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110 Assets LLC v. Patel

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CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF QUEENS HOUSING PART E

-----X

110 ASSETS LLC

Petitioner,

INDEX # 55245/20

-against-

BAHRGAVI PATEL et.al.

DECISION / ORDER

Respondent.

-----X

Present: Kimon C. Thermos, JHC.

Appearing for the Petitioner, 110 Assets LLC: Jack L. Glasser Esq.
Appearing for the Respondent, Rima Patel s/h/a "Jane Doe": Michael Kang Esq. of The Legal Aid Society.

Recitation, as required by CPLR 2219(a), of the papers considered in the review of the instant moving papers.

Papers	Numbered
Notice of Motion, Affirmation, Affidavit and exhibits	NYSCEF Doc. # 14-20
Notice of Cross-Motion/Opposition Affirmation exhibits.....	NYSCEF Doc. # 21-27
Affirmation, Affidavit in Reply, exhibits.....	NYSCEF Doc. # 35-40

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

This is a post foreclosure holdover proceeding predicated upon the service of a notice to quit ostensibly seeking to recover possession of apartment 1C located on the first floor of the property known as 63-41 110 street, Forest Hills, Queens. Petitioner moves for permission to amend the petition to change the language in paragraph 2 which presently describes the parties' relationship as landlord and tenant, to reflect that there is no landlord tenant relationship as the Petitioner is the purchaser at auction having no privity with Respondents. The motion also seeks to challenge respondent's filing of a hardship declaration pursuant to CEEFPA. The branch of the motion seeking to challenge the hardship declaration, and lift the stay imposed, is denied as moot since the CEEFPA statute containing such stay expired on January 15, 2022, along with the stay imposed.

Respondent opposes the motion to amend and cross moves to dismiss because both the original and proposed amended petition contain the wrong description of the premises. The original petition seeks to recover possession of "Second Floor Apt 1C" and the proposed amended petition seeks possession of "Second Floor Apt 4C." It is undisputed that the respondent resides


on the first-floor apartment known as 1C. Citing to RPAPL § 741(3), which reads that every petition “*shall* [emphasis added] describe the premises from which removal is sought,” respondent argues that an amendment to the floor number, if one was even sought, would not be permitted because such a fatal defect is not amendable. See, *Papacostopulos v. Morrelli*, 122 Misc. 2d 938, 939, 472 N.Y.S.2d 284, 286 (Civ. Ct. Kings Co. 1984) and *217 Malcolm X Blvd LLC v. Naughton Bros. Funeral Home Inc.*, 43 Misc. 3d 1214(A) (Civ. Ct. Kings Co. 2014). Respondent argues that the proposed amendment purports to fix the relationship status of the parties but renders the pleadings even more defective on the issue of the description of the premises, since it would now seek possession of a different apartment number which is the subject of another proceeding under a different index number. Finally, respondent contends that the description of a premises is material in summary proceedings for possession since an inaccurate description would make execution of a warrant of eviction by a marshal an impossible task.

Although CPLR 3025(b) permits liberal amendment of pleadings, it is required that a proper proposed amended pleading be annexed to the moving papers. The correct description of the premises is an essential pleading in a summary proceeding. See, *272 Sherman, LLC v. Vasquez*, 4 Misc. 3d 370, 777 N.Y.S.2d 853, 2004 N.Y. Slip Op. 24177 (Civ. Ct. New York Co. 2004). Although the proposed pleading annexed attempts to fix an incorrectly plead party relationship, Respondent correctly points out that it now incorrectly seeks possession of apartment 4C, a completely different apartment in the building. See, *Exhibit to Motion*, NYSCEF Document #19. This is notwithstanding the fact that the original petition contained its own material defect of the wrong floor number. Petitioner has not provided an explanation for the defects and instead argued the point of whether the apartment number is “1C” vs. “C1” which is irrelevant. The Court need not delve into the issue of how the apartment number is written. Instead, the description of the premises as on the “second floor” fails to satisfy RPAPL § 741(3)'s requirement, mandating dismissal.

The motion to amend the petition is denied as futile because even if granted, the petition would still contain a material defect as to description of premises. Respondent’s motion seeking dismissal is granted without prejudice and the portion of Respondent’s motion seeking leave to file an answer is denied as moot. This constitutes the Decision and Order of the Court.

Dated: July 7, 2022

Queens, New York



Hon. Kimon C. Thermos, JHC