

**Women's Interart Ctr., Inc. v New York City
Economic Dev. Corp.**

2011 NY Slip Op 34102(U)

March 9, 2011

Sup Ct, New York County

Docket Number: 109017/07

Judge: Cynthia S. Kern

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: CYNTHIA S. KERN J.S.C.

PART 52

Index Number : 109017/2007

WOMEN'S INTERART CENTER INC

INDEX NO. 109017/07

vs

NYC ECONOMIC DEVELOPMENT CORP.

MOTION DATE

Sequence Number : 010

MOTION SEQ. NO. 10

REARGUMENT/ RECONSIDERATION

MOTION CAL. NO.

The following papers, numbered 1 to were read on this motion to/for

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

PAPERS NUMBERED

Answering Affidavits — Exhibits

Replying Affidavits

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion is decided in accordance with the annexed decision

FILED

MAR 11 2011

NEW YORK COUNTY CLERK'S OFFICE

Dated: 3/9/11

CYNTHIA S. KERN J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: Part 52

-----X
WOMEN'S INTERART CENTER, INC.,

Plaintiff,

Index No. 109017/07

-against-

DECISION/ORDER

NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION (EDC); ANDREW M. ALPER, President of EDC; JERILYN PERINE, Commissioner, Department of Housing Preservation and Development; CITY OF NEW YORK; DANIEL DOCTOROFF, Deputy Mayor, City of New York; and MICHAEL BLOOMBERG, Mayor, City of New York,

Defendants.

FILED

MAR 11 2011

NEW YORK
COUNTY CLERK'S OFFICE

-----X
WOMEN'S INTERART CENTER, INC.,

Plaintiff,

Index No. 113088/07

-against-

DECISION/ORDER

CLINTON HOUSING DEVELOPMENT FUND CORP.,

Defendants.

-----X
HON. CYNTHIA S. KERN, J.S.C.

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

Papers	Numbered
Notice of Motion and Affidavits Annexed.....	<u>1</u>
Notice of Cross Motion and Answering Affidavits.....	<u>2</u>
Replying Affidavits.....	<u>3</u>
Exhibits.....	<u>4</u>

Plaintiff Women's Interart Center, Inc. ("WIC") commenced the second-captioned action

above seeking a declaration that a document entitled Net Lease entered into by defendant Clinton Housing Development Fund Corp. (“CHDFC”) and the City of New York (the “City”) by its agency the New York City Department of Housing Preservation and Development dated April 15, 1999 (the “1999 Agreement”) was a management agreement and that therefore CHDFC did not have the authority to commence summary proceedings and evict WIC from certain of its tenancies. CHDFC now moves to reargue the prior order of this Court, decided by Justice Karen Smith on August 19, 2010 (the “August 2010 Decision”), in which the Court granted summary judgment to the plaintiff, declared the 1999 Agreement a management agreement, voided various Notices of Termination with respect to plaintiff’s tenancies, dismissed plaintiff’s cause of action for injunctive relief and ordered that plaintiff’s cause of action sounding in prima facie tort is continued. The City has made a separate motion to intervene and, upon intervention, to renew and reargue the August 2010 Decision. These motions are consolidated for disposition. The motion to reargue by CHDFC and the City is denied. It is in the court’s discretion whether to grant reargument and, in the instant case, the court declines to do so. For the reasons set forth more fully below, the City’s motion to intervene is granted but its motion to renew is denied.

Pursuant to CPLR 1001, persons who “might be inequitably affected by a judgment in the action” shall be made parties. As the First Department has explained, intervention is warranted where the intervenors have a “real and substantial interest in the outcome of the litigation.” *George v Grand Bay Assocs. Enterprise Inc.*, 45 A.D.3d 451 (1st Dept 2007). In the instant case, the City is entitled to intervene. As the property owner and a party to the very contract being litigated, it undoubtedly has a “real and

substantial interest” in the outcome of this action. Whether the contract is found to be a management agreement or a net lease affects the City’s legal status, rights and responsibilities with regard to the subject property. Therefore, the City’s motion to intervene is granted.

The City’s motion to renew the prior summary judgment motion is, however, denied. On a motion to renew, the movant must allege new facts not offered on the prior motion and a reasonable justification for the failure to present those facts on the prior motion or shall demonstrate that there has been a change in the law that changes the court’s prior determination. CPLR 2221(e)(2) and (3). In the instant case, the City fails to present any new facts not offered on the prior motion and it fails to demonstrate that there has been a change in the law that would change the prior court’s determination. In addition, the City has failed to present a reasonable justification for its failure to allege facts on the prior motion. The first-captioned case above, to which the City was a party, had been consolidated with the instant case for discovery and trial. The City was aware of the second action and of the pending summary judgment motion. Moreover, one of the primary issues in the summary judgment motion was whether the action should be dismissed on the ground that plaintiff had failed to join the City as a necessary party. The City had every opportunity to move to intervene in the instant action before or while the summary judgment motion at issue was pending but instead chose to wait until after Justice Smith issued a decision unfavorable to it to make the present intervention motion. Therefore, the City’s motion to renew is denied.

Accordingly, defendant CHDFC’s motion to reargue is denied. The City’s motion to intervene in the second-captioned action is granted but its motion to renew and reargue the prior summary judgment motion is denied. This constitutes the decision and order of the court.

Dated: 3/9/11

Enter: CK
J.S.C.

CYNTHIA S. KERN
J.S.C.

FILED

MAR 11 2011

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COUNTY CLERK'S OFFICE