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Nejat West LLC v. Marenco

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NYSCEF DOC. NO. 26
Civil Court of the City of New York
County of New York
Part: Part H, Room: 830
Date: March 8, 2023

RECEIVED NYSCEF: 05/22/2023
Index #: LT-311519-22/NY
Motion Seq #: 1 & 2

Decision/Order

Nejat West LLC
Petitioner(s)
-against-
Edgar Marengo
Respondent(s)

Present: Tracy Ferdinand
Judge

Recitation, as required by CPLR 2219(A), of the papers considered in the review of this Motion for:
Amend Petition

PAPERS	NUMBERED
Notice of Motion and Affidavits Annexed	1
Order to Show Cause and Affidavits Annexed	2
Answering Affidavits	_____
Replying Affidavits	_____
Exhibits	_____
Stipulations	_____
Other <u>NYSCEF</u> Court file and comments _____	3

Upon the foregoing cited papers, the Decision/Order in this Motion is as follows:

Failure to properly plead the regulatory status of the premises is a fatal defect, depriving the court of jurisdiction and warranting dismissal. (*MSG Pomp Corp. v Jane Doe*, 185 AD2d 798 [1st Dept 1992]). While certain defects, even regulatory status may be amended, when the defects are so numerous that amendment would be tantamount to serving an entirely new pleading, leave to amend may be denied and dismissal appropriate. (*Jaikarran & Sons, Inc. v Beecham*, 61 Misc 3d 130[A], 2018 NY Slip Op 51410[U] [App Term 2018]).

Here petitioner seeks to amend to correct both the regulatory status and the multiple dwelling status of the premises. Those two material misstatements coupled with the fact that petitioner had corrected earlier errors by filing a second "corrected" petition prior to commencement of this proceeding, lead the court to the conclusion that the multiple defects, timely objected to, warrants dismissal.

Accordingly, petitioner's cross motion to amend is denied and respondent's motion for summary judgment dismissing the petition is granted, without prejudice.

This constitutes the decision/order of this Court.

Date: 5/22/23

HON. TRACY FERDINAND
JUDGE, CIVIL/HOUSING COURT

Generated: May 22, 2023