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2023-06-20

### Breaking Ground HDFC v. Mack

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#### Recommended Citation

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Civil Court of the City of New York

County of NEW YORK

Part D 524

Index Number 307922/21

Motion Cal. # \_\_\_\_\_ Motion Seq. # \_\_\_\_\_

**DECISION/ORDER**

Recitation, as required by CPLR §2219 (a), of the papers considered in the review of this Motion:

**Papers**

NYSCEF Doc  
Numbered

Notice of Motion and Affidavits Annexed.....	<u>27</u>
Order to Show Cause and Affidavits Annexed.....	_____
Answering Affidavits .....	<u>— (NONE)</u>
Replying Affidavits.....	_____
Exhibits .....	_____
Other.....	_____

Breaking Ground HDFC

Claimant(s)/Plaintiff(s)/Petitioner(s)  
against

ERNEST MACK

Defendant(s)/Respondent(s)

Upon the foregoing cited papers, the Decision/Order on this Motion to respondent's motion

for summary judgment among other things, is as follows:

The court notes respondent is represented by the Legal Aid Society. Counsel filed a Notice of Appearance dated October 13, 2022. Thereafter, respondent's counsel entered into a stipulation with <sup>petitioner</sup> on October 31, 2022, wherein, respondent's counsel sought to make a motion on behalf of respondent and a briefing schedule was entered into by the parties.

Respondent filed this motion for summary judgment on November 23, 2022. The matter has been adjourned four times (12/20/23; 2/16/23; 4/6/23 + 5/11/23) and petitioner failed to oppose respondent's motion.

Based on the foregoing, respondent's motion for summary dismissal of the Petition is granted based on respondent's second and third affirmative defenses, that Petitioner has failed to state a cause of action for breach of lease or nuisance. The Petition is dismissed without prejudice to petitioner's claims for possession. This constitutes the decision + order of the court.

Date

Judge, Civil Court

6/20/23

Evon M. Asforis