Doyle v Commissioner, Dept. of Hous. Preserv. & Dev. of the City of N.Y.
2021 NY Slip Op 30198(U)
January 19, 2021
Supreme Court, Kings County
Docket Number: 513645/2020
Judge: Richard Velasquez
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At an IAS Term, Part 66 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 19th day of JANUARY, 2021

P R E S E N T:
HON. RICHARD VELASQUEZ, Justice.

---X

SHARINA DOYLE, JEREMIAH AVILES,

Plaintiff,

-against-

Index No.: 513645/2020
Decision and Order

COMMISSIONER, DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT OF THE CITY OF NEW YORK; CITY OF NEW YORK AND LUIS RIQUELME & CARLOS BARBOSA,

Defendants,

---X

The following *papers NYSCEF* Doc #'s 27 to 19 read on this motion:

Papers	*NYSCEF DOC NO.'s*
Notice of Motion/Order to Show Cause Affidavits (Affirmations) Annexed______________________	27-42; 46-48
Opposing Affidavits (Affirmations)______________________	47

After having heard Oral Argument on JANUARY 19, 2021 and upon review of the foregoing submissions herein the court finds as follows:

Respondents, COMMISSIONER, DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT OF THE CITY OF NEW YORK; CITY OF NEW YORK, move pursuant to CPLR 2221(e) to reargue on the grounds that the Court misapprehended matters of fact and law in determining the prior motion and based upon new facts not offered on the prior motion. (MS#2) Petitioner cross-moves to amend the pleading and/or enjoin DOB vacate order. (MS#3).

ANALYSIS

CPLR 2221 in pertinent part states: "(d) A motion for leave to reargue: 1. shall be identified specifically as such; 2. shall be based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion, but shall not include any matters of fact not offered on the prior motion; and 3. shall be made within thirty days after service of a copy of the order determining the prior motion and written notice of its entry. CPLR 2221(d)(2) articulates the standards previously outlined in the caselaw. A motion to reargue, it says: "shall be based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion but shall not include any matters of fact not offered on the prior motion. CPLR 2221.

Under the caselaw existing prior to the 1999 amendments, a motion for re-argument was often used when there was a change in the law after the prior order. CPLR 2221(e)(2) now clarifies that the motion to renew, not the motion to reargue, is the proper expedient when the motion is based on a change in the law that occurs while the case is still subjudice, such as a new statute taking effect or a definitive ruling on a relevant point of law being handed down by an appellate court that is entitled to stare decisis. See *Siegel, New York Practice* 449 (4th ed. 2005). The distinction, made clear in the caselaw and now embodied in the statute, is that the motion to renew involves new proof while the motion to reargue does not; it merely seeks to convince the court that it overlooked or misapprehended something the first time around and ought to change its mind. NY CPLR 2221.

In the present case, Respondents contend that in deciding the previous motion, the Court overlooked or misapprehended relevant facts or misapplied controlling principles of law regarding the administrative agency's determination. The Court agrees.

It is well settled that what is reviewed under the arbitrary and capricious standard is the rationality of the agency's determination, and a court may overturn an administrative action only if the record reveals no rational basis for it. *Matter of Pell v. Board of Education,* 34 NY2d 222, 230 (1974). It is also well settled, that "the ordinary function of a preliminary injunction is ... to maintain the status quo until there can be a full hearing on the merits." Spectrum Stamford, LLC v. 400 Atl. Tit., LLC, 162 A.D.3d 615, 616 (1st Dep't 2018).

In the present case it is undisputed that at the time of the argument on the motion for a preliminary injunction the Petitioners were no longer living in the subject premises as they had already been relocated to a hotel. This renders the motion for a preliminary injunction MOOT.

Next, the court turns to the Respondents request to renew pursuant to 3211(e)(2). New facts have arose. Specifically, on September 15, 2020 the New York City Department of Buildings also issued a partial vacate order on the subject premises. Annexed to Respondents moving papers are the DOB Construction Inspector Allen Duke's affidavit. DOB Construction Inspector Allan Duke ("Inspector Duke") inspected the subject premises on September 9, 2020 following receipt of two complaints forwarded by 311 which stated "an illegally created attic apartment with an unpermitted bathroom and kitchen, only one means of egress (no adequate second means of egress), no sprinkler system, an unpermitted gas line installed near the lone means of egress, and a ceiling height in the attic that was approximately 3.6 feet at its lowest point." *See Duke Aff.* at ¶ 5. After concluding his inspection Mr. Duke issued two Notices of Violation to the subject premises and recommended that a partial vacate order be

issued due to the dangerous, unlawful conditions. *See id*. at ¶¶ 7-10. Mr. Duke noted that "[g]as, water and waste lines installed without a permit, and a lack of second means of egress without a sprinkler system, are not only illegal, **but are hazardous conditions**." *See id.* at ¶ 13. It is clear that the subject premises is in an unsafe condition. It should also be noted that said subject premises is a landmark building and any attempt to bring said premises up to code may not be feasible given its landmark status, this information was also not made available to the court during the first arguments. In light of this new information it is clear that the HPD vacate order was not arbitrary and capricious, nor is the DOB partial vacate order. As a result of Mr. Duke's inspection, two Notices of Violation ("NOV"s) were issued to the subject premises and recommended that a partial vacate order be issued due to the dangerous, unlawful conditions. As described in the NOVs, conducting work without a permit, such as the installation of water and waste lines to the three-piece bathroom and residential sink, and the installation of the gas line to the gas stove, is a violation of 2014 Administrative Code § 28-105.1. Converting or maintaining a dwelling for occupancy of more than the legally approved number of families authorized by the Certificate of Occupancy or official DOB records is a violation of 2014 Administrative Code § 28-210.1. All of these conditions render this premises unsafe and hazardous and illegal.

Petitioners cross-motion to amend pleading and/or preliminarily enjoin DOB vacate order is hereby deemed moot, for the reasons stated above.

Accordingly, Respondents request to reargue and renew is hereby granted and upon reargument this Court hereby vacates it's decision and order dated September 1, 2020 which granted a preliminary injunction and enjoined enforcement of the HPD

vacate order, and reinstates enforcement of the HPD vacate order. (MS#2). Petitioners cross-motion to amend pleading and/or preliminarily enjoin DOB vacate order is deemed MOOT as the subject premises has been vacated, as they are unsafe, illegal and hazardous. (MS#3).

This constitutes the Decision/Order of the court.

Dated: Brooklyn, New York
January 19, 2020

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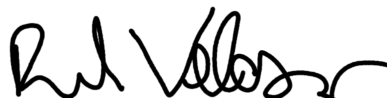

HON. RICHARD VELASQUEZ