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1770 TPT LLC v. JACKMAN

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CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF BRONX: HOUSING PART J

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1770 TPT LLC,
Petitioner,

Index No. L&T 50482/19

-against-

DECISION/ORDER

MICHELLE JACKMAN, JOHN DOE,
JANE DOE,

Motion seq. no. 2

Respondents.

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HON. KISHA L. MILLER:

Hertz, Cherson & Rosenthal, P.C., for Petitioner.
New York Legal Assistance Group, for Respondent.

Recitation, as required by C.P.L.R. § 2219(a), of the papers considered in review of the motion to dismiss.

Papers

Numbered

Notice of Motion and Affidavits Annexed.....	NYSCEF Doc. Nos. 9-16
Answering and Affidavits Annexed.....	NYSCEF Doc. No. 17
Reply Affidavit.....	NYSCEF Doc. No. 18, 19

Petitioner commenced this holdover summary eviction proceeding premised on the allegation that Respondent Jackman is a licensee of the premises located at 1409 Prospect Avenue, Apartment 3, Bronx, New York. The “10 Day Notice to Quit,” incorporated by the petition, alleges that Respondent’s right to occupy the premises terminated when the tenant of record, Mildred Buggs, died in 2019. Respondent filed for rental assistance through the COVID-19 Emergency Rental Assistance Program, which stayed the proceeding. By stipulation, the parties agreed to vacate the stay and set a date for Respondent to either file an answer or a motion. Respondent filed the instant pre-answer motion to dismiss pursuant to RPAPL §741(4).

The crux of Respondent’s argument is that Petitioner failed to plead the rent regulatory status of the premises, which Respondent states is subject to regulatory agreements with the New York City Department of Housing Preservation and Development (“HPD”) executed in 2013 with Petitioner’s predecessor, and in 2014 and 2018 with Petitioner. Respondent argues that the

omission is fatal to the proceeding because the petition fails to apprise the court and Respondent of any defenses available to her based on the regulatory agreements. Respondent, who is asserting a succession claim, attests that she moved into the apartment to care for Ms. Buggs who was ill with cancer, and that she has lived in the premises for ten years sharing income and household expenses with Ms. Buggs, who introduced Respondent as her daughter.

Petitioner opposes the motion, arguing that Respondent is not a party to any of the regulatory agreements; that the regulatory agreements do not extend additional defenses to Respondent not already included in the Rent Stabilization Code; and that Respondent cannot point to any defenses available to her under the regulatory agreements. Petitioner further argues that Respondent has suffered no prejudice by the omission, which is an amendable defect, and requests leave to amend the pleadings.

In response, Respondent argues she is a third-party beneficiary of the 2014 regulatory agreement and that she has a potential rent overcharge defense due to multiple, unexplained rent increases during Mildred Buggs' tenancy in violation of the rent setting terms of the regulatory agreements. Regarding Petitioner's request to amend the petition, Respondent argues Petitioner has not filed a cross-motion and has failed to annex proposed amended pleadings in support of the relief requested.

Pleading the Rent-Regulatory Status of the Premises

RPAPL §741(4) requires that the petition in a summary proceeding must state, among other things, the interest of the petitioner in the premises and the facts upon which the proceeding is based. To satisfy the requirement of Section 741(4), the petitioner must plead the rent regulatory status of the premises (*MSG Pomp Corp. v Doe*, 185 AD2d 798 [1st Dept 1992]). The purpose is to ensure that a tenant will be informed of the factual and legal claims he or she will have to meet and enables the tenant to interpose whatever defenses are available (*MSG*

Pomp Corp. v Doe, id; *Migliaccio v Childs*, 65 Misc 3d 131[A], 2019 NY Slip Op 51575[U] [2d Dept 2019] [the tenant is entitled to a concise statement of the ultimate facts upon which the proceeding is based).

If the petitioner is a party to government contracts, the petition must allege the existence of such contracts as they may provide the tenant with certain potential defenses (*Volunteers of Am.-Greater New York, Inc. v Almonte*, 65 AD3d 1155 [2d Dept 2009]). Failure to plead the entire regulatory framework will leave the court unaware of the regulations governing the tenancy and any defenses available to a tenant, subjecting the petition to dismissal (*PCMH Crotona v Taylor*, 57 Misc 3d 1212[A], 2017 NY Slip Op 51401[U] [Civ Ct, Bronx County 2017])[petition did not comply with RPAPL 741(4) because it failed to state that the premises is supportive housing and that the tenancy was subject to petitioner's contract with the New York State Office of Mental Health]; *Jasper, L.P. v Davis*, 63 Misc 3d 1209 [A], 2019 NY Slip Op 50448[U] [Civ Ct, Bronx County 2019] [omission in licensee holdover petition was fatal where the Shelter Plus Care Program contained protections for the respondent as a remaining family member]; *Westchester Gardens, L.P. v Lanclos*, 43 Misc 3d 681, 2014 NY Slip Op 24062 [Civ Ct, Bronx County 2014] [petitioner dismissed where the regulatory agreement required the landlord to follow certain formal procedures, including written notice to the tenant, prior to terminating the tenancy]; *2515 LLC v Bencosme*, 77 Misc 3d 1229[A], 2023 NY Slip Op 50063[U] [Civ Ct, NY County] [court dismissed holdover proceeding brought against former superintendent where the petition failed to state whether or not the premises were subject to rent stabilization]).

Here, Paragraph 6 of the petition states:

“The premises are subject to the Rent Stabilization Law of 1969 as amended and have been duly registered with the N.Y. State Division of Housing and Community Renewal -DHCR- and the rent demanded herein does not exceed the registered rent and does not exceed the lawful Rent Stabilized rent. *There are regulatory agreements recorded against the property* [emphasis added].”

The petition does not identify the regulatory agreements or otherwise mention any details of the agreements. It gives no indication, at a minimum, that the premises are subject to regulatory agreements with HPD for financing pursuant to Article XV of the Private Housing Finance Law of the State of New York. Petitioner argues it “need not state each and every governing agreement,” but it should have been more thorough in identifying the regulatory agreements. The single line in the petition that “there are regulatory agreements” in effect, without more, leaves this court and Respondent unaware of how the government is significantly entwined with the subject premises.

Petitioner’s argument that Respondent cannot point to any potential defenses in the regulatory agreements does not change the result. As the court stated in *2515 LLC v Bencosme*, supra, “[i]mplicit in the requirement that the regulatory status be *fully* and *properly* pleaded, is that it must be *pleaded* in the first instance.” Moreover, Petitioner failed to make any effort to address the omission and possibly avoid dismissal.

In *OLR ECW, L.P. v Myers*, 59 Misc 3d 650, 2018 NY Slip Op 28060 [Civ Ct, Bronx County 2018]), the court denied a motion to dismiss pursuant to RPAPL §741(4) on the basis that the respondents, who the petitioner alleged were licensees, failed to point to any aspect of the regulatory agreements which affected their substantive rights or explain why the petitioner’s failure to reference the agreements in the petition was prejudicial. However, unlike here, the petitioner in *OLR ECW, L.P.* cross-moved to amend the pleadings attaching a proposed amended petition to the papers, arguing the omission caused no undue prejudice or surprise to the respondents. The court allowed the amendment.

Petitioner’s request to amend the petition included in the body of its opposition papers is insufficient. Petitioner did not seek leave of court by filing a cross-motion and failed to annex an amended petition with proposed language regarding the rent regulatory status (CPLR 3025[b])[a

motion to amend shall be accompanied by the proposed amended or supplemental pleading clearly showing the changes or additions to be made]). Absent leave of court, Petitioner's request to amend the petition is denied.

Accordingly, it is

ORDERED that Respondent's motion to dismiss the proceeding pursuant to RPAPL §741(4) is granted. The proceeding is hereby dismissed without prejudice.

This constitutes the decision and order of the court.

Dated: March 17, 2023



KISHA L. MILLER, J.H.C.