

### LANDLORD-TENANT LAW

# Summary Proceedings: Premises Titled Under Assumed Name



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In September 2017, in the commercial summary holdover proceeding entitled *Habibian v. Sudman's Service & Diagnostics*, NYLJ 1202798890970 (Dist. Ct. Nas. Co. Nov. 20, 2017) (*Habibian*), Judge Scott Fairgrieve of District Court, Nassau County, was presented with a novel question; namely, when title to the subject property is held in a trade or assumed name that is not itself a legal entity, who, if anyone, may bring a summary proceeding? The court answered that question by holding that the proceeding could properly be maintained by the natural person who was properly conducting business under the trade name which was reflected on the deed.

### Background

The facts presented to the court in *Habibian* were as follows. In April

2017, the subject premises, a commercial property located in Hewlett, New York, was sold at a tax foreclosure sale. The deed, dated April 24, 2017, was executed by the Nassau County treasurer, Beaumont A. Jefferson, as grantor, and listed the grantee as “Frontpage Investments.”

On or about May 9, 2017, the new owner commenced a summary holdover proceeding against Sudmann’s Service & Diagnostics and H.J. Sudmann & Sons, Inc based on the tenancy having been terminated as a result of the tax foreclosure. The caption of the petition reflected that the petitioner was “Yousef Habibian d/b/a Frontpage Investments” and the petition itself alleged that “petitioner Yousef Habibian is the owner of the property.”

The tenants moved to dismiss the petition on the grounds that the petitioner lacked capacity to bring the proceeding. The tenants maintained that Yousef Habibian, who was listed as the petitioner, was not the owner of the property—rather,

Frontpage Investments was the grantee under the deed—and thus he lacked capacity to bring the proceeding. The tenants further contended that dismissal of the petition was warranted because Frontpage Investments was not incorporated, was a d/b/a only, and thus any deed purporting to transfer the property “to a non-corporate entity is void.” Thus, tenants claimed that because neither Habibian nor Frontpage Investments owned the subject property, the proceeding could not be maintained.

The petitioner, Habibian, argued that he was permitted to hold title to the property in the “d/b/a name only,” since he complied with General Business Law (GBL) §130 by filing a business certificate demonstrating that he was conducting or transacting business in the name of Frontpage Investments. He maintained that by virtue of said filing, the proceeding may be maintained in his name and that “extrinsic evidence may be introduced, if

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necessary, to determine the name of the grantee.”

### The Court’s Decision

The court denied the tenants’ motion to dismiss. In so holding, it first observed that the law permits a person to engage in business under any assumed name provided there is compliance with GBL §130. It further explained that under New York law, a grantee is permitted to take title under an assumed name and that extrinsic evidence may be used to clarify the identity of the true grantee:

Section 35 of 43 N.Y. Jur. 2d Deeds states that... ‘a grantee may take title in an assumed name, and, where there is a dispute as to the person intended to be named as grantee, evidence is admissible to establish the identity of the true grantee.’ In 23 Am. Jur. 2d Deeds, §29, the Treatise contends that the rule that a conveyance is void due to the nonexistence, does not apply where the living person takes title under an assumed name: ‘The rule that a deed which names as grantee a nonexistent person is void applies only when the named grantee does not in fact exist and not to the situation where a person in existence is described by a fictitious or assumed name. If a living or legal person is identifiable as the grantee named in the deed, the deed is valid.’

The court, citing to 23 Am. Jur. 2d Deeds, §21, went on to explain:

A deed to a fictitious grantee, or which names as grantee a person who has no existence, is inoperative and void. However, a deed to an existing person as grantee who is described by a fictitious or assumed name is valid.

Relying on a 2015 decision from the U.S. District Court in Connecticut, the court then went on to explain that a trade name—such as Frontpage Investments—has “no separate legal existence” and that the owner of the trade name, and

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the trade name entity, are one and the same.

In *TicketNetwork v. Darbouze*, 133 F. Supp.3d 442 (U.S. Dist Ct., Conn. 2015), the Court makes it clear that a trade name has no separate legal existence from the person doing business under that name:... ‘Use of a so-called trade name does not create a separate legal entity. Instead, the trade name user is the same entity as its owner... While a trade name does not create a separate legal entity, the entity doing business under the trade name, whether corporation or individual, remains liable for all of its obligations. [T]he owners of the trade name and the trade name entities are one and the same.’

The court observed that in the matter before it, Yousef Habibian registered the name of Frontpage Investments with Nassau County, as required by GBL §130, prior to assuming title to the premises in the name of Frontpage Investments. It thereby concluded that “Habibian has the right to operate under the assumed name of Frontpage Investments and to take title to the property in that name.” The court further concluded that because “[t]here is no separate legal existence between Yousef Habibian and Frontpage Investments,...[p]etitioner may bring this summary proceeding” and “any doubt about the grantee of the tax deed can be explained by extrinsic evidence.”

### Conclusion

While we are not advising that it is wise to take title to real property in the name of a trade or assumed name, if this is done, this case instructs that one must be certain to register the trade or assumed name pursuant to the requirements of GBL §130. Provided that the trade or assumed name is properly registered, it seems that a summary proceeding may be brought in the name of the person or entity doing business under the trade or assumed name.