

**OLR MM, LP v Larue**

2025 NY Slip Op 33145(U)

August 4, 2025

Civil Court of the City of New York, Bronx County

Docket Number: Index No. L&T 316423/24

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,

Index No. L&T 316423/24

Petitioner,

-against-

DECISION/ORDER

LESLIE LARUE, JOHN DOE,  
JANE DOE,

Motion seq. no. 1

Respondents.  
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HON. KISHA L. MILLER:

Richard Layliev, Esq., for Petitioner.  
Mobilization for Justice, Inc., 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. 17

Petitioner commenced this holdover summary eviction proceeding to recover possession of the premises located at 627 Manida Street, Apartment 20, Bronx, New York, based upon Respondent’s failure to complete annual income recertifications. Respondent moves to dismiss the proceeding pursuant to CPLR §3211(a)(1) and (a)(7), arguing, *inter alia*, that the petition fails to state a cause of action under RPAPL § 741(4) by failing to plead the rent regulatory status of the building.

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]).

RPAPL §741(4) requires that the petition in a summary proceeding must state, among other things, the interest of the petitioner in the premises and the facts upon which the proceeding is based, including stating the rent regulatory status of the premises (*MSG Pomp Corp. v Doe*, 185 AD2d 798 [1st Dept 1992]). A landlord must fully and accurately plead all applicable regulatory frameworks governing a tenancy, particularly when federal housing subsidies are involved (see *Westchester Gardens, L.P. v Lanclos*, 43 Misc 3d 681, 2014 NY Slip Op 24062 [Civ Ct, Bronx County 2014]). Failure to do so is a fatal defect, not a technical oversight, because it prejudices tenants and prevents courts from assessing compliance with applicable laws and agreements (*Westchester Gardens, L.P. v Lanclos*, id. [petition failed to plead entire regulatory scheme]; *Fortune Socy. v Brown*, 68 Misc 3d 956, 2020 NY Slip Op 20167 [Civ Ct, Bronx County 2020] [petition failed to disclose participation in supportive housing program which deprived tenant of potential defenses]).

The petition characterizes the tenancy as subject to rent stabilization but omits reference to the regulatory agreement between Petitioner and the New York City Department of Housing Preservation and Development (“HPD”). The regulatory agreement, annexed to Respondent’s motion, sets forth requirements affecting rent levels and expands upon rights conferred under rent stabilization. Petitioner should have included the existence of this government contact so the court may be aware of all regulations governing the tenancy and any defenses available to Respondent (*Volunteers of Am.-Greater New York, Inc. v Almonte*, 65 AD3d 1155 [2d Dept 2009]; *PCMH Crotona v Taylor*, 57 Misc 3d 1212[A], 2017 NY Slip Op 51401[U] [Civ Ct, Bronx County 2017]).

Failure to accurately state the regulatory status in a petition is a defect that may be overlooked where no prejudice results to the tenant and may be corrected by amendment in certain cases (see *OLR ECW, L.P. v Myers*, 59 Misc 3d 650, 2018 NY Slip Op 28060 [Civ Ct, Bronx County 2018]). Petitioner did not seek leave to amend the petition or submit a proposed amended pleading. Under these circumstances, Petitioner’s failure to include the entire regulatory framework warrants dismissal of the proceeding.

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

Accordingly, it is

ORDERED that Respondent's motion to dismiss the proceeding (seq. no. 1) is granted.

The proceeding is dismissed without prejudice.

This constitutes the decision and order of the court.

Dated: August 4, 2025



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KISHA L. MILLER, J.H.C.