

**Cucs Hous. Dev. v Aymes**

2020 NY Slip Op 33477(U)

October 21, 2020

Supreme Court, New York County

Docket Number: 159303/2018

Judge: Melissa A. Crane

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. MELISSA ANNE CRANE PART IAS MOTION 15EFM

Justice

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CUCS HOUSING DEVELOPMENT
Plaintiff,

- v -

AYMES, CLIFFORD S.
Defendant.

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INDEX NO. 159303/2018
MOTION DATE N/A
MOTION SEQ. NO. 008

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 008) 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260 were read on this motion to/for RENEWAL.

Upon the foregoing documents, it is

Petitioner is in the process of building a homeless shelter. Meanwhile, Respondent Clifford Aymes, a serial litigator,1 owns the adjacent property that sits vacant, unused and empty without utilities including electricity, or a secure front entrance to keep trespassers and vandals out. (See decision after hearing Cucs Housing Development Fund Corp. IV v. Aymes, No. 159303/2018, 2019 WL 934935, at \*4 [N.Y. Sup. Ct. Feb. 26, 2019]). Respondent had refused any access to Petitioner first for underpinning and second for overhead protections. The petition ensued as a result of this refusal.

On July 22, 2019, while Respondent's motions 5 and 6 were pending, this court entered an interim order to allow Petitioner access to respondent's property in order to install overhead protections [see EDOC 158 Interim Order]. Despite that the balance of motions 5 and 6

1 A simple Westlaw search reveals no less than eight cases in which respondent is a named party. This case is the only one in which he is NOT the plaintiff.

remained pending, respondent filed a motion for reargument on August 12, 2019 (seq. 7). The court denied this motion on August 26, 2017.

On December 6, 2019, this court decided the balance of motions 5 and 6. The court ruled that the DOB had approved Petitioner's project, including overhead protections. Because this was not an article 78 proceeding, respondent lacked standing as a result. Given that respondent kept making the same argument over and over again, the court warned that further motions, if baseless, would result in sanctions and that there was to be no further motion practice without prior notice to the court.

Now, Respondent brings yet another motion, indifferent to the plight of the homeless or an overburdened state court system and the effect of the pandemic upon both. Petitioner cross moves for sanctions. Respondent opposed the cross motion and therefore has had an opportunity to be heard pursuant to 22 NYCRR 130-1.1[d] (see *In re Balsamo*, 55 A.D.3d 905, 866 N.Y.S.2d 345 [2d Dep't 2008])

The court denies the motion and grants the cross motion. There is no basis for "renewal" Nothing has changed. This is still NOT an Article 78 proceeding. DOB has still approved Petitioner's project. Moreover, a new administrative decision from the DOB that only confirms its prior decisions, available at the time of the main motion, is not a basis for renewal, even if this were an article 78 proceeding. Finally, DOB administrative decisions are not binding upon this court. Thus, this motion marks the seventh time that the court has heard the same basic argument.

In its decision of December 16, 2019 [EDOC 210], this court warned Respondent that it would impose sanctions should Respondent file another baseless motion. Respondent is correct

that this court did not, (and cannot) preclude him from filing a motion without leave of court.

However, this court can award sanctions under rule 130-1.1 for abusive conduct.

This motion, aside from being procedurally improper (see discussion above), is another in a series of motions containing bizarre legal arguments that make little sense and do nothing to change the status of this litigation into an Article 78 proceeding. The only conclusion is that Respondent keeps making these motion, despite admonition from this court, out of spite to harass Petitioner. Accordingly, the court awards a sanction of \$5,000 to be paid to the Clerk of the Court. The court however denies that part of the cross motion seeking attorney's fees without prejudice as there is no proof of what those fees are in the record.

Petitioner has represented that its project is nearly complete. Accordingly, there does not appear to be any reason to continue this action. Therefore, Petitioner is directed to apprise the court within ten days of the efiled date of this decision whether it has any further need of the court on this case.

Accordingly, it is

ORDERED THAT Respondent's motion for "renewal" is denied; and it is further

ORDERED THAT Petitioner's cross motion for sanctions is granted and Respondent Clifford Aymes is hereby sanctioned by this court in the amount of \$5,000.00, and shall deposit this amount with the County Clerk [Room 141B] together with a copy of this order, for transmittal to the New York State Commissioner of Taxation and Finance; and it is further

ORDERED THAT, written proof of payment of this sanction shall be provided to the Clerk of part 15 via e filing , and opposing counsel within 30 days after service of a copy of this order with notice of entry; and it is further

ORDERED THAT, in the event that proof of payment is not provided in a timely manner, the Clerk of the Court, upon service upon him of copy of this order with notice of entry and an affirmation or affidavit reciting the fact of such non-payment, shall enter a judgment in favor of the Commissioner and against Respondent in the amount of \$5,000.00.

10/21/2020  
DATE

  
MELISSA ANNE CRANE, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/> DENIED	GRANTED IN PART	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE