

<b>1372 Shakespeare Ave HDFC v Perez</b>
2025 NY Slip Op 35257(U)
April 7, 2025
Civil Court of the City of New York, Bronx County
Docket Number: Index No. LT-323487-24/BX
Judge: Rina Gurung
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

CIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF BRONX: HOUSING PART L

-----X  
1372 SHAKESPEARE AVE HDFC,

Index No. LT-323487-24/BX

Petitioner-Landlord,

**DECISION/ORDER**

-against-

INGRID PEREZ,

Mot. Seq. Nos. 1 and 2

Respondent-Tenant.  
-----X

Present: Hon. Rina Gurung  
Judge, Housing Court

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

<b>Papers</b>	<b>Numbers<sup>1</sup></b>
Respondent’s Notice of Motion, Affirmation, and Exhibits (Mot. Seq. No. 1) .....	9-11
Petitioner’s Cross Motion, Opposition, and Exhibits (Mot. Seq. No. 2) .....	<u>12-14</u>
Respondent’s Reply and Opposition .....	<u>15</u>
Court File.....	<u>Passim</u>

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

In this nonpayment proceeding brought under RPAPL § 711(2), Petitioner 1372 Shakespeare Ave. HDFC (“Petitioner”) seeks possession of the allegedly unregulated subject premises on grounds that Respondent Ingrid Perez (“Respondent”) accrued rental arrears. Respondent now moves to amend her pro se Answer under CPLR 3025(b) and to dismiss this proceeding under CPLR 3211(a)(7). Specifically, Respondent seeks dismissal on RPAPL § 741 grounds, alleging that the Petition defectively fails to comply with the pleading requirements of the recently enacted Good Cause Eviction Law, L 2024, ch 56, part HH (“GCEL”). Petitioner cross moves, seeking leave to amend the Petition under CPLR 3025(b) and (c) to comply with the

<sup>1</sup> NYSCEF Document Number.

GCEL. Respondent's Motion is partially granted to the extent that Respondent is granted leave to interpose her Proposed Amended Answer, NYSCEF Doc. No. 11, and that proposed pleading is deemed duly served and filed. The balance of Respondent's Motion seeking dismissal is hereby denied, and Petitioner's Cross Motion to amend granted, with Petitioner's Proposed Notice of Petition and Petition, NYSCEF Doc. No. 13, deemed duly served and filed, as under the facts of this proceeding, Respondent has failed to demonstrate any prejudice that would arise from permitting Petitioner to amend.

The sufficiency of a petition in a summary eviction proceeding is governed by RPAPL § 741. Under the recently enacted GCEL, the legislature modified RPAPL § 741 to include subdivisions 5-a and 5-b, which require a petitioner-landlord to “[a]ppend or incorporate the notice required pursuant to section two hundred thirty-one-c of the real property law [to the petition]” and to “append or incorporate” information required by “subdivision one of section two hundred fourteen of the real property law [to the petition].” L 2024, ch 56, part HH, § 5. These RPAPL § 741 amendments did not take effect until August 18, 2024, even though RPL § 215, providing that “[n]o landlord shall, by action to evict or to recover possession, by exclusion from possession, by failure to renew any lease, or otherwise, remove any tenant from housing accommodations covered by section two hundred fourteen of this article except for good cause as defined in section two hundred sixteen of this article[,]” went into effect on April 20, 2024. *See* L 2024, ch 56, part HH, § 7 (“This act shall take effect immediately and shall apply to actions and proceedings commenced on or after such effective date [of April 20, 2024]; provided, however, that: (a) sections two, three, four, and five of this act shall take effect on the one hundred twentieth day after this act shall have become a law”).

This proceeding was commenced on June 26, 2024, and there is no dispute that the Petition,

dated June 18, 2024, NYSCEF Doc. No. 1, does not comply with the GCEL pleading requirements that went into effect on August 18, 2024.<sup>2</sup> Petitioner instead cross moved to amend its pleading to conform with the GCEL requirements after that effective date. Respondent opposes on grounds that a failure to comply with subdivisions 5-a and 5-b of RPAPL § 741 cannot be cured by amendment, analogizing these new pleading requirements with the requirement that a petition for a summary eviction proceeding must plead the regulatory status of the premises sought. *See* NYSCEF Doc. No. 10 at ¶¶ 42-47.

Respondent's argument relies on support from *MSG Pomp Corp. v. Doe*, 185 A.D.2d 798 (App Div 1st Dept 1992), a First Department decision requiring dismissal because a petitioner-landlord misrepresented the ownership and rent regulatory status of the premises in the petition, and *Volunteers of Am.-Greater New York, Inc. v. Almonte*, 65 A.D.3d 1155 (App Div 2d Dept 2009), a Second Department decision affirming dismissal because a petitioner-landlord failed to plead the existence of a government contract as that contract provided the tenant with potential defenses and would have been necessary for the presiding court to properly adjudicate that proceeding. NYSCEF Doc. No. 15 at ¶¶ 20-21.

Since 1992 when *MSG Pomp Corp.* was decided, the Appellate Division of the First Department has clarified that “[w]ith respect to the contents of the petition, adequacy of notice in a landlord-tenant proceeding is governed by a standard of reasonableness under the circumstances[.]” *546 W. 156th St. HDFC v. Smalls*, 43 A.D.3d 7, 11 (App Div 1st Dept 2007). It is when a petitioner-landlord engages in “deliberate misrepresentation of the rent-stabilized status of a leasehold” that “a petition [is subject] to strict construction as a matter of equity,

---

<sup>2</sup> CCA § 400 provides that a special proceeding is commenced by filing and Petitioner filed the Notice of Petition and Petition on June 6, 2024.

subjecting the summary proceeding to dismissal.” *Id.* Here, there was no such misrepresentation as to the GCEL status of the subject premises and further, Petitioner has now cross-moved to amend under CPLR 3025(b) and (c) to bring the Petition into compliance with RPAPL § 741 rather than leaving the Petition in violation of the newly effective subdivisions 5-a and 5-b.

Moreover, while under *Almonte*, an omission rather than a misrepresentation could also supply a basis for dismissing the Petition, the relevant inquiry is whether the omission prevented the tenant from being aware of “certain potential defenses” and whether the presiding court could “properly adjudicate” the proceeding given the pleading omission. 65 A.D.3d at 1157. Given that Respondent neither alleges that the Petition’s omission prevented her from being aware of any potential defenses, nor argues that this Court could not have properly adjudicated this proceeding in the absence of the Petition’s compliance with the GCEL’s pleading requirements, there is no basis for the Court to dismiss this proceeding and deny Petitioner’s Cross Motion to amend based on *Almonte*. While a showing of prejudice can also bar the amendment of a pleading, Respondent does not allege any prejudice in this nonpayment proceeding arising out of the Petition’s omission of the GCEL status of the subject premises. *See Coalition Houses L.P. v. Bonano*, 12 Misc. 3d 146(A), 2006 N.Y. Slip Op. 51516(U) (App Term, 1st Dept 2006) (granting a “landlord’s motion to amend the petition to conform to the proof concerning the rent regulatory status of the apartment premise” in part because the tenant failed “to demonstrate that she was prejudiced by the amendment” (internal citations omitted)).

Again, this is a nonpayment proceeding brought under RPAPL § 711(2). While the GCEL contains provisions that could provide defenses to a nonpayment claim – including restrictions against “unreasonable” rent increases upon renewal under RPL § 216(1)(a)(i) – Respondent does not argue that any of these provisions are relevant here. In light of the above, Respondent’s Motion

is partially granted to the extent that her Proposed Amended Answer is deemed duly served and filed, with the remainder of the Motion seeking dismissal on GCEL grounds denied, and Petitioner's Cross Motion granted to the extent that its Proposed Amended Notice of Petition and Petition are deemed duly served and filed.

All Parties are ordered to return to **Bronx Housing Court, Part L, Room 450 on April 23, 2025 at 9:30 AM** for a pre-trial conference.

The foregoing constitutes the Decision and Order of this court.

Dated: Bronx, New York  
April 7, 2025

SO ORDERED



---

Hon. Rina Gurung  
Judge, Housing Court