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Hull Unique Equities LLC v. Boone

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[*1]

Hull Unique Equities LLC v Boone
2024 NY Slip Op 51311(U)
Decided on September 13, 2024
Civil Court Of The City Of New York, Kings County
Rumprecht-Behrens, J.
Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431.
This opinion is uncorrected and will not be published in the printed Official Reports.

Decided on September 13, 2024

Civil Court of the City of New York, Kings County

<p>Hull Unique Equities LLC, Petitioner(s),</p> <p>against</p> <p>Tyiesha Boone; John Doe; Jane Doe, Respondent(s).</p>
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Index No. LT-334433-23/KI

For Petitioner: Balsamo & Rosenblatt PC.

For Respondent: Brooklyn Legal Services by Andrew Sexton, Esq.

Agata E. Rumprecht-Behrens, J.

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 6-8

Answering Affidavits/ Affirmations NYSCEF 10-11

Reply Affidavits/ Affirmations NYSCEF 12

This is a summary holdover proceeding. Petitioner seeks to recover the premises known as 2350 Pacific Street, Apt 3, Brooklyn, NY 11233.

Respondent Boone retained counsel and moves to dismiss the case for failure to comply with *New York's Limited Liability Company Law § 206(a)* (hereinafter *LLC Law*). *LLC Law §206(a)* requires a limited liability company to publish its articles of organization in two newspaper and file proof of publication with the Department of State within 120 days of the company's formation. Without compliance, "the authority of such limited liability company to carry on, conduct or transact any business in this state shall be suspended . . . "

In essence, respondent argues that petitioner failed to comply with applicable laws and therefore does not have the ability to maintain a special proceeding. Respondent relies on [*Small Step Day Care, LLC v Broadway Bushwick Builders, L.P.*, 137 AD3d 1102](#) (2d Dept 2016) where the 2nd Department affirmed dismissal of a proceeding where plaintiff failed to comply with *LLC Law §206(a)*. Further, respondent cites to *109 Equities LLC v. Lynn Smith*, 2022 WL 17589545 where Honorable Baer-Kuzniewski dismissed a petition because the *LLC Law §206(a)* "requirements cannot be overlooked because the company has failed to meet its legal obligations . . . "

In opposition, petitioner admits that they have not complied with *LLC Law §206(a)* but contends that dismissal is not warranted as the defect is curable. Affirmation in Opposition does not allege that the cure is in progress. The cure is only mentioned in the affidavit of the petitioner: "it does appear that the publication requirement was not complied with at the time of setting-up the LLC; however, presently, Petitioner's agents are 'curing' the failure to publish, by posting in the required daily and weekly periodical(s) and taking all necessary steps for publication." Petitioner does not annex any proof that the defect is in the process of being cured. Nor was any proof of an attempt to cure this issue provided during oral argument.

Petitioner cites to *Acquisitions America VI, LLC v. Lamadore*, 5 Misc 3d 461 (Civ. Ct. NY Co. 2004) where the trial court found that "petitioner is not precluded from commencing the [*2] instant proceeding, and is entitled to cure the publication defect."

Petitioner also cites to *Dual Groupe, LLC v. Gans-Mex LLC*, 932 F. Supp. 2d 569 (S.D.N.Y 2013) but that case does not support petitioner's position. Federal Court found that "Dual Groupe has not yet satisfied the publication procedures required to be a company authorized to do business in New York. As such, Dual Groupe *would not be entitled to commence an action in New York state court*, but it is not prevented from litigating in federal court. Even if the publication requirements

barred Dual Groupe from maintaining a federal action, this is not a basis for dismissing Dual Groupe's complaint, as the proper course of action is to stay the case until the failure is cured." (emphasis added) Reliance on *Dual Groupe* is misguided here.

It is undisputed that petitioner did not comply with *LLC §206(a)*. The issue here is whether failure to comply warrants dismissal or whether the defect is curable and can be overlooked.

Petitioner points out that some trial level courts have allowed the case to go forward under these circumstances (*Lamadore* which was decided in 2004). However, this court sits in the 2nd Department and is guided by the Appellate Division 2nd Department case from 2016 (*See One Step Daycare, Supra.*)

Further, as to the curability of this defect, respondent cites to the legislative history and that was discussed in *One Stone Lending, LLC. V. Alta operations, LLC*, 2020 NY Misc Lexis 8759 (Sup. Ct. NY County March 6, 2020):

"[t]he goal was to make information about LLCs available to the public in a manner which reinforces the public's right to know the entities with which they are dealing and to the benefit of consumers and other persons who do business in this state . . .

The fact is that plaintiff started a case when it did not have the capacity to do so. It does not matter that plaintiff later may have rectified this error. Simply put, what would be the purpose of the legislature creating strict statutory requirements for LLCs to publish only for the courts to give a plaintiff a chance to comply if and when a defendant raises it as a defense? This court cannot condone the LLC's practice of ignoring the statute, unless and until it is caught, and then pretending it shouldn't make a difference."

Petitioner started the case when it did not have the legal capacity to do so, and this requires dismissal. This court finds that the defect is not curable, and even if it was, petitioner did not sufficiently show that it is in the process of curing the defect despite being on notice.

Accordingly, respondent's motion is granted, and the case is dismissed without prejudice.

Respondent is directed to serve a copy of this Decision/Order with a Notice of Entry on petitioner via NYSCEF on or before September 20, 2024.

This constitutes the Decision/Order of the court.

Date: September 13, 2024

Hon. Agata E. Rumprecht-Behrens

Housing Court Judge

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