New York State Commercial Landlord-Tenant Law and Procedure: A Primer—Part I

Gerald Lebovits
Free BBA Public Forum Featured Expensive Legal Advice

By: Charles F. Otey, Esq.

This article is reprinted with the permission of the Brooklyn Eagle and coincides with the recent selection of the Brooklyn Bar Association by the New York State Conference of Bar Leaders at the NYSBA Annual Meeting receiving the 2013 Bar Leaders Innovative Award for larger Bar Associations.

Some very expensive and timely legal advice was recently given at a Brooklyn Bar Association Public Forum, where lawyers specializing in vital areas of the law imparted their expertise for free! Yes, no charge. The public was invited!

This special public-service forum was started six years ago — initiated under the BBA presidency of Diane Szochet — has gone a long way toward helping the public to benefit from “the good that lawyers do.” (The theme of this column for the last 13 years— “Pro Bono Barrister”.) Fern Finkel served as moderator and the program was organized by Jaime Lathrop.

The topic, “Co-op Living — Know your Rights as a Shareholder and as a Renter.” Ms. Finkel’s invitation stresses that “All members of the public are invited to attend (this) informational lecture on co-op law, share-holders rights ... under the Martin Act and the New York State Constitution.”

How BBA’s Public Forum Became a State Bar Star

In recognition of the steady effort by Barrister Finkel and the initial launch six years ago, handled by Diana Szochet, we asked Ms. Szochet, via email, a number of questions regarding the founding and the continuing agenda of the BBA Public Forum. Not only did she reply, Ms. Szochet actually

President Andrew M. Fallek, Past President Diana J. Szochet, Trustee Fern Finkel and Executive Director Avery Eli Okin, Esq., CAE.

Theresa M. Ciccotto, Former BBA Trustee, Is Inducted as a Judge of The Civil Court Of the City of New York, Kings County

By: Glenn Verchick, Esq.

On December 18, 2013, the Induction Ceremony of Theresa M. Ciccotto as Judge of the Civil Court of the City of New York, County of Kings was held in the Ceremonial Courtroom of the Brooklyn Borough Hall. Judge Ciccotto’s inspiring and steadfast rise to her Judgeship was celebrated and honored by a packed room of friends, colleagues, members of the judiciary and key members of her political party. Becoming a judge was a lifelong dream for Theresa M. Ciccotto. She acknowledged that it could not have been accomplished without the help of friends, supporters and colleagues and, especially, not without the love and support of her

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HOLD THE DATE
Second Annual
Hon. Theodore T. Jones, Jr. Memorial Golf Outing
presented by the
Brooklyn Bar Association Foundation, Inc.
Golf Outing
Monday, April 28, 2014
Colonia Country Club

Visit us at www.brooklynbar.org

Gerald Lebovits is a New York City Civil Court judge and an adjunct professor of law at Columbia, Fordham, NYU, and New York Law School. Michael B. Turk is an associate with David Rozelook & Associates. The authors thank Shogik Oganiyan, an associate at Cohen Hochman & Green, and Jomo N. Neumann, a student at Benjamin N. Cardozo School of Law, for their generous contributions. Some research in this article comes from Gerald Lebovits, Damon P. Howard & Michael B. Turk, New York State Commercial Landlord-Tenant Law and Procedure — 2012-2013 (5th ed. 2013).

I. INTRODUCTION

Contrary to what the uninformed believe, New York landlord-tenant law, both commercial and residential, is complex and specialized. Some of the more intricate aspects are limited to the New York City area. But commercial landlord-tenant litigation can often be as complicated and confusing as residential landlord-tenant litigation, if not more so. New York commercial landlord-tenant law and procedure will be discussed in a future article. In the meantime, we will consume the inexperienced practitioner. This three-part article is a roadmap that we hope will make the maze of New York commercial landlord-tenant litigation easier to navigate.

II. SUMMARY PROCEEDINGS TO RECOVER POSSESSION

A. Procedure and Pleadings

A tenant or other occupant may ordinarily be ejected from real property in New York pursuant only to a warrant of eviction issued by a court of competent jurisdiction. Although there is an absolute prohibition on self-help evictions of residential tenants, a limited common-law right to self-help allows landlords to do so if doing so is effectuated without force or violence.i Even when this common law self-help option is available, landlords will rarely exercise it in commercial landlord-tenant litigation, if not more so. New York commercial landlord-tenant law and procedure will be discussed in a future article. In the meantime, we will consume the inexperienced practitioner. This three-part article is a roadmap that we hope will make the maze of New York commercial landlord-tenant litigation easier to navigate.

Summary proceedings are special proceedings to recover possession of real property under RPAPL Article 7. Every summary-proceedings calendar is a trial calendar for Civil Practice Law and Rules (CPLR) purposes. The court may hold a trial whenever the proceeding is on the calendar, although, in part, the matter will generally be handled by motion, letter, or telephone conference. The petition must contain a description of the premises to be recovered.xi The description in the dismissal of the petition.

Failure to comply with any requirement can result in summary proceedings. Courts that adjudicate summary proceedings and final decisions in the dismissal of the petition.

A summary proceeding is typically commenced by filing a notice of petition and petition. Courts also have the power to issue an order to show cause in summary proceeding, although landlords’ attorneys rarely come across an order to show cause in summary proceedings. Even when this common law self-help option is available, landlords will rarely exercise it in commercial landlord-tenant litigation, if not more so. New York commercial landlord-tenant law and procedure will be discussed in a future article. In the meantime, we will consume the inexperienced practitioner. This three-part article is a roadmap that we hope will make the maze of New York commercial landlord-tenant litigation easier to navigate.

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Failure to comply with any requirement can result in summary proceedings. Courts that adjudicate summary proceedings are disposed of in a summary proceeding: A commercial landlord-tenant relief sought.xxii The relief must always in-
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4. Motions in Summary Proceedings

Motions may be made in summary proceedings in substantially the same manner as any proceeding, including pre-answer motions to dismiss, summary-judgment motions, or motions to strike answers, bills of particular demands, or jury demands. A motion in a summary proceeding should be made returnable when the proceeding is scheduled to be heard.**

B. Holdover Proceedings

1. Common Grounds for Holdover

Here are the three most common grounds for holdover proceedings against commercial tenants:

(a) The tenant is claimed to have defaulted under the lease. In these cases, a landlord must give the tenant a notice to cure. A notice to cure must set forth the tenant’s obligation to cure and also must state the consequences that will arise if the default is not cured by a specified date.

(b) The landlord is exercising an early termination option that allows the landlord to effectuate an early cancellation of the lease, the cancellation notice is signed by a petitioner’s attorney or agent.

(c) Holdover proceedings based on the tenant’s alleged breach of a covenant or...