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### Ciampa US LLC v. Satterfield

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[\*1]

<b>Ciampa US LLC v Satterfield</b>
2023 NY Slip Op 50734(U)
Decided on July 19, 2023
Civil Court Of The City Of New York, Queens County
Guthrie, J.
Published by <a href="#">New York State Law Reporting Bureau</a> pursuant to Judiciary Law § 431.
This opinion is uncorrected and will not be published in the printed Official Reports.

Decided on July 19, 2023

Civil Court of the City of New York, Queens County

<p><b>Ciampa US LLC, Petitioner,</b></p> <p><b>against</b></p> <p><b>David Satterfield, Respondent.</b></p>
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Index No. L&T 310596/22

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Clinton J. Guthrie, J.

Recitation, as required by CPLR § 2219(a), of the papers considered in the review of respondent's motion to dismiss pursuant to CPLR § 3211 for failure to state a cause of action:

## Papers Numbered

Notice of Motion & Affirmation/Exhibits Annexed 1 (NYSCEF No.9-13)

Affirmation in Opposition & Affidavit/Exhibits Annexed 2 (NYSCEF #14-19)

Upon the foregoing cited papers, the decision and order on respondent's motion is as follows:

## PROCEDURAL HISTORY

This summary nonpayment proceeding was commenced in July 2022. Respondent filed a pro se answer on August 10, 2022. Subsequently, The Legal Aid Society appeared as counsel for respondent. The proceeding was transferred to Part X for trial assignment in February 2023. After the proceeding was assigned to this trial Part, respondent made the instant motion to dismiss in May 2023. Following adjournments for briefing, the motion was argued on July 18, 2023 and the court reserved decision.

## [\*2]DISCUSSION

Respondent seeks dismissal for failure to state a cause of action under CPLR § 3211 on the basis that the rent demand is defective because it failed to account for earmarked payments from the NYC Human Resources Administration (HRA). Petitioner opposes the motion in all respects.

On a CPLR § 3211(a)(7) motion for failure to state a cause of action, the petition "is to be afforded a liberal construction, the facts alleged are presumed to be true, the [petitioner] is afforded the benefit of every favorable inference, and the court is to determine only whether the facts as alleged fit within any cognizable legal theory." [Watts v. City of New York, 186 AD3d 1577](#), 1578 [2d Dept 2020]. When evidentiary material is offered and considered on such a motion, "the criterion is whether the proponent of the pleading has a cause of action, not whether he has stated one[.]" [Guggenheimer v. Ginzburg, 43 NY2d 268, 275 \[1977\]](#). At argument, petitioner's attorney raised the timeliness of the motion insofar as respondent had answered before it was made. However, a motion to dismiss under CPLR § 3211(a)(7) may be made "at any subsequent time" and is not waived if not made within the time for answering (*see* CPLR § 3211(e); [GMAC Mtge. LLC v. Coombs, 191 AD3d 37](#), 43-44 [2d Dept 2020]). Therefore, the court will determine the merits of respondent's motion.

Respondent asserts that petitioner's rent demand is defective because it does not credit HRA shelter allowance checks from April through June 2022. Respondent attaches an HRA

printout (Exhibit C), which highlights five (5) shelter allowance payments totaling \$107.50 each, for a total of \$537.50, which are shown as cashed. Those payments are attributable to April 2023 ("B" portion), May 2023, and June 2023. Petitioner's rent demand is dated June 15, 2022; four (4) of the five (5) shelter payments highlighted are shown as being cashed by that date. The fifth payment is shown as being cashed on July 5, 2022, which was after the rent demand was served but before the petition was issued.

Petitioner, via an affidavit of its agent, Simone Edwards-Nelson, acknowledges that the \$537.50 may have been "mistakenly" uncredited in the rent demand and petition. Nonetheless, petitioner argues that the rent demand nonetheless contained a good-faith approximation of rents due at the time it was issued and that respondent was not prejudiced by the failure to credit the HRA payments.

The Appellate Term, Second Department has held that a proper rent demand is a "statutory prerequisite to a nonpayment proceeding" and "must 'set forth the approximate good faith amount of rent owed' and 'fairly apprise the tenant of the periods for which rent is allegedly due and in what amounts.'" [EOM 106-15 217th Corp. v. Severine, 62 Misc 3d 141](#)[A], 2019 NY Slip Op 50068[U] [App Term, 2d Dept, 2d, 11th & 13th Jud Dists 2019] [quoting [Dendy v. McAlpine, 27 Misc 3d 138](#)[A], 2010 NY Slip Op 50890[U] [App Term, 2d Dept, 2d, 11th & 13th Jud Dists 2010] and [Pantigo Professional Ctr., LLC v. Stankevich, 60 Misc 3d 133](#)[A], 2018 NY Slip Op 51039[U] [App Term, 2d Dept, 9th & 10th Jud Dists 2018]]; [see also Rochdale Vil., Inc. v. Chadwick, 73 Misc 3d 131](#)[A], 2021 NY Slip Op 50958[U] [App Term, 2d Dept, 2d, 11th & 13th Jud Dists 2021]. Generally, earmarked payments must be applied to the periods for which they were intended. *See Severine*, 2019 NY Slip Op 50068[U], \*1. Nonetheless, "minor inaccuracies in the amounts sought [in a rent demand] should be disregarded." *10 Midwood LLC v. Hyacinth*, 2003 NY Slip Op 50789[U], \*1 [App Term, 2d Dept, 2d & 11th Jud Dists 2003]; [see also Moniaci v. Kelly, 73 Misc 3d 127](#)[A], 2021 NY Slip Op 50884[U] [App Term, 2d Dept, 9th & 10th Jud Dists 2021]; [310 12th St. Assoc. LLC v. Disla, 78 Misc 3d 1211](#)[A], 2023 NY [\*3] Slip Op 50201[U] [Civ Ct, Kings County 2023].

Here, the uncredited HRA shelter payments that were cashed before issuance of the rent demand amount to 1.8% of the total sought in the rent demand and 2.1% of the total sought in the petition. Although the best practice is to credit all HRA/DSS payments in a rent demand, the court finds the uncredited amounts herein to be "minor inaccuracies" that do not render the rent demand defective. Moreover, there is no affidavit from respondent describing any prejudice or inability to formulate defenses in this proceeding (*see Severine*, 2019 NY

Slip Op 50068[U], \*1; *Hyacinth*, 2003 NY Slip Op 50789[U], \*1).

Therefore, respondent's motion to dismiss for failure to state a cause of action is denied. Nonetheless, in accordance with the Appellate Term's opinion in *Hyacinth*, the court will modify/amend the petition to credit the \$537.50 in HRA shelter allowance payments. Pursuant to CPLR § 409(b), the petition shall be amended to reflect the total amount of \$24,583.75 (\$25,121.25 minus \$537.50).

## CONCLUSION

Respondent's motion to dismiss is denied for the foregoing reasons. The petition is modified/amended to the extent stated herein. The proceeding will be restored for trial in Part O, Room 202, on September 19, 2023 at 2:30 PM. All subpoenas shall be served by August 21, 2023 and any pre-marked exhibits may be emailed to the court (qn-housing-202@nycourts.gov) by September 15, 2023. The August 24, 2023 court date previously scheduled in Part D is stricken.

This Decision/Order will be filed to NYSCEF.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

Dated: July 19, 2023  
Queens, New York  
HON. CLINTON J. GUTHRIE  
J.H.C.

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