

**Department of Hous. Preservation & Dev. of the City
of N.Y. v Ohebshalom**

2024 NY Slip Op 32859(U)

July 17, 2024

Civil Court of the City of New York, Queens County

Docket Number: Index No. L&T 301645/21

Judge: Clinton J. Guthrie

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This opinion is uncorrected and not selected for official publication.

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF QUEENS: HOUSING PART B

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DEPARTMENT OF HOUSING
PRESERVATION AND DEVELOPMENT OF
THE CITY OF NEW YORK,
Petitioner,

Index No. L&T 301645/21

against

DECISION/ORDER

DANIEL OHEBSHALOM A/K/A DAN SHALOM,
ROBIN IGNICO, HIGHPOINT ASSOCIATES VI,
LLC,
Respondents.

Premises:
84-53 Dana Court
Queens, NY 11379

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Present:

HON. CLINTON J. GUTHRIE, J.H.C.

Recitation, as required by CPLR § 2219(a), of the papers considered in the review of petitioner’s motion to reargue and renew portions of this court’s November 29, 2023 Decision/Order pursuant to CPLR § 2221 (Seq. 6):

Papers	Numbered
Notice of Motion and All Documents Annexed.....	<u>1 (NYSCEF #110-121)</u>
Affirmation in Opposition (Virga) and All Documents Annexed.....	<u>2 (NYSCEF #123-129)</u>
Affirmation in Opposition (Mironenko).....	<u>3 (NYSCEF #130)</u>
Affirmation in Reply and All Documents Annexed.....	<u>4 (NYSCEF #131-140)</u>

Upon the foregoing cited papers, the decision and order on petitioner’s reargue and renew is as follows.

PROCEDURAL HISTORY

The court has thoroughly discussed the procedural history of this HP proceeding involving the building at 84-53 Dana Court, Queens, New York, in the Decision/Orders dated November 29, 2023 (*see Dept. of Hous. Preserv. & Dev. of the City of N.Y. v. Ohebshalom*, 81 Misc 3d 1210[A], 2023 NY Slip Op 51313[U] [Civ Ct, Queens County 2023]) and April 10, 2024 (*see Dept. of Hous. Preserv. & Dev. of the City of N.Y. v. Ohebshalom*, 2024 NY Slip Op

31258[U] [Civ Ct, Queens County 2024]). Petitioner's instant motion seeks reargument and/or renewal of portions of the November 29, 2023 pursuant to CPLR §§ 2221(d) and 2221(e), respectively. The court heard argument on the motion on April 5, 2024 and reserved decision.¹

MOTION FOR REARGUMENT

Pursuant to CPLR § 2221(d)(2), a motion for leave 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." Petitioner asserts that the court, in its November 29, 2023 Decision/Order, errantly: (1) denied petitioner's motion for civil penalties, and (2) declined to impose civil and criminal contempt upon Daniel Ohebshalom a/k/a Dan Shalom (hereinafter "Ohebshalom") and Robin Ignico (hereinafter "Ignico"). The respective respondents oppose petitioner's motion for reargument in its entirety.

After due deliberation, the court grants the motion for reargument solely to the extent of restoring the case for reargument. Upon reargument and consideration of the papers submitted, the court hereby adheres to the findings of law and fact contained within the November 29, 2023 Decision/Order and does not find a basis to modify or vacate any findings contained in the November 29, 2023 Decision/Order that are challenged by petitioner in the instant motion. Therefore, the court denies the ultimate relief requested in petitioner's motion for reargument.

MOTION TO RENEW

Pursuant to CPLR § 2221(e)(2), a motion for leave to renew "shall be based upon new facts not offered on the prior motion that would change the prior determination or shall

¹ There is currently a hearing relating to the November 29, 2023 and April 10, 2024 Decisions/Orders (which resolved motions for various relief, including civil contempt, criminal contempt, and civil penalties, made by petitioner) scheduled for July 17, 2024. Also returnable on July 17, 2024 is a motion by the attorneys for Highpoint Associates VI, LLC to withdraw as counsel.

demonstrate that there has been a change in the law that would change the prior determination.” Additionally, the motion “shall contain reasonable justification for the failure to present such facts on the prior motion.” *See* CPLR § 2221(e)(3). Petitioner seeks renewal of the court’s determination not to hold Ohebshalom and Ignico in civil and criminal contempt of the January 31, 2022 consent order. The attorneys for Ohebshalom and Ignico oppose the renewal motion in all respects.

As a basis for renewal, petitioner highlights the following “new” facts that it claims would change the court’s prior determination: (1) the agreement in the December 6, 2022 Interim Consent Order that waived any defense by Ohebshalom and Ignico that they were not owners as defined by the Housing Maintenance Code or Multiple Dwelling Law; (2) a brochure from Spring 2023 for a UCC foreclosure auction lists Ohebshalom (referred to as “Daniel Shalom”) as a pledgor of interests in Highpoint; (3) Information procured from filings and testimony in this proceeding and others from respondents’ former attorney, Simon W. Reiff, Esq., and Gustavo Santana and Johnathan Santana, the former managing agents, clarified that Ohebshalom was the principal for Highpoint when the relevant consent order was executed; and (4) Ohebshalom’s tax attorneys filed at least 14 tax certiorari petitions listing him as “Manager” of Highpoint from 2006 to 2022. Respondents oppose renewal, arguing that certain of the records upon which petitioner moves, including the tax certiorari petitions, were publicly available when the original contempt motion was made. Respondents also assert that petitioner did not exercise due diligence in attempting to procure the evidence upon which it relies before making the original motion.

The Appellate Division, Second Department has held that “a motion to renew is not a second chance freely given to parties who have not exercised due diligence in making their first

factual presentation, and the [lower court] lacks discretion to grant renewal where the moving party omits a reasonable justification for failing to present the new facts on the original motion.” *Jovanovic v. Jovanovic*, 96 AD3d 1019, 1020 [2d Dept 2012] [internal citations omitted]; *see also Vassiliou-Sideris v. Nautilus, Inc.*, 186 AD3d 1758, 1759 [2d Dept 2020]. Here, the court finds that the totality of the evidence presented by petitioner has created an issue of fact as to whether Ohebshalom, in his individual capacity, is in civil and criminal contempt of the January 31, 2022 consent order.

The evidence, especially the information from Gustavo Santana and Johnathan Santana, which was not available before the original motion was made, suggests that Ohebshalom’s primary position with Highpoint was veiled by the presence of the Santanas as nominal agents. Furthermore, although the tax certiorari petitions were publicly available, petitioner has presented a convincing basis for its discovery of them after the information from the Santanas came to light. Those petitions corroborate petitioner’s theory that Ohebshalom was Highpoint’s principal when the original contempt motion was made. Thus, the court finds there is a basis to hold a hearing on the issue of whether Ohebshalom is in civil and criminal contempt of the January 31, 2022 consent order (*see Citibank, N.A. v. Anthony Lincoln-Mercury, Inc.*, 86 AD2d 828, 829 [1st Dept 1982]). However, the court does not find an adequate basis for renewal as to Robin Ignico. Although petitioner effectively suggests that Ohebshalom and Ignico were sufficiently entwined for Ignico’s individual liability to be apparent, the court finds the suggestion to be implied, rather than sufficiently demonstrated to warrant a hearing. Accordingly, the court denies petitioner’s request, upon renewal, to hold Ignico in civil and criminal contempt. The court adheres to its determinations as to Ignico in its November 29, 2023 Decision/Order.

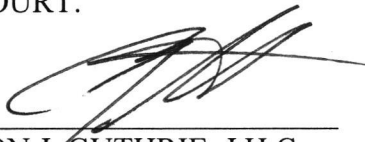
The hearing on whether Ohebshalom should be held in civil and criminal contempt of the January 31, 2022 consent order will be conducted jointly with the hearing granted via the November 29, 2023 and April 10, 2024 Decisions/Orders. The hearing is currently scheduled for July 17, 2024 at 2:15 PM.

CONCLUSION

Upon the foregoing determinations, petitioner's motion is denied to the extent that it seeks reargument of the November 29, 2023 Decision/Order and renewal as to the determination to decline to hold Robin Ignico in civil and criminal contempt. The motion is granted solely to the extent that, upon renewal, the court has found a sufficient basis for a hearing on whether Daniel Ohebshalom a/k/a Dan Shalom should be held in civil and/or criminal contempt of the January 31, 2022 consent order in his individual capacity. This Decision/Order will be filed to NYSCEF.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

Dated: July 17, 2024
Queens, New York



CLINTON J. GUTHRIE, J.H.C.

DO ORDERED - HON. CLINTON J. GUTHRIE