

Barboza v 470 Manhattan Ave. LLC
2026 NY Slip Op 32113(U)
July 17, 2026
Civil Court of the City of New York, Kings County
Docket Number: Index No. L&T 328805-25
Judge: Logan J. Schiff
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CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF KINGS: HOUSING PART B

-----X
DANICA BARBOZA

Index No. L&T 328805-25

Petitioner,

-against-

DECISION/ORDER

470 MANHATTAN AVENUE LLC, et al.

Respondents-Owners.
-----X

Present: Hon. Logan J. Schiff
Judge, Housing Court

Recitation, as required by CPLR § 2219(a), of the papers considered in the review of
Respondent-Owner 470 Manhattan Avenue LLC's motion to dismiss pursuant to CPLR 3211:
NYSCEF 8-18.

Upon the foregoing cited papers, the Decision/Order on Respondent's motion is as follows:

Petitioner Danica Barboza, an occupant in an interim multiple dwelling (IMD) subject to Article 7-C of the Multiple Dwelling Law (the Loft Law), commenced the instant Housing Part (HP) enforcement proceeding by Petition dated October 16, 2025. The Petition alleges the existence of several hazardous housing conditions in common spaces of the building, including, inter alia, mold, asbestos, vermin, foundational cracks, and ongoing leaks, and within the subject apartment, including, inter alia, water damage, deteriorated plaster, ongoing leaks, and defective floors. Although the Petition does not denominate or otherwise state the legal basis for a cause of action for an order to correct the aforementioned conditions, the wherefore clause seeks an order directing the Respondent-Owner to correct all hazardous conditions and for inspections by the relevant supervising agencies, namely the Department of Housing Preservation and Development (Respondent-HPD), and the NYC Loft Board.

Respondent-Owner now moves to dismiss pursuant to CPLR 3211(a)(3) and (a)(7) arguing: (1) the Petition is defective because it fails to specify distinct causes of action in the body of the pleading or otherwise set forth the statutory elements of any legal claim, (2) the Housing Maintenance Code is inapplicable to IMDs subject to the Loft Law, and (3) Petitioner lacks standing to maintain this proceeding as, at most, a mere licensee without a possessory interest.

"On a motion to dismiss pursuant to CPLR 3211(a)(7), the complaint is to be afforded a liberal construction, the facts alleged are presumed to be true, the plaintiff is afforded the benefit of every favorable inference, and the court is to determine only whether the facts as alleged fit within any cognizable legal theory" (*CK Real Estate, LLC v 2018 Li Lin Realty LLC*, 2026 NY Slip Op 04173 [2d Dept 2026] [internal quotations and citations omitted]; *Reed v State Farm*

Mut. Auto. Ins. Co., 41 Misc 3d 145 [App Term, 2d Dept, 2d, 11th & 13th Jud Dists 2011] [At the motion to dismiss stage “[t]he complaint should be accepted as true and the court must determine whether such facts fit any cognizable legal theory” and need only provide adequate notice of the “transactions intended to be proved”]).

Here, the Petition adequately states facts and transactions that, if accepted as true, state a cognizable theory for an enforcement proceeding in an IMD under Multiple Dwelling Law § 282-a(2), which provides that:

It shall be unlawful for any owner to interrupt, deny, or discontinue essential services, or to impair the habitability of an interim multiple dwelling unit or building. In addition to any remedies provided under this article, regulations promulgated by the loft board, or any other law or regulation governing the housing standards, any occupant of an interim multiple dwelling may commence an action or proceeding in a court of competent jurisdiction which, notwithstanding any other provision of law, *shall include the housing part of the New York city civil court*, to enforce the provisions of this section. Any agreement that waives or limits the benefits of this section shall be deemed void as against public policy (emphasis added).

See also 29 RCNY § 2-04(4) (noting that the minimum housing standards set forth in the Loft Board’s implementing regulations provide only “a guide which courts can use as part of their determination as to whether landlords are meeting their current and future responsibilities to residential occupants according to the Warranty of Habitability in Real Property Law § 235-b[1] for IMD buildings”).

Further, to the extent the Petition arguably suffers from a technical infirmity inasmuch as it fails to denominate a cause of action for an order to correct under the Housing Maintenance Code or the Loft Law, the court finds this to be a non-fatal pleading defect pursuant to CPLR 2001 that does not require dismissal at this stage and may be cured by amendment prior to or, potentially, even during trial (*see Kimso v Gandhi*, 24 NY 3d 403 [2014]; *MRI Enters. Inc. v Comprehensive Med. Care of N.Y., P.C.*, 122 AD3d 595 [2d Dept 2014]).

To the extent Respondent’s counsel argued in its brief and at oral argument, that petitioners in tenant-initiated HP proceedings should be held to the same “rigorous” pleading standards as landlords in summary eviction proceedings, the court finds the analogy inapt and the argument to be without merit. While both tenant-initiated HP and summary eviction proceedings commenced in housing court pursuant to Civil Court Act § 110 are a type of special proceeding governed by Article 4 of the CPLR, HP proceedings are not a summary proceeding enacted in derogation of the common law remedy of ejectment and subject to strict construction, as is the case for eviction proceedings governed by RPAPL Article 7 (*see Gomez v Gomez*, 2026 NY Slip Op 26006 [Civ Ct, Kings County 2026]). Rather:

An HP proceeding transcends an individual landlord-tenant dispute, and is part of a broad statutory enforcement mechanism where both the Housing Part of the Civil Court and the New York City Department of Housing Preservation and Development . . . are charged with the responsibility of enforcing the broad public interest in maintaining housing

standards under the Multiple Dwelling Law and the Housing Maintenance Code (*Harvey v Miller*, 86 Misc 3d 133 [App Term, 2d Dept, 2d, 11th, & 13th Jud Dists 2025] [internal citation and quotation omitted]).

Accordingly, given the remedial ambit of an HP proceeding, dismissal is not appropriate for a non-prejudicial, non-jurisdictional, pleading defect, including, as relevant here, Petitioner's failure to clearly articulate a cause of action for an order to correct unsafe housing conditions. In any event, this court subscribes to the well-established practice of allowing liberal amendment of pleadings in the absence of material misstatements or omissions, or venal motives, including for landlords in summary eviction proceedings (*see, e.g., 47-05 Ctr. SPE L.L.C. v Hack*, 87 Misc 3d 787 [Civ Ct, Queens County 2025] [sua sponte amending the petition after trial in a holdover to plead exemption from the Good Cause Eviction Law]; *Paikoff v Harris*, 185 Misc 2d 372, 377 [App Term, 2d Dept, 2d & 11th Jud Dists 1999]; *17th Holding LLC v Rivera*, 195 Misc 2d 531 [App Term, 2d Dept, 2d & 11th Jud Dists 2002]).

With respect to Respondent's contention that the Housing Maintenance Code is inapplicable in IMDs, this argument is unavailing for the reasons stated in *Kim v United Am. Land LLC*, 74 Misc 3d 578 [Civ Ct, New York Couty 2022]). While there may be limited housing conditions inextricably linked to the legalization process contemplated under the Loft Law over which the Loft Board has primary, or even exclusive jurisdiction (*see id.*), the record is insufficiently developed at this juncture for the court to make any such determination with respect to the conditions alleged in the Petition.¹ Further, even in the absence of Housing Maintenance Code violations, lawful occupants of IMDs have standing to seek redress in the Housing Part for violations of the Loft Law that impair habitability (*see MDL § 282-a; 29 RCNY § 2-04[4]*).

Finally, as there is no meaningful dispute that Petitioner is, at a minimum, a licensee rather than a squatter or trespasser, she is a "lawful occupant," who may maintain this tenant-initiated enforcement proceeding (*see NYC Admin Code §§ 27-2120[b], 27-2115[h][1]; RPAPL 711; Rodriguez v HUB BK, LLC*, 2025 NY Slip Op 25167 [App Term, 2d Dept, 2d, 11th & 13th Jud Dists 2025]).

Accordingly, Respondent's motion is denied in its entirety. The matter is adjourned to August 12, 2026, at 930am for all purposes.

¹ Counsel for HPD and the Loft Board appeared during oral argument and indicated they are in the process of scheduling inter-agency meetings to address the interplay of the Housing Maintenance Code and the Loft Board regulations pertaining to minimum housing standards in IMDs. The court urges these agencies to expeditiously promulgate clearer rules as to the applicability of the Housing Maintenance Code in such dwellings, as HPD's longstanding and seemingly unwritten practice of issuing only "soft" violations for a limited subset of housing conditions in loft buildings, and which normally do not appear as Code violations on the HPD website, impinges on the ability of tenants in IMDs to obtain meaningful redress. Furthermore, these are matters of technical expertise that should be decided by the supervising administrative agencies, rather than the courts, in the first instance.

Dated: July 17, 2026
Brooklyn, New York



HON. LOGAN J. SCHIFF, J.H.C.