

Ocean 801 LLC v Rich
2026 NY Slip Op 30531(U)
February 11, 2026
Civil Court of the City of New York, Kings County
Docket Number: Index No. 303875/25
Judge: Elyssa O. Slutzky
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CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF KINGS: HOUSING PART G

OCEAN 801 LLC,
Petitioner

Index No. 303875/25

-against-

DECISION/ORDER

ANITA RICH.
Respondent.

Present: Hon. Elyssa O. Slutzky, JHC

Recitation, as required by CPLR §2219(a) of the papers considered in the review of Respondent's Notice of Motion (Seq. 1) for an Order, pursuant to CPLR §3025(b), granting her leave to file an Amended Answer and, pursuant ant to CPLR §3212, granting her summary judgment, dismissing the Petition, on the grounds that the Petitioner lacks capacity to sue based upon its violation of Limited Liability Company Law ("LLC") §206; and Petitioner's cross-motion (Seq. 2) for an Order pursuant to CPLR§3211(b) and/or CPLR§3013 dismissing and/or striking the Respondent's proposed affirmative defenses.

Papers Numbered

Notice of Motion (Seq. 1), Affirmation, Affidavit and Exhibits	NYSCEF #7-17
Notice of Cross-Motion (Seq. 2), Affirmation, Affidavit and Exhibit	NYSCEF #19-21
Affirmation in Reply (Seq. 2) an Exhibits	NYSCEF #22-26

Procedural History

Petitioner brings this nonpayment proceeding seeking possession of the premises located at 801 Ocean Avenue a/k/a 805 Ocean, Apartment 12, Brooklyn, New York 11226 ("premises"). Prior to commencing this proceeding, Petitioner served Respondent with a Fourteen Day Rent Demand, dated December 19, 2024, requiring Respondent to pay \$59,185.57 within fourteen days or vacate the premises. Respondent failed to pay the arrears and/or vacate and Petitioner commenced this proceeding on January 29, 2025, by Notice of Petition and Petition. Respondent interposed a *pro se* Answer on March 12, 2025. Subsequently, counsel Respondent appeared *via* Notice of Appearance. Counsel for Respondent now brings the within motion to interpose an Amended Answer and for summary judgment based upon Petitioner's failure to comply with LLC §206. In response, Petitioner cross-moves to dismiss or strike Respondent's proposed affirmative defenses. It is undisputed that at the time this proceeding was commenced, Petitioner had not filed a certificate of publication with the Department of State, in accordance with LLC §206, as evidence by an email dated November 19, 2025, stating the publication was underway pursuant to LLC §206.

Amended Answer

First, this Court will examine if Respondent should be granted leave to interpose an Amended Answer. Pursuant to CPLR §3025(b), a party is permitted to "amend[their] pleading or supplement

it...at any time by leave of Court or by stipulation of all parties." Applications to amend such pleadings are within the sound discretion of the court. (34-06 73 LLC v Seneca Insurance Company, 39 NY3d 44 [2022]). Generally, leave to amend should be freely granted in the absence of prejudice to the non-moving party where the answer is not patently lacking or devoid of merit. (Coleman v Worster, 140 AD3d 1002 [AD2nd 2016]). The burden of "demonstrating prejudice or surprise, or that a proposed amendment is palpably insufficient or patently devoid of merit, falls upon the party opposing the motion." (Wells Fargo Bank N.A. v Spatafore, 183 AD3d 853 [AD 2nd 2020]). Here a review of the Amended Answer reflects that Respondent's defenses are not insufficient and/or devoid of merit, especially Respondent's First Objection in Point of Law based upon lack of standing pursuant to LLC §206. Petitioner fails to demonstrate surprise and/or prejudice by allowing Respondent to amend her Answer. Accordingly, Respondent's motion to interpose an Amended Answer is granted.

LLC §206

LLC §206 requires limited liability companies to publish their articles of organization for six successive weeks in two local newspapers designated by the clerk of the county where the limited liability company has its principal office. (LLC §206). After the LLC publishes its articles of organization, it is then required to file an Affidavit with the Department of State, stating that such publication has been completed. (LLC §206 [a]). LLC §206 specifically states that failure to comply with these requirements precludes a limited liability company from maintaining any action or special proceeding in New York." (Small Step Day Care, LLC v. Broadway Bushwick Builders, L.P., 137 AD3d 1102 [2016]). The legislative intent behind the provision of LLC §206, which conditions the maintenance of an action or special proceeding on compliance with the publication requirement, is to provide an incentive to ensure that the required disclosure is made. (Barklee Realty Co, LLC v Pataki, 309 AD2d 310 [AD 1st Dept 2003]). The Court of Appeals has upheld the use of limitations on legal proceedings as a means of obtaining compliance with a statute's principal goal (Curiale v Ardra Ins. Co., Ltd., 88 NY2d 268 [1996]).

As stated above, it is undisputed that Petitioner was out of compliance with LLC §206(a) when it commenced this proceeding. Thus, this Court finds that Petitioner lacks standing to maintain this proceeding. This Court rejects Petitioner's argument that it may cure its defect to maintain this proceeding. The legislative intent behind LLC §206 was to make information about an LLC available to the public in a manner allowing the public's right to know the entities with which they are dealing in New York. (One Stone Lending LLC v Alta Operations, LLC, No. 850039/2019, 2020 WL 1077590 (Sup. Ct. 2020). Petitioner's failure to timely comply deprived Respondent of such disclosure, at the commencement of this proceeding, in contravention to the legislative intent. Moreover, Petitioner's reliance on Acquisition Am. VI, LLC v. Lamadore, 5 Misc3d 461 (Civ Ct NY 2004) and its progeny, for the proposition that a failure to comply with the requirements of LLC §206 does not constitute a jurisdictional defect warranting dismissal is misplaced. These cases are

based on the decision in Lamadore, which was decided prior to the legislature’s modification of LLC §206 and its effort to increase limited liability companies’ transparency and accountability.

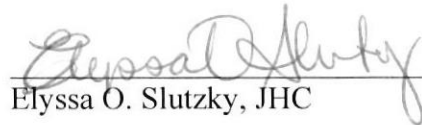
WHEREFORE, it is

ORDERED that Respondent’s motion for an Order to interpose an Amended Answer and to dismiss this proceeding pursuant to CPLR §3212 for lack of standing is **GRANTED**, and it is further

ORDERED that Petitioner’s motion to strike and/or dismiss Respondent’s proposed affirmative defenses is **DENIED AS MOOT**.

This constitutes the Decision/Order of this Court.

Dated: Brooklyn, New York
February 11, 2026


Elyssa O. Slutzky, JHC

February 11,
2026

DATE

HON. ELYSSA O. SLUTZKY
JUDGE, HOUSING COURT

Hon. Elyssa O. Slutzky, J.H.C.

CHECK ONE:

MOTION SEQ. #1

CHECK IF
APPROPRIATE:

NOTES

<input type="checkbox"/>	CASE	<input type="checkbox"/>	NON-FINAL
<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN
<input type="checkbox"/>	JUDGMENT	<input type="checkbox"/>	DENIED-Seq. 2
<input type="checkbox"/>	WITHDRAWN	<input checked="" type="checkbox"/>	DEFAULT
<input type="checkbox"/>	ADJOURNED: ALL	<input type="checkbox"/>	ADJOURNED:
<input type="checkbox"/>	ADJOURNED: HEARING	<input type="checkbox"/>	ADJOURNED:
<input type="checkbox"/>	TRANSFER/REASSIGN	<input type="checkbox"/>	GAL APPOINTMENT

This proceeding is dismissed