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2023-07-18

### Bay Parl One-A LLC v. Johnson

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#### Recommended Citation

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Civil Court of the City of New York  
County of Kings

Index # **LT-301842-23/KI**



Bay Parl One-A LLC

Petitioner(s)

**Decision / Order**

-against-

Juquette Johnson; "John" "Doe"; "Jane" "Doe"

Respondent(s)

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

Papers	Numbered
Notice of Motion and Affidavits /Affirmations annexed	NYSCEF No. 6
Answering Affidavits/ Affirmations	NYSCEF No. 7
Reply Affidavits/ Affirmations	NYSCEF No. 8

Pursuant to *CPLR §3025(b)* leave to amend a pleading should be freely granted absent prejudice or surprise and as long as the proposed amendment is not palpably insufficient or patently devoid of merit. Generally, leave is granted if the amended pleading does not prejudice or surprise the opposing party. *See Lucido v Mancuso*, 851 N.Y.S.2d 238 (2d Dep’t 2008).

Respondent seeks to amend the pro-se answer to include a defense of improper service of the predicate notice. Petitioner opposes the motion because “the law is settled that a jurisdictional defense not asserted in the first responsive pleading, whether answer or pre-answer dismissal motion...it waived.” *McGowan v Hoffmeister*, 15 A.D.3d 297 (1<sup>st</sup> Dep’t 2005.) Respondent contends that the failure to serve a predicate notice does not implicate the lack of personal jurisdiction but, rather, is a condition precedent to commencing a nonpayment case.

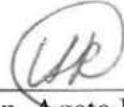
It is well established that pursuant to RPAPL § 711(2), a rent demand must be made in writing and served upon the tenant in accordance with RPAPL § 735. Improper service of the rent demand, or complete lack thereof, is not a jurisdictional defense. Petitioner does not allege any surprise or prejudice that would result from the amendment. In addition, petitioner is concerned that the only defense that would remain in the amended answer is the improper service of the rent demand. Parties are free to chart their own course of litigation and if respondent’s counsel chooses to pursue only that defense, that is their right.

Based on the above, respondent’s motion to amend the pro-se answer is granted and the amended answer is deemed served and filed.

This case will appear on the in Part G/Room 509 on August 10, 2023 at 9:30 am for all purposes.

This constitutes the Decision/Order of the Court.

Date: 7/18/23

  
\_\_\_\_\_  
Hon. Agata E. Rumprecht-Behrens  
Housing Court Judge