

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF QUEENS: PART 52

Index No. LT-306109/23

3770 82ND STREET LLC.,

Mot. Seq. 3

Submitted: 7/10/23

Petitioner,

- against -

DECISION AND ORDER

VARGAS LEON CORPORATION,
"JOHN DOE," "JANE DOE,"
"ABC CORPORATION,"

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

Respondents-Licensees,

Order to Show Cause and Affidavits Annexed
.....NYSCEF 17
Answering Affidavits.....NYSCEF 18-23

Upon the foregoing papers, Jose Vargas Leon's order to show cause and motion to vacate the default judgment, to stay the execution of the warrant and to restore to possession of the premises is decided as follows:

Movant, Jose Vargas Leon, moves to vacate the default judgment, staying execution of the warrant and to restore to possession of the premises. Leon contends, *inter alia*, that he was not given proper notice of the termination of the tenancy, that he received a court notice that stated an appearance date of 5/22/23 and that the landlord changed the locks and removed the property without a marshal or a warrant.

In opposition, petitioner argues, *inter alia*, that as an initial matter, respondent's application through Jose Vargas Leon as president of named respondent, Vargas Leon Corporation, is improper and is a nullity as it was not made by counsel representing the corporate entity. In any event, petitioner avers, *inter alia*, that the relationship between the parties was that of a licensor/licensee, that the license was properly terminated and that respondent has not shown any meritorious defense to vacate any default as respondent was in arrears in payment of the license in excess of \$150,000.

"The general rule in New York is that '[w]hen the party to an action is a fictional person—a legal entity with limited liability ... it cannot represent itself but must be represented by a licensed practitioner, whether outside counsel or staff counsel, answerable to the court and other parties for his or her own conduct in the matter.'" (*Ernest & Maryanna Jeremias Family Partnership, L.P. v Sadykov*, 48 Misc 3d 8 [App Term 2015], quoting *Matter of Sharon B.*, 72 N.Y.2d 394 [1988].)

In the instant case, movant Jose Vargas Leon may not represent respondent VARGAS LEON CORPORATION as movant is not an attorney. Notwithstanding, Leon's application is procedurally improper as it appears that the lockout already occurred at the time of the presentation of the Order to Show Cause for consideration. Regardless, movant did not address the Order of the Hon. Andrea Ogle dated May 15, 2023 which determined that petitioner adequately demonstrated the licensor/licensee relationship between the parties and found that the

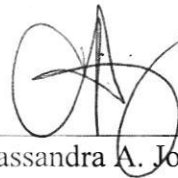
license was effectively terminated as of May 15, 2023. As such, petitioner possessed a common-law right to oust them without legal process (*see Coppa v LaSpina*, 41 AD3d 756 [2d Dept 2007; *Visken v Oriole Realty Corp.*, 305 AD2d 493 [2d Dept 2003].) “Since a licensee does not have ‘possession,’ he cannot ‘recover’ possession in an RPAPL 713 (10) unlawful entry and detainer proceeding (*internal citations omitted*).” (*Li Jen Yao v Steele*, 79 Misc 3d 131(A) [App Term 2023].) Movant’s conclusory contentions regarding service and the existence of a tenancy are insufficient to vacate the default judgment.

Lastly, it is noted that named respondent, Vargas Leon Corporation, subsequently, through counsel submitted additional papers self-entitled “Supplemental Affirmation in Support” and “Supplemental Affidavit in Support,” which were, in effect, an improper reply. (*See* Uniform Ct R 202.8-d “[a]bsent advance permission of the court, reply papers shall not be submitted on orders to show cause”; *see also Flores v Stankiewicz*, 35 AD3d 804, 805 [2d Dept 2006].) As such, the court declines to consider any papers submitted by the same. Likewise, petitioner’s supplemental affirmation and affidavit were submitted without permission of the court and therefore, not considered by the court.

Accordingly, movant Jose Vargas Leon’s order to show cause and motion to vacate the default judgment, to stay execution of the warrant and to restore to possession of the premises is denied in all respects.

This constitutes the decision and order of the court.

Dated: November 8, 2023



Hon. Cassandra A. Johnson, J.C.C.