

**Castle Vil. Owners Corp. v Girardi**

2025 NY Slip Op 32888(U)

July 31, 2025

Supreme Court, New York County

Docket Number: Index No. 654284/2023

Judge: Lyle E. Frank

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. LYLE E. FRANK PART 11M**

*Justice*

-----X

CASTLE VILLAGE OWNERS CORP.,

Plaintiff,

- v -

GUILLERMINA GIRARDI,

Defendant.

-----X

**INDEX NO. 654284/2023**

**MOTION DATE 06/25/2025**

**MOTION SEQ. NO. 013**

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 013) 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507

were read on this motion to/for VACATE - DECISION/ORDER/JUDGMENT/AWARD.

Upon the foregoing documents, the motion is denied.

The present motion arises out of a long and bitter dispute between a co-op board and a shareholder over the installation of a gas line and an alleged shower leak. In October of 2023, the Court issued an order granting Plaintiff’s order to show cause and preliminarily enjoined Defendant from interfering with Plaintiff’s access to her apartment in order to carry out gas line work and to inspect her bathroom in connection with a leak. This motion represents Defendant’s sixth attempt to vacate the October Order. Defendant’s basis for bringing the present motion is that she believes that documents obtained during discovery constitute newly discovered evidence of fraud. Plaintiff opposes. For the reasons that follow, the motion is denied.

*The Documents Reference Do Not Constitute Newly Discovered Evidence and the Motion is Duplicative*

CPLR § 5015(2) permits a party to be relieved from a judgment upon such terms as may be just on the grounds that evidence has been newly discovered that “if introduced at trial, would

probably have produced a different result and which could not have been discovered in time to move for a new trial.” The evidence that Defendant submits are 1) financial statements from the Co-op stating that they bought oil for the heating system, and 2) a letter from the Board stating that the building’s boiler system was fully converted to natural gas as of the fall of 2024.

Defendant’s arguments appear to be that these documents somehow conclusively establish that when Plaintiff’s counsel represented to the Court in 2023 that the preliminary injunction was warranted in part because “gas service will be necessary likely in very short order to properly heat the building”, this was fraud.

There are several flaws in Defendant’s argument. To begin with, the Court has already considered and rejected the notion that the idea that because the Plaintiff purchased and potentially used heating oil in 2024, this fact would have changed the outcome of the October Order. Plaintiff has attested that they purchase heating oil as a backup and has produced sworn affidavits that Defendant’s refusal to allow Plaintiff access to her apartment would have jeopardized the heating of that building in 2023 had the preliminary injunction not been granted. They also explained that the boilers were converted from oil to natural gas on a rolling basis, and that the statement about the completion of the conversion by fall of 2024 referred to the status of the gas conversion across *all buildings* that the Plaintiff operates and was not solely referring to Defendant’s building. Nothing that Defendant has produced contravenes these statements, and nothing that Defendant has produced would have likely produced a different outcome had they been produced in 2023.

These same arguments were advanced on the prior motions, and under the law of the case doctrine a subsequent motion based on the same excuse that failed before is not to be granted. *See, e.g., 2001 Real Estate Space Catalyst, Inc. v. Stone Land Capital, Inc.*, 194 A.D.3d 535, 535

[1st Dept. 2021]; *see also Olwine, Connelly, Chase, O'Donnell & Weyher v. Valsan, Inc.*, 226 A.D.2d 102, 103 [1st Dept. 1996] (holding that a party moving under CPLR § 5015(a)(2) must show that “the newly discovered evidence is material, is not merely cumulative, is not of such a nature as would merely impeach the credibility of an adverse witness and that it would probably change the result previously reached”). For the sixth time, Defendant has not produced evidence that would give grounds to vacate the October Order as relates to the gas pipeline issue. Defendant also moves to vacate under CPLR § 5015(1)(3), arguing that the statement about the necessity of heating the building was fraud or misrepresentation. Again, nothing that Defendant has produced conclusively establishes that theory, and the motion fails under this provision of the CPLR as well. *See, e.g., Matter of Callwood v. Cabrera*, 49 A.D.3d 394, 395 [1st Dept. 2008] (explaining that conclusory allegations are insufficient to sustain a motion under CPLR § 5015(a)(3)).

*The Relief Sought is Improper*

There are further reasons why denial of this motion is proper. As explained above, the October Order’s preliminary injunction enjoined Defendant from preventing access to Plaintiff’s agents for the purpose of installing the gas pipeline. Therefore, vacating that portion of the order would simply mean that Defendant would no longer be enjoined from preventing access to install the gas pipeline, a fixture that has already been installed. Here, Defendant seeks a plethora of things, including 1) an order directing Plaintiff to reroute the gas pipe, 2) “compensation for the significant financial, emotional and personal harm” allegedly suffered as a result of the gas pipeline installation, and 3) “additional damages” and “full compensation for all related financial, emotional and person harm” resulting from Plaintiff’s allegedly unlawful actions (actions the Court has already rejected as constituting a basis for vacating the October Order).

These forms of relief are simply not available on a motion to vacate a preliminary injunction. It appears that Defendant has commenced a separate action where she seeks damages related to the pipeline installation. The relief sought in this motion is more properly sought in the form of damages for a claim, such as in the other action.

The Bathroom Leak Portion of the October Order Has Already Been Addressed

To the extent that Defendant is moving to vacate the portions of the October Order that deal with the alleged leak in the shower pan, that portion has already been dealt with by the extensive and acrimonious motion practice in this proceeding since 2023. The Court will not be revisiting its prior decisions on this matter. Accordingly, it is hereby

ADJUDGED that the motion is denied.

20250731120508LFRANK45A7179033CD407EADF3ED1D6219E536

LYLE E. FRANK, J.S.C.

7/31/2025

DATE

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE