

**Tsatsani v TJS Assoc. LLC**

2021 NY Slip Op 31931(U)

February 10, 2021

Supreme Court, Queens County

Docket Number: 711459/20

Judge: Timothy J. Dufficy

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(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.

**Short Form Order**

**NEW YORK SUPREME COURT - QUEENS COUNTY**

**PRESENT: HON. TIMOTHY J. DUFFICY**  
**Justice**

**PART 35**

-----X  
**GRAMMATIKI EVE TSATSANI,**

**Plaintiff Pro Se,**

**-against-**

**Index No.: 711459/20**  
**Mot. Cal. Dates:**  
**11/10/20 and 12/15/20**  
**Mot. Seq. 1, 2 and 3**

**TJS ASSOCIATES LLC,**

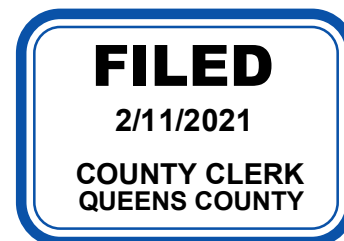
**Attorney(s) for TJS Associates LLC:**  
**Troia & Associates**

**Defendant 1**

**and**

**METRO MANAGEMENT DEVELOPMENT,**  
**INC.,**

**Defendant 2.**



-----X  
The following papers were read on this motion by defendants TJS Associates LLC and Troia & Associates dismissing the Complaint on the grounds of failure to join a necessary party, lack of personal jurisdiction and failure to state a cause of action, pursuant to CPLR 1003 and 3211(a) (7),(8) and (10) - (Motion Sequence No. 1); Self represented plaintiff Grammatiki Eve Tsatsani separately moves for an order granting leave to amend the Complaint to add Cathy Angello Bernstein as a defendant (Motion Sequence No. 2); Defendant Metro Management Development Inc. (Metro) separately moves for an order dismissing the Complaint on the grounds that it is not a proper party, documentary evidence, failure to state a cause of action and failure to join a necessary party, pursuant to CPLR 3211(a)(1),(7) and (10) - (Motion Sequence No. 3).

**PAPERS**  
**NUMBERED**

**Motion Sequence No. 1**

Notice of Motion-Affirmation-Affidavit-Exhibits..... EF 18-30  
Opposing Affidavit..... EF 43

**Motion Sequence No. 2**

Notice of Motion-Affidavit-Exhibits..... EF 32

**Motion Sequence No. 3**

Notice of Motion-Affidavits-Exhibits..... EF 33-41  
Opposing Affidavit..... EF 44  
Reply Affirmation-Exhibit..... EF 45-47

Upon the foregoing papers the motions, marked as Motion Sequence Nos. 1, 2 and 3, are consolidated for the purpose of disposition in a single decision and order.

The motion by defendants TJS Associates LLC and Troia & Associates is denied (Motion Sequence No. 1); the motion by plaintiff is denied (Motion Sequence No. 2); and the motion by defendant Metro Management Development Inc. is denied (Motion Sequence No. 3), as set forth below.

As an initial matter, the caption above is the one that appears on the Summons served and filed by self represented plaintiff Grammatiki Eve Tsatsani. Plaintiff named the defendants as “TJS Associates LLC Attorney(s) for TJS Associates LLC: Troia & Associates Defendant Number 1 and Metro Management Development Inc. Defendant Number 2”. The Court notes that the plaintiff asserted, *inter alia*, in her opposition, that: she made no attempt to name TJS Associates LLC and Troia & Associates as one defendant and clearly stated the names of the two defendants; and a typographical error occurred in the caption in which Defendant 1 appeared, under the name of Troia and Associates. However, as set forth below, this Court dismissed the plaintiff’s Complaint against all the named defendants. As such, the Court need not address the formatting of the caption or the plaintiff’s acknowledged typographical error regarding it.

### **Background**

TJS Associates LLC is the owner of the shares appurtenant to the cooperative apartment, located at 124-16 84th Road, Apt. 5F, Kew Gardens, New York 11415. The subject apartment is located in a cooperative housing corporation, known as Crestwood Apartment Owners Corp. (Crestwood). Cathy Angello-Bernstein, the rent stabilized tenant of record for apartment 5F, surrendered the premises to TJS Associates Inc., pursuant to an agreement, dated August 6, 2019.

In September, 2019, TJS Associates LLC commenced a holdover proceeding, in the Civil Court, Queens County, entitled *TJS Associates LLC v Grammatiki Eve Tsatsani*, Index No. 67322 2019, based upon Tsatsani’s continued occupancy of the subject premises following its surrender. TJS Associates LLC voluntarily discontinued said proceeding, without prejudice, on February 13, 2020, as Tsatsami had not been properly served with the holdover petition. A second holdover proceeding was commenced, entitled *TJS Associates LLC v Grammatiki Eve Tsatsani, et al.*, Index No. 56198/20. Troia & Associates has represented TJS Associates LLC in both holdover proceedings.

## Plaintiff's Complaint

Self represented plaintiff Grammatiki Eve Tsatsani commenced this action for declaratory judgment, injunctive relief and damages on July 28, 2020. The defendants named in the summons are "TJS Associates LLC Attorney(s) for TJS Associates LLC: Troia & Associates Defendant Number 1 and Metro Management Development Inc. Defendant Number 2".

Plaintiff alleges in her Complaint that she resides at 124-16 84 Road, Apt. 5F, Kew Gardens, New York 11415, a rent stabilized studio apartment in the apartment complex "Crestwood Apartments". The Complaint alleges, in pertinent part, that defendant TJS Associates, LLC is the owner/landlord of said apartment and is represented by the law firm of Troia & Associates; that defendant Metro is the management company of Crestwood Apartments and that its current managing agent is Steven Bashia; and that the former superintendent was Parmeshward Prasad, known in the premises as "Peter." It is alleged that Metro hires the superintendent, "who works with the board and the Managing Agent and reports to the managing agent."

Plaintiff alleges in her Complaint, that on February 26, 2019, she entered into a rental agreement for the subject apartment through a broker, and that she did not know and had no contact with the owner of the subject apartment. She alleges that: it was her understanding that the owner of the apartment was a couple who had lived there many years and had relocated to Colorado; she agreed to a one year lease commencing April 1, 2019, with a rent of \$ 1,500 a month, and a security deposit of one month's rent; and the apartment would be available if she wanted to renew the lease. She further alleges that: she paid the security deposit, on February 26, 2019; she did not get a copy of the lease; the owner's name was Cathy Angello and was provided with an address in Colorado; the broker told her that she would receive a lease from Cathy Angello and should mail all payments to her. Plaintiff also alleges that: she was in Greece, until May 15, 2019; in late March she received a draft roommate agreement in an email from Cathy Angello and said agreement was also mailed to her; and she was instructed to obtain the key to the apartment from friends of Cathy Angello who lived in the subject building.

Plaintiff alleges in her complaint that: she took occupancy of the subject apartment, on May 15, 2019, and, shortly thereafter learned that Cathy Angello was the prime tenant of the apartment and the roommate agreement was an illegal sublet that Cathy Angello had made without the permission of the landlord. Plaintiff thereafter refused to be involved in

Cathy Angello's "roommate" or "guest" schemes, and that Cathy Angello and her friends began to harass her. She further alleges that: on June 26, 2019, two friends of Agnello, who live in the building, came to her door and threatened to use a key to enter the apartment; on June 24, 2019, she went to the DHCR, and was provided with several complaint forms; on July 1, 2019, she received a rent history for the apartment going back to 2018; the legal rent was \$771.61; on July 17, 2019, Cathy Angello unlocked and entered the apartment, along with her husband and a dog, and began to verbally, threaten and harass her; the couple left the apartment late at night and returned early the next morning and that this continued for two weeks during which time Cathy Angello removed various items or put them on sale and removed light fixtures leaving exposed wires.

Plaintiff also alleges that: on July 19, 2019, Cathy Angello claimed to have obtained from the landlord a new two year lease ending in 2020, but had not signed it yet; she first learned the identity of the landlord, TJS Associates LLC, on July 20, 2019, when Cathy Angello gave her a copy of a 10 day notice of cure, dated June 11, 2019, that the landlord had mailed to Angello at her Colorado address; on August 4, 2019, four friends of Cathy Angello, as well as others, unlocked and entered the apartment and verbally harassed her for five hours and removed items that had not been sold; on August 5, 6 and 7, 2019, she called the landlord's attorney's office and complained about the harassment and proposed that she be given a lease and was told that the landlord was interested in reclaiming the apartment; on August 11, 2019, two friends of Cathy Agnello again unlocked the door, entered the apartment and verbally harassed her for two hours; and, on August 30 and September 1, 2019, friends of Cathy Angello came to her apartment.

Plaintiff further alleges that: on July 22, 2019, she filed complaints with the DHCR for the owner's failure to furnish a copy of a signed lease, for an illusory prime tenancy tenancy, for a rent overcharge, and for a rent reduction based upon a decrease in services. On July 29, 2019, she filed a harassment complaint with the DHCR. Plaintiff alleges that: the DHCR rejected the harassment complaint on the grounds that it only had jurisdiction to handle complaints from rent regulated tenants against the owners and she did not have a landlord-tenant relationship and a lease agreement with the owner; on January 9, 2020, the DHCR issued an order terminating the proceeding pertaining to complaint that the owner had not provided her with a lease, which stated that "...the complainant is not the legal tenant of the premises. Therefore, the complainant cannot file a lease violation complaint against the prime tenant or the owner"; on January 16, 2020, she requested clarification of said order;

on February 12, 2020, she also she mailed a petition for administrative review with respect to said order; the DHCR's records demonstrate that Cathy Angello was the tenant of record; there were various lease renewals; there was no lease renewal in 2018; and there was a lease renewal in 2019.

Plaintiff also alleges that: the landlord reduced services in that she did not have access to the front door bell, the mailbox, the storage unit for the apartment, the gym, recreation room and to maintenance services such as extermination; the apartment does not have a carbon monoxide detector, smoke detector, or sprinkle system; light fixtures were remove by the prime tenant, or are broken and the wires are exposed in the ceiling and in the wall; the water pipe under the sink in kitchen is broken and water is leaking; cooking gas is shut off; the heating unit in the bedroom is not working; and the tap water is discolored. She alleges that she has notified the landlord of these issues.

Plaintiff further alleges that: the landlord and its agents did not lack knowledge that third parties, other than the tenant, were occupying the apartment for a substantial period of the tenancy; the landlord's agents had not seen the prime tenant for a substantial period of time; the superintendent and the prime tenant had both stated that they had never met one another; that Cathy Angello made references to her ex-husband having lived in the apartment after she left; mail addressed to Cathy Angello and her former husband were left at her door; and the landlord's building employees should have known that the prime tenant's tenancy was illusionary.

The Complaint sets forth allegations concerning the tenant's agreement surrendering the premises, dated August 6, 2019, and the first holdover proceeding commenced against her by the landlord, TJS Associates LLC, including improper service of process in that proceeding and the discontinuance of said proceeding.

Under the heading "Document Fraud: Mail Theft and Mail Tampering USPS Case Search," the plaintiff alleges, among other things: she was not properly served with certain documents; the non-receipt of three copies of certain documents sent to her by certified mail and said certified mail were signed for by a "J Doe", who she alleges is the former superintendent Peter.

Plaintiff also alleges: that a traverse hearing was held in the first holdover proceeding, on January 30, 2020; a second traverse hearing was scheduled for February 13, 2020 and on the morning of February 13, 2020, she received a notice under her apartment door, dated February 8, 2020, stating that the superintendent Peter no longer worked at the subject

premises; prior to the commencement of the traverse hearing that day, the landlord's attorney stated that the proceeding had been discontinued and she did not receive notice of the discontinuance; on February 20, 2020, she received a USPS Case Search Report for the three "Certified Letters" mailed on August 23, 2019, but she was aware of the information contained in said report, since December 30, 2019; she had a telephone conversation with a "USPS representative", who informed her that on August 26, 2019, the mail carrier delivered the three Certified Letters to a person, and that person was Peter. Plaintiff, however, also alleges that "at the present, [she] does not have proof in writing that the USPS representative's statement was correct, and that it was the Superintendent who received the Letters and signed the USPS receipt for the delivery". Plaintiff further alleges that she can establish that Peter signed for the letters, as a sample of the superintendent's handwriting exists based upon a gift and note he left at the front door of all residents, on December 25, 2019.

Under the heading "Injuries", the plaintiff alleges that: the landlord failed to "engage in a good faith interactive process" with her after she "requested to contact their office and asked the Prime Tenant's cooperation to prevent such contact"; the landlord's commencement of the holdover proceeding, which was "intended to evict Plaintiff and to waive or not exercise her rights under the Rent Stabilization Code; the landlord submission of misleading information to the Housing Court and misrepresentations as to material facts regarding the conspicuous service and the prime tenant's violations of the Rent Stabilization laws; the landlord's failure to intervene to end the prime tenant's harassment of her and the landlord's "tolerance encouraged the Prime Tenant's harassment of Plaintiff and the invasions of Plaintiff's privacy"; and the landlord's failure to provide necessary repairs and essential services, endangering her health and safety "with the purpose to cause Plaintiff to vacate the apartment and to not exercise her rights under the Rent Stabilization laws".

She further alleges: that Metro "used a fictitious name to sign the receipt of delivery for the three USPS Certified Letters with knowledge of the fact that such signature did not relate to the person(s) the Letters were addressed, or to the person who received and signed the receipt for delivery" and that Metro "assisted the landlord in misleading the [Housing] Court by providing false documentation and by withholding of material information with knowledge that these actions would affect Plaintiff's legal rights and obligations and would have serious legal consequences" and that the defendants engaged in actions that were intended to force her to leave the apartment and to give up her rights.

She also alleges that: she has lost employment opportunities and other benefits and compensation; the defendants acted with malice and reckless indifference to her rights; and, she has suffered and continues to suffer severe mental anguish and, emotional distress, as a result of the defendants conduct.

In her wherefore clause, the plaintiff seeks a judgment declaring the acts and practices complained of to be violations of the Rent Stabilization Code and the laws that protect her rights: to permanently restraining said violations of law; to provide her with tenancy status protected by the rent regulation laws; compensatory and punitive damages; costs and reasonable attorney fees; and unspecified statutory and punitive damages. Plaintiff also sets forth a demand for a jury trial.

**TJS Associates and Troia & Associates' pre-answer motion to dismiss the complaint (Motion Sequence No.1)**

Troia & Associates moves on behalf of TJS Associates LLC (TJS) and Troia & Associates. Defendants assert that the plaintiff attempted to name TJS and Troia & Associates as one defendant, Defendant 1, and only served a copy of the Summons and Complaint upon Troia & Associates. Defendants have submitted a copy of a Sheriff's certificate of service on corporation, partnership or governmental subdivision which demonstrates that service of process was made on Troia & Associates, on August 4, 2020. Jeffrey Goldstein, the authorized agent for TJS Associates LLC, states his affidavit that TJS Associates LLC has not been served with a copy of the Summons and Complaint, and that Troia & Associates is not authorized to accept service on its behalf and did not accept service on its behalf.

CPLR 311-a provides, as relevant here, that personal service upon a limited liability company shall be made by delivering a copy personally to any member or manager of the company, any agent authorized to receive process, or any other person designated by the company to receive process. Service of process may also be made by serving the Secretary of State pursuant to Limited Liability Company Law § 304. Defendant TJS Associates LLC, by its evidentiary submissions, has demonstrated that the individual purportedly served was not authorized to receive process on its behalf, and thus, jurisdiction over said defendant was not obtained (*see Pinzon v IKEA New York, LLC*, 163 AD3d 733, 734 [2d Dept 2018]; *Ciafone v Queens Ctr. for Rehabilitation & Residential Healthcare*, 126 AD3d 662, 663-664 [2d Dept 2015]).

“The burden of proving that personal jurisdiction has been acquired over a defendant in an action rests with the plaintiff” (*Mtge. Elec. Registration Sys., Inc. v Congregation Shoneh Halochos*, 189 AD3d 820 [2d Dept 2020], quoting *Wells Fargo Bank, NA v Chaplin*, 65 A.D.3d 588, 589 [2d Dept 2009]; see *Washington Mut. Bank v Holt*, 71 A.D.3d 670 [2d Dept 2010]).

Plaintiff, in opposition, asserts that: she made no attempt to name TJS Associates LLC and Troia & Associates as one defendant; she clearly stated the names of the two defendants; and that a typographical error occurred in caption in which Defendant 1 appeared under the name of the attorney for TJS Associates LLC. Plaintiff, however, has failed to establish that defendant TJS Associates LLC was served with process, pursuant to CPLR 311-a or Limited Liability Company Law § 304.

In considering a motion to dismiss a complaint for failure to state a cause of action, “the court must afford the pleading a liberal construction, accept as true all facts as alleged in the pleading, accord the pleader the benefit of every possible inference, and determine only whether the facts as alleged fit within any cognizable legal theory” (*LG Funding, LLC v United Senior Properties of Olathe, LLC*, 181 AD3d 664 [2d Dept 2020], quoting *V. Groppa Pools, Inc. v Massello*, 106 AD3d 722, 722 [2d Dept 2013]; see CPLR 3211[a][7]; *Monaghan v R.C. Diocese of Rockville Ctr.*, 165 AD3d 650, 652 [2d Dept 2018] *Dorce v Gluck*, 140 A.D.3d 1111, 1112[2d Dept 2016]). Here, plaintiff’s complaint fails to state any cognizable claim against Troia & Associates.

Accordingly, the branch of defendants’ motion to dismiss the complaint against TJS Associates LLC, on the grounds of lack of personal jurisdiction, is granted ; and the branch of defendants’ the motion to dismiss the Complaint against Troia & Associates, on the grounds of failure to state a cause of action, is also granted.

**Defendant Metro Management Development Corp.’s pre-answer motion to dismiss the complaint (Motion Sequence No. 3)**

Defendant Metro moves to dismiss the Complaint, on the grounds of documentary evidence, failure to state a cause of action, and failure to name a necessary party, Cathy Angello-Bernstein. Metro, in support of its motion submits, as documentary evidence the Complaint, the stock certificate, deed, and the notice to cure and to terminate the tenancy of the prime tenant Cathy Angello-Bernstein

Metro also submits an affidavit from its employee, Steven Berisha, a property manager. Berisha states, in his affidavit, that Metro is the property manager for Crestwood, a residential cooperative, and that he is currently assigned to said property. He states that Metro works at the pleasure of Crestwood and has no contractual relationship with TJS Associates LLC, plaintiff or the alleged prime tenant, Cathy Angello-Bernstein. He further states that the Crestwood's building superintendent is a direct employee of the building and is not employed by Metro.

Berisha states that: defendant TJS Associates LLC was the original sponsor of the cooperative and is the owner of a number of units within Crestwood, including unit 5F and upon information and belief, unit 5F is a rent stabilized rental unit that is fully within the control of TJS Associates LLC; TJS Associates LLC, as the owner of the unit and a sponsor, has the authority to lease the apartment, in accordance with the Rent Stabilization laws, without seeking approval of the Board of Crestwood; and in no circumstances would they be obligated to seek any approval or permission from Metro to rent a unit.

He further states that: any subleasing would be at the discretion of TJS Associates LLC; Metro and Crestwood would not be involved with the decision to permit a sublease in the subject unit; Metro has no knowledge of the extent of repairs made within the unit; TJS Associates LLC, as the sponsor, owned the rental unit and was responsible for keeping the subject unit free from any fire violations; whether the subject unit is occupied by a prime tenant or a subtenant, Metro's obligations, or lack therefore, remain the same.

He also states that Metro does not bring holdover actions against tenants or shareholders, as that is solely within the purview of the unit owners and/or Crestwood, and that Metro had no part in the holdover actions brought against the plaintiff. He further states that Metro is unable to provide access to mailboxes, doorbells, the gym, recreation room and storage unit to anyone but the shareholder, unit owner, or authorized tenant of a unit.

Plaintiff, in opposition, asserts that the documentary evidence submitted by Metro is not related to her claims against Metro. In opposition to Metro's assertion that the Complaint fails to state a cause of action, the plaintiff asserts that said defendant is improperly seeking to reach the merits of her claims. Plaintiff concedes that Cathy Angello-Bernstein is a necessary party to this action and states that she has moved to amend the complaint in order to assert a claim against her (Motion Sequence No. 2).

Metro, in its reply, submits: all of the exhibits attached to plaintiff's Complaint, including a copy of a notarized surrender agreement signed by Cathy Angello-Bernstein,

dated August 6, 2019; a document pertaining to the service of process in the first holdover proceeding naming TJS Associates LLC as the sole petitioner; a HPD building registration showing Crestwood as the owner and Metro as its managing agent; and document from the DHCR concerning the petition filed by Tsatsani against Angello-Bernstein. Metro asserts that the affidavits submitted in support of the motion were not offered as documentary evidence, but in support of its request to dismiss the Complaint on the grounds of failure to state a cause of action.

“On a pre-answer motion to dismiss pursuant to CPLR 3211, the pleading is to be afforded a liberal construction and the plaintiff’s allegations are accepted as true and accorded the benefit of every possible favorable inference” (*S & J Serv. Ctr., Inc. v Commerce Commercial Group, Inc.*, 178 AD3d 977, 977-78 [2d Dept 2019], quoting *Granada Condominium III Assn. v Palomino*, 78 AD3d 996 [2d Dept 2010]; see *Leon v Martinez*, 84 NY2d 83, 87 [1994]). A motion pursuant to CPLR 3211(a)(1) to dismiss a complaint on the ground that a defense is founded on documentary evidence “may be appropriately granted only where the documentary evidence utterly refutes [the] plaintiff’s factual allegations, conclusively establishing a defense as a matter of law” (*Goshen v Mutual Life Ins. Co. of N.Y.*, 98 NY2d 314, 326, [2002]; see *S & J Serv. Ctr., Inc. v Commerce Commercial Group, Inc.*, 178 AD3d at 977-78; *Rodolico v Rubin & Licatesi, P.C.*, 114 AD3d 923, 924–925 [2d Dept 2014]). “The evidence submitted in support of such motion must be documentary or the motion must be denied” (*Cives Corp. v George A. Fuller Co., Inc.*, 97 AD3d 713, 714 [2d Dept 2012] [internal quotation marks omitted]; see *Attias v. Costiera*, 120 AD3d 1281 [2d Dept 2014]; *Fontanetta v John Doe 1*, 73 AD3d 78, 84 [2d Dept 2010]).

In order for evidence submitted in support of a CPLR 3211(a)(1) motion to qualify as “documentary evidence,” it must be “unambiguous, authentic, and undeniable” (*Granada Condominium III Assn. v Palomino*, 78 AD3d at 997; see *S & J Serv. Ctr., Inc. v Commerce Commercial Group, Inc.*, 178 AD3d at 977-78; *Attias v Costiera*, 120 AD3d at 1282–1283; *Cives Corp. v George A. Fuller Co., Inc.*, 97 AD3d at 714). “[J]udicial records, as well as documents reflecting out-of-court transactions such as mortgages, deeds, contracts, and any other papers, the contents of which are ‘essentially undeniable,’ would qualify as ‘documentary evidence’ in the proper case” (*Fontanetta v. John Doe 1*, 73 AD3d at 84–85., quoting David D. Siegel, Practice Commentaries, McKinney’s Cons Laws of NY, CPLR C3211:10; see *Attias v. Costiera*, 120 AD3d at 1283). “Neither affidavits, deposition

testimony, nor letters are considered documentary evidence within the intendment of CPLR 3211(a)(1)” (*Granada Condominium III Assn. v Palomino*, 78 AD3d at 997 [internal quotation marks omitted]; see *S & J Serv. Ctr., Inc. v Commerce Commercial Group, Inc.*, 178 AD3d at 977-78; *Cives Corp. v George A. Fuller Co., Inc.*, 97 AD3d at 714).

In considering a motion to dismiss a complaint for failure to state a cause of action, “the court must afford the pleading a liberal construction, accept as true all facts as alleged in the pleading, accord the pleader the benefit of every possible inference, and determine only whether the facts as alleged fit within any cognizable legal theory” (*LG Funding, LLC v United Senior Properties of Olathe, LLC*, 181 AD3d 664 [2d Dept 2020], quoting *V. Groppa Pools, Inc. v Massello*, 106 AD3d 722, 722 [2d Dept 2013]; see CPLR 3211[a][7]; *Monaghan v R.C. Diocese of Rockville Ctr.*, 165 AD3d 650, 652 [2d Dept 2018] *Dorce v Gluck*, 140 A.D.3d 1111, 1112[2d Dept 2016]). If the court considers evidentiary material, a motion to dismiss pursuant to CPLR 3211(a)(7) must be denied “ ‘unless it has been shown that a material fact as claimed by the pleader to be one is not a fact at all and unless it can be said that no significant dispute exists regarding it’ ” (*Sokol v Leader*, 74 AD3d 1180, 1182 [2d Dept 2010], quoting *Guggenheimer v Ginzburg*, 43 NY2d 268, 275 [1977]; see also *Ferrera v City of New York*, 164 AD3d 754, 755 [2d Dept 2018]),

Here, the Complaint does not allege any claims against Metro, based upon the alleged actions of Cathy Angello-Bernstein, the issuance of the 10 day notice to cure and the notice to terminate, the proceedings before the DHCR, or the commencement of the first summary holdover proceeding. Furthermore, the documentary evidence submitted herein establishes that: the subject buildings is owned by Crestwood; TJS Associates LLC owns shares of stock in Crestwood; Cathy Angello-Bernstein surrendered the subject apartment to TJS Associates LLC; and the 10 day notice to cure and the notice to terminate were issued by TJS Associates LLC to the tenant Cathy Angello-Bernstein and to the occupants Eve Tsatsani, John Doe and Jane Doe. The documentary evidence also establishes that the first holdover proceeding was commenced solely by TJS Associates LLC and that Metro was not a party to that proceeding.

Plaintiff’s allegations against Metro, which she refers to as “mail tampering” or “mail fraud” fail to state a cognizable cause of action. At most, the plaintiff alleges that someone signed, as “J Doe”, for three pieces of certified mail addressed to her, and that she did not receive said mailings. Although the plaintiff alleges that the person who signed for said mail was Peter, the building’s former superintendent, she also alleges that

she cannot establish this claim. Moreover, the plaintiff does not allege that Peter was acting at the direction of Metro, or that Metro had any knowledge that someone other than the addressee signed for certified mail addressed to the plaintiff.

Plaintiff's allegation that Metro "withheld information" from the court in the holdover proceeding fails to state a cognizable cause of action. Plaintiff does not allege that Metro proffered any testimony or evidence as a non-party witness at the traverse hearing held in that proceeding. In addition, the documentary evidence presented herein establishes that the holdover proceeding was commenced by TJS Associates LLC and Metro was not named as a party to that proceeding.

Accordingly, Metro's motion to dismiss the Complaint, on the grounds of failure to state a cause of action, is granted.

**Plaintiff's motion to amend the complaint in order to add Cathy Angello-Bernstein as a defendant (Motion Sequence Number 2)**

In view of the fact that the plaintiff's Complaint has been dismissed as to all defendants, her motion to amend the Complaint to add Cathy Angello-Bernstein as a defendant is denied.

Accordingly, based upon the foregoing, it is

**ORDERED** that the branch of the pre-answer motion by defendants TJS Associates LLC and Troia & Associates to dismiss the Complaint against it, on the grounds that this Court lacks personal jurisdiction over TJS Associates LLC, is granted (Motion Sequence No. 1); and it further

**ORDERED** that the branch of the motion by defendant TJS Associates LLC and Troia & Associates to dismiss the Complaint against Troia & Associates, on the grounds that the Complaint fails to state a cause of action against it, is also granted (Motion Sequence No. 1); and it is further

**ORDERED** that the pre-answer motion by defendant Metro Management Development, Inc. to dismiss the Complaint on the grounds that the Complaint fails to state a cause of action is granted (Motion Sequence No. 3); and it is further

**ORDERED** that the motion by plaintiff for leave to amend the Complaint to add Cathy Angello-Bernstein, as a defendant, is denied, as the Complaint has been dismissed as to all defendants (Motion Sequence No. 2).

The foregoing constitutes the decision and order of this Court.

**Dated: February 10, 2021**



**TIMOTHY J. DUFFICY, J.S.C.**

