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| <b>Housing Urban Dev., LLC v Morris</b>                                                                                                                                                                                        |
| 2021 NY Slip Op 32156(U)                                                                                                                                                                                                       |
| October 29, 2021                                                                                                                                                                                                               |
| Supreme Court, Kings County                                                                                                                                                                                                    |
| Docket Number: Index No. 502449/14                                                                                                                                                                                             |
| Judge: Kathy J. King                                                                                                                                                                                                           |
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| This opinion is uncorrected and not selected for official publication.                                                                                                                                                         |

At an IAS Term, Part 64 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 29<sup>th</sup> day of October, 2021.

P R E S E N T:

HON. KATHY J. KING,

Justice.

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HOUSING URBAN DEVELOPMENT, LLC

Plaintiff(s),

- against -

Index No. 502449/14

BRIAN MORRIS, AS TEMPORARY ADMINISTRATOR  
OF THE ESTATE OF GERMAINE KIRTON, THE  
PEOPLE OF THE STATE OF NEW YORK, ET AL.

Defendant(s).

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The following papers numbered 1 to 3 read herein:

Papers Numbered

Notice of Motion/Order to Show Cause/  
Petition/Cross Motion and  
Affidavits (Affirmations) Annexed\_\_\_\_\_

1-2

Opposing Affidavits (Affirmations)\_\_\_\_\_

3

Reply Affidavits (Affirmations)\_\_\_\_\_

Affidavit (Affirmation)\_\_\_\_\_

Other Papers\_\_\_\_Record before DHCR\_\_\_\_\_

Upon the foregoing papers, defendant Brian Morris moves, for leave to renew and/or reargue an order of the Court dated September 15, 2020, pursuant to CPLR 2221(f). Upon the granting of leave, defendant seeks an order removing and transferring from Supreme Court, Kings County to the Surrogate's Court, Kings County. Plaintiff opposes the requested relief.

Plaintiff commenced the within action to quiet title to the premises located at 237 Maple Street, Brooklyn, NY (“the subject premises”). Plaintiff acquired title to the subject premises by deed dated April 6, 2011. Defendant is a distributee of the Kirton Family, prior owners of the subject premises. On January 10, 2020, defendant was granted temporary letters of administration for the sole purpose of representing the estate in the action pending in the Kings County Supreme Court: entitled Housing Urban Development LLC v Brian Morris, et al under docket no. 502449/2014. Thereafter, by order dated September 15, 2020, the Court denied defendant’s motion to remove and transfer the underlying action from Supreme Court to Surrogate’s Court. Defendant now moves to renew and/or reargue the Court’s September 15, 2020, order.

It is well settled that a motion to reargue “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[d][2]). The Court has the discretion to determine whether to grant a motion for leave to reargue (*see Barnett v Smith*, 64 AD3d 669, 670 [2d Dept 2009] [internal citations omitted]).

Firstly, the Court notes that although defendant moves for reargument, defendant acknowledges in his affirmation of support that the Court in its prior decision correctly stated the law and the facts. Based on this acknowledgement, the Court finds reargument is not warranted.

As regards that branch of defendant’s motion seeking renewal, “[a] motion to renew shall be based upon new facts not offered on the prior motion that would change the prior determination....and shall contain reasonable justification for the failure to present such facts on

the prior motion” (CPLR 2221[e] [1] and [e] [3]).

Here, defendant has established reasonable justification for the failure to present such facts on the prior motion. The record demonstrates that defendant had temporary letters of administration, at the time the Court issued its September 15, 2020, decision. Thereafter, on December 8, 2020, defendant was granted full letters of administration which the Court finds provides new facts warranting renewal. Upon renewal, the Court shall now consider whether the within matter shall be transferred from Supreme Court to Surrogate’s Court.

In support of the motion, defendant contends that the Surrogate’s Court has subject matter jurisdiction over the within matter since it involves disputed interests arising from an estate. In opposition, plaintiff argues that the standard for transfer and removal of matters between Supreme Court and Surrogate’s Court has not been met.

The Court agrees.

The standard for an application for the transfer of matters between these two courts of concurrent jurisdiction is established by CPLR 325(e): Where an action pending in the Supreme Court affects the administration of a decedent’s estate which is within the jurisdiction of the Surrogate’s Court, the Supreme Court, upon motion, may remove the action to such Surrogate’s court upon the prior order of the Surrogate’s Court.

“[A]s a general rule, in courts of concurrent jurisdiction of a particular subject matter the court first assuming jurisdiction should retain the action (*Gaentner v Benkovich*, 18 AD3d 424, 428 [2d Dept 2005][internal citations omitted]). Here, pursuant to the court’s September 15, 2020, order defendant was granted the authority to represent the estate in the within action, which has been pending for over seven years. The issuance of letters of administration to

defendant on December 8, 2020, does not negate defendant's ability to act pursuant to the court's September 15, 2020 order. It is well settled that "[t]he Supreme Court and the Surrogate's Court have concurrent jurisdiction over matters involving administration of a decedent's estate" (see NY Const. Art VI; *Manning v Thorne*, 73 AD3d 1136 [2<sup>nd</sup> Dep. 2010]; *Burmax Co. v B & S Indus.*, 135 AD2d 599, 601 [2<sup>nd</sup> Dept. 1987]).

Based on the foregoing, it is hereby,

**ORDERED** that defendant's motion to renew and/or reargue is granted to the extent of renewing the Court's September 15, 2020 order. Upon renewal, defendant's motion to transfer and remove the underlying action from Supreme Court to Surrogate's Court is denied.

The foregoing constitutes the decision and order of the court.

E N T E R,

/s/ *Kathy J. King*

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HON. KATHY J. KING  
J.S.C