

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF QUEENS: HOUSING PART A
SAU MEI CHAN

Petitioner

Index No. L&T 75566/17
DECISION

-against-

“JOHN DOE” and “JANE DOE”
71-38 71st Street, Basement A1
Glendale, New York 11385

Respondents

SAU MEI CHAN

Petitioner

Index No. L&T 75567/17
DECISION

-against-

“JOHN DOE” and “JANE DOE”
71-38 71st Street, Basement A2
Glendale, New York 11385

Respondents

SAU MEI CHAN

Petitioner

Index No. L&T 75568/17
DECISION

-against-

“JOHN DOE” and “JANE DOE”
71-38 71st Street, 2nd Floor
Glendale, New York 11385

Respondents

SAU MEI CHAN

Petitioner

Index No. L&T 75569/17
DECISION

-against-

“JOHN DOE” and “JANE DOE”
71-38 71st Street, 1st Floor
Glendale, New York 11385

Respondents

Hon. Clifton A. Nembhard

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

respondents’ motion for an order dismissing the proceeding on the grounds that petitioner failed to accurately describe the premises; that the premises are rented in violation of MDL §302 and 22 NYCRR § 208.42(g) and pursuant to CPLR § 1024 for failure to properly name respondents and petitioner’s cross-motion for an order directing respondents to produce copies of their alleged lease and permitting her to amend the petition.

Papers	Numbered
Notice of Motion and Affidavits Annexed	1
Order to Show Cause and Affidavits Annexed	_____
Answering Affidavits (Cross-Motion).....	2
Replying Affidavits	3
Exhibits	_____
Other	_____

Upon the foregoing papers, the Decision /Order on the motion and cross-motion is as follows:

Background

Petitioner commenced these holdover proceedings to recover the subject apartments located at 71-38 71st Street, Glendale. Prior to commencement petitioner served Thirty Day Notices terminating respondents’ tenancies effective September 30, 2017. The matters were consolidated on January 16, 2018. Respondents now move to dismiss the proceedings arguing, among other things, that petitioner’s use of a pseudonym to describe them is improper.

Discussion

The gravamen of respondents’ argument is that petitioner or her predecessors were made aware of their names in prior proceedings. In addition, petitioner acknowledged on the record that she was aware of respondents’ first names prior the commencement of these proceedings.

CPLR § 1024 provides for the use of a pseudonym such as John Doe or Jane Doe where the name of a respondent cannot be ascertained after a reasonable and diligent effort. However, the unusual authority sanctioned by the statute should not be availed of in the absence of a genuine effort to learn the true name of the party. *Capital Resources v. John Doe*, 154 Misc2d 864 [Civ Ct Kings 1992]. If the name of a respondent could be discovered upon reasonable investigation, the petitioner must name that person using his or her actual name or so much of the name and identity as is known. *ABKCO Industries v. Lennon*, 52 AD2d 435 [1st Dept 1976]. If a petitioner knows a party’s name, or fails to demonstrate that it made diligent efforts to learn a party’s name, then use of a pseudonym is not authorized by CPLR § 1024 and the petition is rendered fatally defective as to that party. *Triborough Bridge and Tunnel Auth. v. Wimpfheimer*, 165 Misc2d 584 [App Term 1st Dept 1995].

Here the petitioner does not dispute the allegations made by respondent. She acknowledged on the record that she was able to learn the first names of the respondents, through her own investigation, before starting these cases. In addition, this Court conducted a traverse hearing involving these premises on April 5, 2016 after petitioner's predecessor brought holdover proceedings against respondents. During the hearing Steven Romney identified himself as the first floor tenant, Joe Amato testified that he lives in the street level rear apartment, John Scott Walker stated that he lives in apartment 1 Forward and Douglas Kirschener testified that he's in the top floor apartment.

Conclusion

Based on the foregoing petitioner cannot avail herself of the use of "John Doe" and "Jane Doe" to describe the occupants of the subject apartments. Accordingly, the motion is granted and the proceedings dismissed. The Court need not reach the other branches of the motion. The cross-motion is denied as moot.

This constitutes the decision and order of the Court.

Date: February 26, 2018
Queens, New York

SO ORDERED

HON. CLIFTON A. NEMBHARD

Hon. Clifton A. Nembhard, JHC