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### Fernandex v. Mag Realty Corp.

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CIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF KINGS: HOUSING PART B

-----X

EDWARD FERNANDEZ,

Index No. 6056/21

Petitioner,

-against-

DECISION AND ORDER

MAG REALTY CORP.,

and

NEW YORK CITY DEPARTMENT OF HOUSING  
PRESERVATION AND DEVELOPMENT,

Respondents.

-----X

Present:

Hon. Sergio Jimenez  
Judge, Housing Court

Recitation, as required by CPLR § 2219(a), of the papers considered in the review of petitioner’s motion for contempt any other relief as the court may find appropriate:

<b>Papers</b>	<b>Numbered</b>
Order to Show Cause.....	<u>1 (NYSCEF 39-50)</u>
Notice of Motion and Affidavits Annexed .....	
Answering Affirmations/Affidavits .....	<u>2 (NYSCEF 51-55)</u>
Replying Affirmations.....	<u>3 (NYSCEF 56-60)</u>
Exhibits .....	
Memorandum of law.....	

In this Housing Part (HP) action, petitioner filed papers initiating this case in July of 2021 alleging the presence of conditions in the subject premises which were violations of the housing maintenance code. On July 28, 2021, the action was set to be heard on Microsoft Teams. Petitioner, at that time, appeared in person. Counsel for respondent herein attended the conference (but as noted in the original order did not file a notice of appearance) and sought to

have the proceeding dismissed stating that the wrong parties were named. The court issued a default order to correct and amended the caption to reflect the correct name (Mag Realty instead of Meg Realty). On August 23, 2021, the court held another appearance pursuant to petitioner's motion to enforce compliance. Again, respondent, through counsel, refused to appear by filing a notice of appearance and again sought to have the motion denied based on the grounds of a typographical error in the name of the respondent. The court issued an interim order, again finding a default by respondent Mag Realty, and setting the matter down for an appearance on September 2, 2021. On that day, the matter was further adjourned to September 21, 2021 where the court issued another order to correct on default, despite respondent's Mag Realty Corp.'s attorney, still the instant attorney attending without filing a notice of appearance, arguing that the entity served was not the correct one and that the court should deny the motion. Hon. Julie Poley's order addressed this argument and found the typographical mistake, in addition to Hon. Kim Slade's prior order discounting this argument, pursuant to CPLR § 2001 found it *de minimis* and issued a further order to correct.

Petitioner was able to obtain counsel after the September appearance and The Legal Aid Society is represents him as of December 17, 2021. Respondent's counsel, who by all accounts has been aware of and attended most court appearances since July 2021, entered a notice of appearance on February 24, 2022. Motion sequence 4 (four) seeking contempt is being held in abeyance on the court's own motion in deference to the Appellate Term's implicit instructions from the CPLR § 5704(b) relief, while the court addresses motion sequence 5 (five) seeking dismissal of the action, over objection by petitioner's counsel. Motion sequence 5 (five), an order to show cause, was rejected by the instant court, but respondent obtained CPLR 5704(b) relief from the Appellate Term and was calendared in an overlapping fashion with motion sequence 4

(four). The court held Arguments were held virtually on April 1, 2022 after motion sequence 5 (five) was fully briefed and the court reserved decision.

#### Motion for Dismissal

Respondent now moves for dismissal of the petition claiming that they were not served properly and that, even if they had been, as a company it “could not” be managing agent as a matter of law and therefore not a proper party in this proceeding. Petitioner counters that personal jurisdiction was already obtained, and that Mag Realty is a proper party under the meaning of the Multiple Dwelling Law and Housing Maintenance Code. The moving party bears the prima facie burden of proof to obtain the relief sought (*Matter of Stop & Shop Cos. Inc. v. Assessor of the City of New Rochelle*, 32 Misc3d 496 [Sup Ct Westchester County 2011]).

The first question before the court is whether respondent’s argument that jurisdiction has not been obtained over them is appropriate, despite the prior court orders. The court finds that service was effectuated at the right place, with a misspelling by a pro se litigant. The crux of respondent’s argument is that the court added a new party, however, that misreads the orders, the amendments did not add a new party, but merely amended the caption/name of the named and served party (Hon. Kim Slade found that the address and method of service was correct as to the respondent) to fix the spelling. CPLR § 2001 is directly on point for allowing these types of corrections. To allow respondents to avoid liability due to simple spelling errors would create absurd results. Non-payments would have to be dismissed because of single letter errors, unamendable predicate notices would be struck for having slightly misspelled names. Further, while the issue has been settled by the prior court orders, the instant court notes that the difference between Meg Realty (or even Meg Reality) and Mag Realty Corp. is *de minimis* and

respondent should have known for whom the papers were meant. The courts have found that harmless typographical errors should not be interpreted as fatal, favoring substance over form. See CPLR § 2001; (*People ex rel. DiLeo v. Edwards*, 247 AD 331 ([App Div 2d Dep't, 1936])). Importantly, Respondent has not stated in any of their papers or in affidavits provided by their clients that there has been any discernible prejudice (outside of having to litigate this proceeding). In fact, their attorneys have attended almost every appearance. The court has been consistent in applying the principle that even if prejudice had been present, the court could exercise its discretion to overlook it when, as is the case here, a mistake was corrected, not disregarded (*Grskovic v Holmes*, 111 AD3d 234 [App Div 2d Dep't, 2013])). Here, Hon. Kim Slade corrected the spelling of a party that was already served at the correct address but had been misspelled by an unsophisticated self-represented litigant.

Respondent also alleges it is an improper party, arguing that only an individual may be a managing agent and that since respondent is a corporation, they cannot be a managing agent as a matter of law and therefore an HP does not lie against them. Courts have found that managing agents, like this respondent who has held themselves out as in control of the premises through their registration, are an appropriate respondent in these types of proceedings (*DHPD v. 849 St. Nicholas Equities*, 141 Misc2d 258 [Civ Ct NY County 1988])). Respondent seeks to use a statute meant to shield tenants from having to engage with empty shell corporations in obtaining repairs as a sword against liability for failure to do repairs. Directly contradicting respondent's sworn affidavits and affirmation that Mag Realty Corp is not the managing agent is the HPD registration, it clearly lists Mag Realty Corp as the managing agent, along with one of its officers. The court is not convinced by the argument that respondent's own registration should

protect an entity entirely from receiving service or from being held liable. In fact, the plain reading of HMC § 27-2095(a)(3)(i) states that service may be effectuated at any business or residence address as set forth in “any registration statement filed by the owner,” which is the case here. See HMC § 27-2095.

The court notes that nowhere in respondent’s papers is the presence of specific violations disputed, there is a mere legal conclusion that all work is done and, if not, the petitioner caused the damage or did not provide access without providing any further detail. However, the court agrees with respondent, that issue is better left for a substantive contempt motion hearing.

#### Conclusion

The motion is denied in its entirety for the reasons set forth above. All orders remain in effect. This action is adjourned to May 13, 2022 at 9:30am for argument on motion sequence 4 seeking contempt of the four orders to correct, the argument may be participated in virtually. This constitutes the Decision and Order of the Court.

Dated: May 5, 2022  
Brooklyn, New York

  
Sergio Jimenez  
Judge, Housing Court

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Sergio Jimenez, JHC

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