

**BPP St Owner LLC v Armillas**

2026 NY Slip Op 30048(U)

January 20, 2026

Civil Court of the City of New York, New York County

Docket Number: LT-309847-24/NY

Judge: Jason P. Vendzules

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Civil Court of the City of New York  
County of New York

Index # **LT-309847-24/NY**

BPP St Owner LLC

Petitioner(s)

**Decision / Order**

-against-

Margarita Armillas; "John" "Doe"; "Jane"  
"Doe"

Respondent(s)

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

Papers	Numbered
Order to show Cause/ Notice of Motion and Affidavits /Affirmations annexed	NYSCEF 45-48
Answering Affidavits/ Affirmations	NYSCEF 49-54
Reply Affidavits/ Affirmations	NYSCEF 55-62
Memoranda of Law	_____
Other	_____

Respondent moves pursuant to CPLR § 3025[b] to amend the answer filed in this matter to add an affirmative defense alleging that Petitioner failed to use the mandatory Notice of Petition form required by Administrative Order 163/19 and 22 N.Y.C.R.R. § 208.42 [b]. Petitioner opposes and cross-moves to amend the notice of petition. Respondent’s motion is granted and Petitioner’s cross-motion denied for the following reasons.

*Respondent’s Motion to Amend the Answer*

Leave to amend as Respondent requests should be freely granted unless the proposed amendment is patently devoid of merit or would unfairly prejudice or surprise the opposing party. *Four Thirty Realty LLC v. Kamal*, 83 Misc.3d 138[A] [AT 1<sup>st</sup> Dept 2024]; *1711 Boone Ave. LLC v. Alhudais*, 84 Misc.3d 127[A] [AT 1<sup>st</sup> Dept 2024]; *Toyota Motor Credit Corp. v. Linen*, 75 Misc.3d 134[A] [AT 1<sup>st</sup> Dept 2022]; *Dupont Realty v. Garcia*, 73 Misc.3d 128[A] [AT 1<sup>st</sup> Dept 2021]. The proposed amendment has merit. *See, e.g., Philbear, LLC v. Meltzer*, No. LT-302213-24/RI (Civ. Ct. Richmond Co. Apr. 25, 2025) (“Therefore, petitioner’s use of a . . . form

notice of petition which does not conform to the new form version set forth in 208.42, which has been in effect for over five years, warrants dismissal.”); *N.Y.C. Hous. Auth. Red Hook East Houses v. Rodriguez*, No. LT-300017-24/RH (Civ. Ct. Kings Co. Mar. 11, 2025) (“Therefore, the Court finds that Petitioner’s failure to utilize the court-mandated notice of petition form over four years after its implementation by the Chief Administrative Judge is a fatal defect in the commencement of this proceeding.”)

Petitioner fails to demonstrate prejudice sufficient to defeat the motion. The Appellate Term has clearly stated that late amendment, on its own, is insufficient reason to deny amendment. *Four Thirty Realty LLC v. Kamal, supra., Thanasoulis v. Shapiro*, 81 Misc.3d 132[A] [AT 1<sup>st</sup> Dept 2023]. Instead, the opponent to amendment must show that some special right has been lost because of the delay in amending, that some chance of position would result from the amendment, or that the failure to amend earlier has caused the opponent some significant trouble or expense. *Four Thirty Realty LLC v. Kamal, supra. (quoting A.J. Pegno Constr. Corp. v. City of New York*, 95 A.D.2d 655, 656 [1<sup>st</sup> Dept 1983].) Petitioner can claim no such prejudice where, as here, it has been on notice of the mandatory form notice of petition for more than five years and the defense alleged raises an element of Petitioner’s *prima facie* case is would be required to show at trial. As, such Respondent’s motion must be granted.<sup>1</sup>

#### *Petitioner’s Cross-Motion to Amend the Notice of Petition*

The Court cannot locate (and Petitioner does not cite) any precedent for allowing amendment to a notice of petition in the manner requested. While such amendments have been allowed to specify a return date (*see, e.g., Webb Props., Inc. v. Town of Newburgh*, 43 A.D.3d

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<sup>1</sup> All other arguments made by Petitioner in opposing the motion have been considered and found to be without merit.

1070 [2<sup>nd</sup> Dept 2007]) and to add or substitute parties (*see, e.g., Zirinsky v violet Mills*, 152 Misc.2d 538 [Civ. Ct., Queens County 1991]), no such substantive amendment has been allowed. Indeed, the only other time a petitioner requested relief similar to that at issue here, it was denied. *Eustace Matthew v. Hinds*, No. LT-343108-24/BX [Civ. Ct. Bronx Co. July 8, 2025]. (“As the instant petition was filed well after the requirement became mandatory petitioner’s cross motion seeking to amend the notice of petition to comply must be denied.”) Indeed, courts view a substantive error in a notice of petition to be akin to a defect in a predicate notice, which would be unamendable. *See M & S Queens Realty LLC v. London*, 79 Misc. 788 [Civ. Ct., Queens County 2023]. As such, the cross motion is denied.<sup>2</sup>

*Conclusion*

As such, it is:

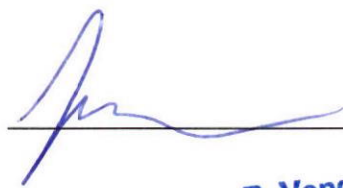
ORDERED that Respondent’s motion to amend the answer is GRANTED. The proposed amended answer filed at NYSCEF 48 is deemed served and filed *nunc pro tunc*; and it is

ORDERED that Petitioner’s cross-motion to amend the notice of petition is DENIED; and it is

ORDERED that this matter is restored to the Court’s calendar on February 20, 2025 at 9:30 AM for pre-trial conference.

This is the Decision and Order of the Court which will be delivered to the parties via posting on NYSCEF.

Dated: January 20, 2026

  
\_\_\_\_\_  
Hon. Jason P. Vendzules  
Judge, Housing Court

<sup>2</sup> All other arguments made by Petitioner in support of the cross-motion have been considered and found to be without merit.