

CIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF NEW YORK : HOUSING PART D

-----X  
RIVERSIDE PARK COMMUNITY, LLC,

Petitioner-Landlord,

-against-

OPHER HENDERSON, *et al.*,

Respondents-Tenants.  
-----X

Index No. L & T 66362/14

**DECISION/ORDER**

**CHERYL J. GONZALES, J.H.C.:**

Recitation, as required by CPLR 2219(a), of the papers considered in reaching the Decision/Order on this motion to: dismiss, etc.

| <b>Papers</b>                                 | <b>Numbered</b>          |
|---|--------------------------|
| Notice of Motion and Affidavits Annexed ..... | <u>1 - 3</u>             |
| Answering Affidavits .....                    | <u>9</u>                 |
| Replying Affidavits .....                     | <u>12</u>                |
| Exhibits .....                                | <u>4 - 8; 10, 11; 13</u> |

Upon the foregoing cited papers, the Decision/Order on this motion is as follows:

The facts relevant to this motion are not in dispute. On January 21, 2014 respondent and certain additional occupants of Apartment E7E located at 3333 Broadway, Building E, New York, NY were arrested at the premises. On April 1, 2014 the Office of the New York County District Attorney forwarded a letter to the petitioner requesting the commencement of eviction proceedings against respondent (the April 1 letter). A copy of the search warrant, vouchers, laboratory reports and criminal court complaints were all enclosed with the April 1 letter. On May 22, 2014 the criminal case against respondent was dismissed and the record was ordered sealed. Three weeks later, on June 6, 2014, petitioner commenced this

proceeding by the filing of the Notice of Petition and Petition. The aforementioned search warrant, voucher, lab reports and criminal court complaints were all attached to the petition.

Respondent now moves to dismiss the proceeding. Respondent argues that because all charges against her were dismissed and all official records and papers relating to the arrest were sealed, they may not be used against her at trial and may not form the basis of the allegations in this eviction proceeding which was commenced after the case was sealed.

This argument is without merit. The information regarding the criminal complaint against respondent was properly disseminated to a third party, the petitioner herein, by virtue of the April 1 letter prior to the dismissal of the charges and the sealing of the record (*Matter of the Application by the New York County District Attorney's Office to Unseal Records in People v Wanda S.*, Docket No. 2005 NY 028400, Sup. Ct., NY County; petitioner's Exhibit 2, pp. 5, 6).

Citing *Morrisania IV Assoc. v Daniels*, Index No. 21203/14 (Civ Ct, Bronx County, July 24, 2014), respondent further contends that it is not the dissemination of the records to a third party which renders them a matter of public record, but, rather their filing in court as exhibits to a petition which renders them a matter of public record (*see* respondent's reply memorandum, Exhibit 1).

This argument, however, directly contradicts the findings of the Supreme Court in *People v Wanda S., supra*. "Specifically, the People sent the documents to defendant's landlord with their May 16, 2005 letter. The landlord then attached the documents to its Housing Court filings, public records on May 24 and November 17, 2005. The sealing was not ordered until one week later, November 23. Since the documents had already been lawfully disseminated and

published, the People's motion to unseal was actually unnecessary, and defendant's current motion moot" (petitioner's Exhibit 2, p. 6).

Respondent further contends the proceeding should be dismissed because the Notice of Petition served on her did not contain the sign or seal of the Clerk of the Civil Court.

This argument is also unavailing. Service of process without the signature of the Clerk of the Court is not a jurisdictional defect (*Hochhauser v Stewart*, NYLJ, April 20, 1992, p 30, at 1 [App Term, 2nd Dept]).

Alternatively, respondent moves for leave to serve an amended answer. Contrary to the allegations of both sides there is no initial answer in the court file. Under these circumstances, respondent will be permitted to serve the answer submitted with these moving papers as Exhibit D with the exception of the first and second affirmative defenses. These claims have already been found to be without merit.

Accordingly, respondent's motion is granted solely to the extent of permitting the service and filing of an answer as noted above on or before November 21, 2014. The remaining branches of respondent's motion are denied.

The case is hereby rescheduled for trial on December 3, 2014, at 9:30 AM, in Part D or any other Part to which the matter may be assigned.

The foregoing constitutes the decision and order of this court.

Dated: New York, New York  
November 12, 2014

  
Cheryl J. Gonzales, J.H.C.