

**Park Cent. I LLC v Simpson**

2025 NY Slip Op 33806(U)

October 7, 2025

Supreme Court, Bronx County

Docket Number: Index No. LT-340248-23

Judge: Elizabeth Donoghue

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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 S

-----X  
THE PARK CENTRAL I LLC

INDEX NO. LT-340248-23

Petitioner-Landlord,

DECISION/ORDER

-against-

Mot. Seq. 1, 2, and 3

MARGARET SIMPSON  
MICHAEL SIMPSON  
JANE DOE

Respondent

-----X  
Present: Hon. Elizabeth Donoghue  
Judge, Housing Court

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

<b>Papers</b>	<b>Numbered</b>
Respondent’s OSC with Memo of Law and Affirmations.....	NYSCEF No. 14-17
Exhibit.....	NYSCEF No. 18
Petitioner’s Cross Motion with Affirmation .....	NYSCEF No. 23-24
Exhibits.....	NYSCEF No. 25-27
Respondent’s Opposition.....	NYSCEF No. 30
Exhibits.....	NYSCEF No. 31-32
Petitioner’s Reply.....	NYSCEF No. 33
Respondent’s Sur-Reply.....	NYSCEF No. 36
Exhibits.....	NYSCEF No. 37
Court File.....	NYSCEF No. 1-37

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

**STATEMENT OF FACTS**

Petitioner THE PARK CENTRAL I LLC (“Petitioner”) commenced the instant holdover proceeding seeking possession of the premises located at 825 Morrison Avenue, Apartment 1C, Bronx, New York 10473 (“subject premises”) from Respondents MARGARET SIMPSON,

MICHAEL SIMPSON, and JOHN DOE (“Respondent(s)). Petitioner alleges service on Respondents with a Notice of Non-Renewal by mail on May 3, 2023, terminating the tenancy. Petitioner alleges service on Respondents with a Petition, Notice of Petition, and Notice of Electronic Filing (NYSCEF No. 5). The matter was initially calendared for February 22, 2024. On June 6, 2024, Respondent Michael Simpson, through his attorneys, filed an answer. On May 2, 2025 (NYSCEF No. 8), once in the trial part, Respondent filed an Order to Show Cause to amend Respondent’s Answer (NYSCEF No. 14). The Order to Show Cause was signed on May 7, 2025 (NYSCEF No.19). On May 9, 2025, Petitioner filed a Notice of Cross Motion and Opposition (NYSCEF No. 23). On June 2, 2025, Respondent filed an Opposition to Petitioner’s Cross Motion (NYSCEF No.30), and on June 20, 2025, Petitioner replied (NYSCEF No.33). Per granted oral application from Respondent, on July 10, 2025, Respondent filed a Sur-Reply (NYSCEF No. 36). The Court heard oral arguments on the return date of August 22, 2025.

### **DISCUSSION**

#### ***Respondent’s Order to Show Cause to Amend the Answer***

Respondent seeks amendment to correct an obvious “scrivener’s error”. It is well-settled that leave to amend should be freely granted, where, as here, the proposed amendment is not insufficient or devoid of merit or resulting in prejudice. *Shepherd v. New York City Transit Auth.*, 129 A.D.2d 574, 574 (App. Div. 2d Dep’t. 1987). As the Appellate Term held in *Four Thirty Realty LLC v Kamal*, 83 Misc. 3d 138(A), 217 NYS3d 800 (AT1 2024), “[a] proper showing of prejudice must be ‘traceable not simply to the new matter sought to be added, but also to the fact that is only now being added. There must be some special right lost in the interim, some change of position or some significant trouble or expense that could have been avoided had the original pleading contained what the amended one wants to add’” (*A.J. Pegno constr. Corp. v City of*

*New York*, 95 AD2d 655, 656 [1983] [internal quotations marks omitted]). As in *Four Thirty Realty*, the petitioner here made no such showing. (see *Tri-Tec Design, Incl v Zatek Corp.*, 123 AD3d 420 [2014]). Petitioner’s attorney’s conclusory statement that they are unable to locate the process server lacks specificity and has no probative value.

Here, Respondent’s Amended Answer should not surprise or prejudice Petitioner because the relief sought is essentially the same as the original answer; Therefore, there is no resulting prejudice to Petitioner, and the Amended Answer is therefore deemed filed and served on October 7, 2025.

***Petitioner’s Cross-Motion***

Petitioner’s Cross Motion to strike Respondent’s traverse defense is denied. Respondent denies that a copy of the notice of petition and petition were affixed to the property sought to be recovered on December 5, 2023. This sworn statement is a sufficient rebuttal of the process server’s affidavit; therefore, a traverse hearing is required. *Rodriguez v 60 Graham, LLC*, 173 AD3d 1095 (AD2 2019)

Petitioner’s argument that traverse is waived because respondent participated in the litigation, without more, is unavailing. In *Flaks v Zaslów & Co, v Bank Computer Network Corp.*, 66 AD2d 363 (1979), the defendant engaged in conduct that went far beyond the mere pleading of a counterclaim, by moving for summary judgment. Such is not the case here.

Finally, Petitioner’s argument that respondent cannot maintain a traverse claim while seeking affirmative relief unrelated to the main relief sought is also not dispositive. Respondent plead his claim of succession as both a defense *and* counterclaim. The gravamen of Respondent’s case is his succession defense arising from Margaret Simpson’s tenancy. The court

also notes that the mere interposition of a counterclaim will not waive a defense's objecting to personal jurisdiction over it. *Katz & Son Billiard Prods. v Correale & Sons*, 26 AD2d 52, aff'd 20 NY2d 903.

For all the foregoing reasons, it is

ORDERED that Respondent's Order to Show Cause is granted, and the Amended Answer is deemed served and filed on October 7, 2025.

ORDERED, that the case is scheduled for a traverse and trial to December 9, 2025, at 9:30 am.

The foregoing constitutes the Decision and Order of the court.

Dated: October 7, 2025  
Bronx, New York

*Hon. Elizabeth Donoghue*