

**[\*1] TRACEY KAHN, Petitioner-Tenant-Respondent, v. 230-79 EQUITY INC.  
AND MICHAEL RICH, Respondents-Landlords-Appellants, DEPARTMENT OF  
HOUSING PRESERVATION AND DEVELOPMENT, Respondent-Respondent.**

**570669/03**

**SUPREME COURT OF NEW YORK, APPELLATE TERM, FIRST  
DEPARTMENT**

*2004 NY Slip Op 50302U; 2 Misc. 3d 140A; 2004 N.Y. Misc. LEXIS 409*

**April 8, 2004, Decided**

**NOTICE:** **[\*\*1]** THIS OPINION IS UNCORRECTED AND WILL NOT BE PUBLISHED IN THE PRINTED OFFICIAL REPORTS.

**PRIOR HISTORY:** Landlords appeal from an order of the Civil Court, New York County, dated July 21, 2003 (Jerald R. Klein, J.) which denied their motion to dismiss the petition and granted tenant's cross motion to amend the petition in a HP proceeding.

**HEADNOTES:** Landlord and Tenant--Summary Proceedings--Amendment of Petition. Landlord and Tenant--Housing Code Violations.

**JUDGES:** PRESENT: HON. WILLIAM P. McCOOE, J.P., HON. WILLIAM J. DAVIS, HON. MARTIN SCHOENFELD, Justices.

**OPINION:**

PER CURIAM:

Order dated July 21, 2003 (Jerald R. Klein, J.) affirmed, with \$ 10 costs.

In this HP proceeding, the cooperative corporation's motion to dismiss the petition was properly denied and the cross motion to amend the petition to reflect the correct proprietary lessee of the premises was properly granted. Mistakes relating to the misdescription of a party are readily subject to correction by amendment in the absence of demonstrated prejudice (*Covino v Alside Aluminum Supply Co.*, 42 A.D.2d 77, 80, 345 N.Y.S.2d 721 [1973]) and do not render the proceeding jurisdictionally defective (*Jackson v New York City Hous. Auth.* 88 Misc 2d 121, 387 N.Y.S.2d 38 [App Term, 1st [\*2] Dept 1976] **[\*\*2]** ).

The cooperative, as statutory owner, is obligated in the first instance to remove Housing Code violations (see, *McMunn v Steppingstone Mgt. Corp.*, 131 Misc 2d 340, 500 N.Y.S.2d 219 [1986]). It is premature to determine whether the tenant shall be ultimately responsible for the repair expenses pursuant to the proprietary lease, since the fact issues concerning the source and cause of the alleged water leak have not yet been tried. We do not reach other arguments raised for the first time on appeal (*City of New York v Stack*, 178 A.D.2d 355, 577 N.Y.S.2d 406 [1991], lv denied 80 N.Y.2d 753, 600 N.E.2d 632, 587 N.Y.S.2d 905 [1992]).