

Jermainia Holdings LLC v Lyndo

2024 NY Slip Op 31604(U)

April 30, 2024

Civil Court of the City of New York, Kings County

Docket Number: Index No. LT-322013-23/KI

Judge: Agata E. Rumprecht-Behrens

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Civil Court of the City of New York
County of Kings

Index # **LT-322013-23/KI**



JERMAINIA HOLDINGS LLC

Petitioner(s)

Decision / Order

-against-

CYNTHIA LYNDON; CHANESE NELSON; DOMINIQUE
NELSON; John Doe; Jane Doe

Respondent(s)

Present: Hon. Agata Rumprecht-Behrens

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

Papers	Numbered
Notice of Motion and Affidavits /Affirmations	NYSCEF 6-8
Answering Affidavits/ Affirmations	NYSCEF 10-11
Reply Affidavits/ Affirmations	NSYCEF 12-13

This is a summary holdover proceeding. Petitioner seeks to recover possession of the premises known as 170 E 32nd Street, Apt 1, 1st Floor, Brooklyn, NY 11226.

Respondent Lyndo appears by counsel and seeks to dismiss this matter pursuant to CPLR §3211(a)(1), CPLR §3211(a)(3) and CPLR §3211(a)(7), *inter alia*, based on petitioner’s lack of standing as petitioner is a foreign entity without authority to do business in New York State.

New York Limited Liability Company Law §802(a) states that any foreign limited liability company shall apply for authority to do business in New York State by submitting the required documents to the department of state. (*Limited Liability Company Law § 802* (Consol., Lexis Advance through 2024 released Chapters 1-49, 52, 61-117)). Respondent argues that the lack of a Certificate of Authority from the Department of State is fatal to this proceeding as petitioner lack ability to do business and maintain any action, suit or special proceeding in any court of this state” *Limited Liability Company Law § 808(a)* (Consol., Lexis Advance through 2024 released Chapters 1-49, 52, 61-117))

Petitioner also cites to *Limited Liability Company Law § 808(a)* and focuses on the later clause which states that a “foreign limited liability company doing business in this state without having received a certificate of authority to do business in this state may not maintain any action, suit or special proceeding in any court of this state unless and until such limited liability company shall have received a certificate of authority in this state.” Petitioner admits that the Certificate of Authority was not obtained prior to commencement of this case and cites to *Matter of Mobilevision Med. Imaging Servs., LLC v. Sinai Diagnostic & Interventional Radiology, P.C.*, 66 AD3d 685 which stands for the proposition that under Limited Liability Company Law 808(a), plaintiff (petitioner) must be provided with a reasonable opportunity to cure its noncompliance prior to dismissal. Petitioner claims that the defect was cured on February 22, 2024, and annexes a certificate of authority from the New York State Department of Taxation and Finance. There is no proof that Jermainia Holdings LLC are registered or have a Certificate of Authority from the Department of State Division of Corporations.

In reply, respondent correctly points out that the Certificate of Authority from the NYS Department of Taxation and Finance is not the same as the Certificate of Authority which must be issued by the Department of State. Respondent annexes a printout from the NYS Department of State Division of Corporations that shows there are no records of Jermainia Holdings LLC in the NYS Division of Corporations lookup as of March 15, 2024.

A foreign corporation may cure a failure to obtain authorization to do business during the pendency of an action. *Uribe v. Merchants Bank*, 266 A.D.2d 21, 22 (1st Dept 1999) The *Uribe* case concerns lack of corporate capacity to use pursuant to *Business Corporation Law §1312* which is analogous to the requirements of *Limited Liability Company Laws* cited above. However, here, petitioner did not cure despite having several months to do so. Petitioner alleges the defect was cured but petitioner obtained a Certificate of Authority from the wrong NYS Agency. Since petitioner is a foreign limited liability company operating without a proper Certificate of Authority, petitioner cannot maintain this suit and the matter must be dismissed. The court does not need to reach the other branch of the motion to dismiss as moot.¹

Accordingly, it is ORDERED that petitioner’s motion to dismiss is granted. And it is further

ORDERED that respondent serve, via NYSCEF, a copy of this Decision/Order with a Notice of Entry on petitioner’s counsel on or before May 15, 2024.

This constitutes the Decision/Order of the court.

Date: April 30, 2024

Hon. Agata E. Rumprecht-Behrens
Housing Court Judge

¹ The court notes that the other ground for dismissal is based on cases that turn on *RPL § 323-b*. Reliance on *RPL § 232-b* is misplaced here as it applies to “a monthly tenancy or tenancy from month to month of any lands or buildings located outside of the city New York...”