

**OLR MM, LP v Larue**

2025 NY Slip Op 33116(U)

August 4, 2025

Civil Court of the City of New York, Bronx County

Docket Number: Index No. L&T 342117/23

Judge: Kisha L. Miller

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This opinion is uncorrected and not selected for official publication.

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

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OLR MM, LP,  
Petitioner,

Index No. L&T 342117/23

-against-

DECISION/ORDER

LESLIE LARUE,  
Respondent.

Motion seq. no. 1

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HON. KISHA L. MILLER:

Richard Layliev, Esq., for Petitioner.  
Mobilization for Justice, for Respondent.

Recitation, as required by C.P.L.R. § 2219(a), of the papers considered in review of the motion to dismiss.

**Papers** **Numbered**

Notice of Motion and Affidavits Annexed.....NYSCEF Doc Nos. 23-30

Petitioner commenced this summary eviction proceeding to recover possession of the premises located at 627 Manida Street, Apartment 20, Bronx, New York, based upon nonpayment of rent. Respondent moves to dismiss the petition pursuant to CPLR §3211(a)(1) and (a)(7), alleging, *inter alia*, a defective rent demand, failure to serve the predicate notices required by the Violence Against Women Act (“VAWA”), and evidence constituting a judicial admission. Respondent also requests a hearing/trial on the counterclaims interposed in the amended answer.

Following two adjournments, affording Petitioner opportunities to submit written opposition in accordance with the parties’ motion briefing schedules, the court reserved decision on the motion. Petitioner failed to submit written opposition.

Where a party moves to dismiss for failure to state a cause of action pursuant to CPLR §3211(a)(7), the “sole criterion is whether the pleading states a cause of action, and if from its four corners factual allegations are discerned which taken together manifest any cause of action cognizable at law, a motion to dismiss will fail” (*Guggenheimer v Ginzburg*, 43 NY2d 268 [1977]). The court must afford the pleading a liberal construction, accept its allegations as true,

and accord Petitioner the benefit of every possible favorable inference (*Leon v Martinez*, 84 NY2d 83 [1994]).

Respondent moves to dismiss the petition pursuant to CPLR §3211(a)(7), arguing that Petitioner failed to comply with mandatory notice requirements under VAWA. Specifically, Respondent states that Petitioner, as a covered housing provider, did not serve the Notice of Occupancy Rights and VAWA certification form with the Notice of Termination, as required by 24 CFR § 5.2005(a)(1)(i)–(iii) and 34 U.S.C. § 12491.

Respondent demonstrated that Petitioner’s building is subject to the Low-Income Housing Tax Credit (LIHTC) program, which is one of the housing programs covered under VAWA (34 U.S.C. § 12491[a][3][J]). Under federal law, covered housing providers must give tenants VAWA documents with any eviction or termination notice (24 CFR § 5.2005[a][1][iii]). Petitioner failed to do, and the omission is a fatal defect in the predicate notice requiring dismissal of the proceeding (see *Carnegie Park Preservation LP v Cintron*, 2024 WL 3624302 [Civ Ct, Bronx County 2024]; *Rahman v Lewis*, 84 Misc 3d 720, 2024 NY Slip Op 24211 [Civ Ct, Bronx County 2024]; *Sea Park E., L.P. v. Thompson*, 85 Misc 3d 764, 2024 NY Slip Op 24310 [Civ Ct, Kings County 2024]).

A defective predicate notice cannot be cured or amended after service (*Chinatown Apts., Inc. v. Chu Cho Lam*, 51 NY2d 786 [1980]).

Additionally, this proceeding must be dismissed based upon the doctrine of judicial admission.

It is well settled that facts admitted in a party’s pleadings “constitute formal judicial admissions and are conclusive of the facts admitted in the action in which they are made” (*U-Trend N.Y. Inv. L.P. v US Suite LLC*, 186 AD3d 438 [1st Dept 2020] citing *Kimso Apts., LLC v Gandhi*, 24 NY3d 403 [2014]). As the Court of Appeals explained in *Mich. Natl. Bank-Oakland v Am. Employers Ins. Co.*, 89 NY2d 94 [1996], “an admission in a pleading in one action is admissible against the pleader in another suit, provided it is shown ‘by the signature of the party, or otherwise, that the facts were inserted with his knowledge, or under his direction, and with his sanction.’”

In the present case, paragraph 5 of the petition alleges Respondent owes \$3,291.65 in “rent and additional rent,” consisting of \$116.93 from May 2023, and \$1,587.36 per month for June and July 2023. In a separate summary eviction proceeding commenced under Index No.

LT-316423-24 (“holdover proceeding”), where Petitioner alleges Respondent failed to complete annual income recertifications, paragraph 9 of the petition states Respondent “is in arrears for rent and/or use and occupancy in the sum of \$0 through April 2024 [emphasis added].”<sup>1</sup> The holdover proceeding was commenced *after* the instant nonpayment proceeding.

The pleading in the holdover proceeding constitutes a formal judicial admission that Respondent owes no rent through April 2024, negating a critical element of Petitioner’s claim in this proceeding, namely, that Respondent owes rent through July 2023. Judicial admissions are documentary evidence that can support dismissal for failure to state a cause of action (see *Morgenthau & Latham v Bank of N.Y. Co.*, 305 AD2d 74 [1st Dept 2003]).

Based on the foregoing reasons, this nonpayment proceeding must be dismissed.

The court need not address the remaining portions of Respondent’s motion seeking dismissal.

Lastly, Respondent’s unopposed request in the motion for an order restoring this proceeding for adjudication on the counterclaims, including breach of warranty of habitability, is granted.

Accordingly, it is

ORDERED Respondent’s motion to dismiss the petition (seq. no. 1) is granted; it is further

ORDERED that the proceeding shall be restored to the calendar on October 1, 2025, Part C, room 590 for a pre-trial conference on Respondent’s counterclaims only.

This constitutes the decision and order of the court.

Dated: August 4, 2025



APPROVED  
KMILLER, 8/4/2025, 4:19:45 PM

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KISHA L. MILLER, J.H.C.

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<sup>1</sup> In the holdover proceeding, this court granted Respondent’s motion to dismiss the petition for failure to plead the entire rent regulatory status of the premises.