' motion to dismiss this proceeding is granted and the case is dismissed without prejudice.

Based on the above, this court does not reach respondents' remaining arguments and petitioner's motion is denied in its entirety.

The foregoing constitutes the Decision/Order of this Court.

Dated: Brooklyn, New York
January 30, 2019



REMY SMITH, J.H.C.

²The verification at issue is not merely defective, but patently false.