

Fordham Law School

FLASH: The Fordham Law Archive of Scholarship and History

All Decisions

Housing Court Decisions Project

2022-03-18

Vazquez v. Suljovic

Follow this and additional works at: https://ir.lawnet.fordham.edu/housing_court_all

Recommended Citation

"Vazquez v. Suljovic" (2022). *All Decisions*. 1138.
https://ir.lawnet.fordham.edu/housing_court_all/1138

This Housing Court Decision is brought to you for free and open access by the Housing Court Decisions Project at FLASH: The Fordham Law Archive of Scholarship and History. It has been accepted for inclusion in All Decisions by an authorized administrator of FLASH: The Fordham Law Archive of Scholarship and History. For more information, please contact tmelnick@law.fordham.edu.

[*1]

Vazquez v Suljovic
2022 NY Slip Op 50231(U)
Decided on March 18, 2022
Civil Court Of The City Of New York, Queens County
Sanchez, J.
Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431.
This opinion is uncorrected and will not be published in the printed Official Reports.

Decided on March 18, 2022

Civil Court of the City of New York, Queens County

<p>Xavier Vazquez, Petitioner,</p> <p>against</p> <p>Remzija Suljovic, Respondent.</p>

L & T Index No.10045/22

Attorneys for Petitioner: Queens Legal Services (Xiaowen Liang, Esq.)

Attorneys for Respondent: Cooper, Paroff & Graham. PC (Ira Cooper, Esq.)

Enedina Pilar Sanchez, J.

This is an alleged illegal lockout case filed by Order to Show Cause in Lieu of Notice of Petition to Restore to Possession. The subject premises are located at 47-10 Laurel Hill Boulevard, Apartment 1B, Woodside, NY 11377. Both sides are represented by counsel and on the first court date, petitioner and the respective counsels appeared via Microsoft Teams video conference pursuant to the Administrative Order in place due to the COVID-19 pandemic.

On the initial court date, after a conference with the court, respondent agreed that the petitioner would be given a key and would be restored to possession. Petitioner was to go the superintendent's apartment within the building, be given a key and be restored forthwith. The case was adjourned to the next court date, March 7, 2022.

On March 7, 2022, petitioner appeared in court with counsel. The Court was informed that petitioner was restored to possession. Petitioner requested a hearing on the issue of the lockout, and upon such a finding awarding petitioner treble damages pursuant to RPAPL §853.

Discussion and Decision:

Petitioner brings this case pursuant to RPAPL Section 713(10), which is the only available procedure to file an emergency case when someone had been removed without the benefit of legal process. [*See Watson v NYCHA-Brevoort Houses*, 70 Misc 3d 900](#) (Civ. Ct. Kings Co. 2020). The landlord may not "*short-circuit the procedural requirements of a summary proceeding, . . .*" *See Martinez v Ulloa*, 50 Misc 3d 45 (A.T. Dept.2nd 2015).

An illegal lockout case may be found where the petitioner was in actual or constructive possession of the premises and the respondent's entry was either forcible or unlawful. *Romanello v. Hirschfield*, 98 AD2d 657, (1st Dept., 1983), *aff'd as modified* 63 NY2d 613 (1984); [*Mondrow v Days Inns Worldwide, Inc.*, 53 Misc 3d 85](#) (App. Term, 1st Dept. 2016); [*Truglio v. VNO 11 East 68th Street, LLC.*, 35 Misc 3d 1227\(A\)](#) (NY Civ Ct., New York County 2012).

Where the petitioner is not voluntarily restored to possession and alleges an ouster, the court is required to hold a hearing. The court must determine if there was an illegal lockout and adjudicate the ultimate issue, which is the restoration to possession of the person who has been ousted. Upon a finding that an ouster occurred, restoration to possession may be the proper remedy. Additional remedies may be available pursuant to RPAPL Section 768(2)(b) if the petitioner is not restored.

As a result of the court conference, the petitioner was restored to possession. This Court is now required to treat this case as academic, since restoration to the premises is no longer sought. The court is precluded from making a finding of an illegal lockout because petitioner is now in possession. The jurisdiction of the court centers on issues of possession, collection of rents and housing standards; *see* New York City Civil Court Act §110(c).

Pursuant to *Tavares v. Tavares*, 2021 NY Slip Op.50386(U); 2021 NY Misc. LEXIS 2144 (AT 1st Dept.) the petition is academic. "*While the proceeding was pending, petitioners informed the court that they no longer sought restoration to the premises. Consequently, the Civil Court should have dismissed the petition as academic rather than on the merits.*"

Petitioner may seek all available remedies in a plenary action, including treble damages, upon proper proof pursuant to RPAPL § 853. [See *Wheeler v Linden Plaza Pres LP* 172 AD3d 608](#) (1st Dept. 2019); [Rostant v Swersky](#) 79 AD3d 456 (1st Dept. 2010) This Court lacks jurisdiction over damages claims, including those arising under RPPAL§ 853); [Saccheri v Cathedral Props Corp.](#), 16 Misc 3d 111 (A.T. 2nd Dept. 2007).

Accordingly, based upon the statement that petitioner is now in possession, it is

ORDERED that the petition is dismissed as academic, and petitioner may seek all available remedies in a plenary action and must do so within the statutory timeframe required.

This Decision and Order is being emailed to the attorneys of record.

This constitutes the Decision and Order of the Court.

So Ordered,
Dated: March 18, 2022
Queens, New York
ENEDINA PILAR SANCHEZ
Judge, Housing Court

[Return to Decision List](#)