

324 E. 14th St. LLC v City of New York

2025 NY Slip Op 33174(U)

August 21, 2025

Supreme Court, New York County

Docket Number: Index No. 158622/2024

Judge: Verna L. Saunders

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. VERNA L. SAUNDERS, JSC PART 36

Justice

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INDEX NO. 158622/2024

324 EAST 14TH STREET LLC, 75 SECOND AVENUE LLC,
219 AVE. A NYC LLC and 158 FIRST AVE NYC LLC,
Petitioners,

MOTION SEQ. NO. 001

- v -

DECISION + ORDER ON MOTION

THE CITY OF NEW YORK and NEW YORK CITY
DEPARTMENT OF BUILDINGS,
Respondents.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57

were read on this motion to/for ARTICLE 78

On September 18, 2024, petitioners 324 East 14th Street LLC, 75 Second Avenue LLC, 219 Ave A NYC LLC, and 158 First Ave NYC LLC ("petitioners") brought this hybrid Article 78 special proceeding and action against respondents The City of New York and New York City Department of Buildings ("DOB") (NYSCEF Doc. No. 1, ¶ 1). Petitioners are the owner corporations of the subject buildings located at 324 East 14th Street, 75 Second Avenue, 219 Avenue A, and 158 First Avenue in Manhattan (id., ¶¶ 7-10). This proceeding arises from DOB's issuance of Immediately Hazardous Class 1 Civil Penalties ("AEUHAZ") against the subject buildings. Petitioners seek an order under CPLR 7803(1) and (2) directing DOB to review petitioners' certificates of correction without requiring petitioners to pay AEUHAZ civil penalties because they did not timely file those certificates (id., ¶ 1). Also, petitioners seek declaratory relief in the form of a judgment that requires DOB to remove and expunge the civil penalties and declare them unenforceable because DOB did not commence a timely action to recover them (id., ¶¶ 2, 4 and p. 14).

Respondents now cross-move to dismiss the verified petition on three grounds (CPLR 3211[a][2], [5] and [7]). First, respondents seek dismissal on the ground that it is time-barred pursuant to CPLR 217(1). Second, respondents argue for dismissal on the ground that this court lacks jurisdiction to hear petitioners' request for a declaratory relief since petitioners did not serve a summons with the notice of verified petition. Third, respondents allege that petitioners did not state a cause of action as to mandamus. Petitioners oppose the motion.

DOB is the City agency that enforces violations of the Administrative Code of the City of New York ("Administrative Code") and the New York City Building Code ("Building Code") related to the maintenance of buildings and reviews certificates of correction on violations it has issued (NYSCEF Doc. No. 1, ¶ 12). Under Administrative Code § 28-204.1, DOB enforces violations by issuing summonses, or notices of violation, to building owners that may be

challenged at the Office of Administrative Trials and Hearings (OATH) (NYSCEF Doc. No. 44, p. 3). Pursuant to Administrative Code § 24-204.2, a summons contains the DOB Commissioner's Order to Correct ("Order to Correct"), which directs a building owner to correct "forthwith" immediately hazardous violations and file certificates of correction with DOB (*id.*). If a building owner does not correct, and certify correction of, an immediately hazardous violation, then this constitutes an AEUHAZ violation for which AEUHAZ civil penalties may be imposed in addition to the penalties imposed for the summons referred to in an order under Administrative Code § 28-204.4 (*id.*, p. 4).

DOB issued summonses to petitioners for immediately hazardous violations, such as failing to maintain a building under Administrative Code § 28-301.1, illegally converting "any dwelling for occupancy by more than the legally authorized number of families" under Administrative Code § 28-210.1, working without a permit under Administrative Code § 28-105.1, and failing to provide an alarm system under Building Code § 907.2.8 (*id.*, p. 3). A summons notifies a building owner of a hearing date before an OATH Hearing Officer who either sustains the violations and imposes a penalty or dismisses the summons (*id.*). If a hearing officer dismisses the summons, then the AEUHAZs are dismissed and the requirement to pay AEUHAZ civil penalties is removed (*id.*, footnote 1). Petitioners assert that they are challenging respondents' unlawful refusal to accept petitioners' certificates of correction for underlying violations issued by DOB at OATH (NYSCEF Doc. No. 52, ¶ 20).

DOB issued 31 summonses, or notices of violation, between 2012 and 2024 to petitioners for violations of various sections of the Administrative Code, and it assessed AEUHAZ civil penalties due to petitioners not correcting, and certifying correction of, the underlying immediately hazardous violations against all four of the subject buildings (NYSCEF Doc. No. 44, p. 2). DOB has not dismissed any of the summonses issued to petitioners that contain AEUHAZs (*see id.*; NYSCEF Doc. No. 15, ¶ 31). Petitioners acknowledge the existence of the violations and civil penalties at issue (NYSCEF Doc. No. 52, ¶ ¶ 3-4). At the time of the filing of the petition, there were 60 underlying violations against petitioners that require correction at 324 East 14th Street (NYSCEF Doc. No. 1, ¶ 17). DOB issued 17 of the related civil penalties in the amount of \$1,500.00 per penalty for petitioners failing to timely file certificates of correction for the immediately hazardous violations (*id.*, ¶ 13). Also, there are 64 underlying violations that require correction at 75 Second Avenue from January 9, 2020 (*id.*, ¶ 35). DOB issued 8 civil penalties through January 3, 2024 and have assessed \$1,500.00 per penalty, except for \$5,000.00 per penalty for 4 violations in 2023 and 2024, for not timely filing certificates of correction (*id.*, ¶ ¶ 30-31). In addition, there are 60 underlying violations that require correction at 219 Avenue A, and DOB issued civil penalties of \$1,500.00 per penalty for 6 civil penalties for not timely filing certificates of correction with respect to the underlying violations, as well as, additional violations for not filing certificates of correction (*id.*, ¶ ¶ 45, 49-50). Finally, petitioner states that DOB issued civil penalties in the amount of \$1,500.00 per penalty to 158 First Avenue for 3 civil penalties between October 30, 2019 and February 16, 2022 (*id.*, ¶ 62). A violation issued in 2022 has a penalty of \$3,000.00 (*id.*, ¶ 63). There are 8 underlying violations that require correction (*id.*, ¶ 67).

Petitioners allege that they attempted to file certificates of correction for underlying violations on “DOB Now”, the DOB website for these filings, but were met with a notification stating:

“A Certificate of Correction cannot be submitted until all Immediately Hazardous Class 1 Civil Penalties (AEUHAZ) associated with this summons are paid. Submit payment by logging into eFiling at NYC Buildings eFiling Login and selecting Express Cashier Payments” (*id.*, ¶ 21).

DOB relied on Administrative Code § 28-219.1 for the above determination that they can reject petitioners’ certificates of correction until they pay AEUHAZ civil penalties to DOB. However, petitioners aver that in 2022, an amendment to Administrative Code § 28-219.1 removed the provision that states:

“In addition, even if the immediately hazardous violation is subsequently corrected, no certificate of correction shall be accepted for the violation giving rise to this civil penalty until such penalty has been paid to the department.”

Therefore, petitioners argue, DOB is violating its duty to review certificates of correction. Further, petitioners allege that DOB may only collect AEUHAZ civil penalties that accrued within the past three years since petitioners have not commenced actions to collect on the older debts (*id.*, ¶¶ 27, 28 [citing CPLR 214(2)]). In sum, petitioners claim that they should not have to pay AEUHAZ civil penalties before they file certificates of correction on all violations (*see id.*).

In respondents’ motion, DOB argues that the language in Administrative Code § 28-219.1 requiring that owners pay penalties to DOB before DOB will accept a certificate of correction was not removed by Local Law 50 in 2022. According to respondents, in 2021, Local Law 126 amended the Administrative Code by adding the language at issue (NYSCEF Doc. No. 42). Respondents annex a copy of the alleged official version of Administrative Code § 28-219.1 published by American Legal Publishing Corporation version which contains the language upon which DOB relies for rejecting petitioners’ certificates (NYSCEF Doc. No. 43). Further, respondents argue that when Local Law 50 went into effect in 2022, the previous language from Local Law 126 could have erroneously omitted the language and, regardless, City Council made no indication to discard the Local Law 126 amendment language (NYSCEF Doc. No. 44, footnote 2). In opposition, petitioners annex the Westlaw version of the relevant section of the Administrative Code which omits the language that DOB relies upon (NYSCEF Doc. No. 55). In reply, respondents argue that the American Legal Publishing Corporation is the only entity licensed by the city to publish the Administrative Code. They annex a copy of the law available through a web link on the New York City Law Department website located at <https://www.nyc.gov/site/law/public-resources/laws-of-the-city-of-new-york.page> (NYSCEF Doc. No. 57, footnote 8), which contains the language in dispute.

“On a motion to dismiss a cause of action as untimely pursuant to CPLR 3211 (a) (5), a defendant bears the initial burden of establishing, *prima facie*, that the time in which to sue has expired. In considering the motion, a court must take the allegations in the complaint as true and

resolve all inferences in favor of the plaintiff” (*Benn v Benn*, 82 AD3d 548, 548 [1st Dept 2011] [internal quotation marks and citation omitted]). If the movant satisfies the burden, then the plaintiff must present evidence that shows “the action was timely or raise[s] a question of fact as to whether the action was timely” (*Lake v New York Hosp. Med. Ctr. Of Queens*, 119 AD3d 843, 844 [2d Dept 2014]).

When it considers a pre-answer motion to dismiss for failure to state a claim, the court “gives the pleadings a liberal construction, accept[s] the allegations as true and accord[s] [petitioner] every possible inference” (*Sassi v Mobile Life Support Services, Inc.*, 37 NY3d 236, 239 [2021]). The court accepts the facts as true and “determines only whether the alleged facts fit within any cognizable legal theory” (*id.*). A petition that contains bare legal conclusions and without support will not survive a motion to dismiss (*M.B. v F.B.*, 235 AD3d 497, 498 [1st Dept 2025]). Additionally, a viable claim does not exist if the factual allegations do not provide for enforceable right of recovery (*Connaughton v Chipotle Mexican Grill, Inc.*, 29 NY3d 137, 142 [2017]). On a motion to dismiss for a court’s lack of subject matter jurisdiction, the court adheres to rules of liberal construction and evaluates whether the complaint’s causes of action fall within the subject matter jurisdiction of the court (see *Ajoku v New York State Office of Temporary and Disability Assistance*, 198 AD3d 437, 438 [1st Dept 2021]).

In their motion, respondents argue that the challenged AEUHAZ violations and related civil penalties became final and binding upon the issuance of the violations when petitioners received summonses of these AEUHAZs (NYSCEF Doc. No. 44, p 14-15). Respondents annex as exhibits proof of the summonses that DOB issued to petitioners (*id.*; NYSCEF Doc. Nos. 17; 19; 21; 23; 25; 27; 29; 31; 33; 35; 37; 39; and 41). Petitioners commenced this special proceeding on September 18, 2024. The dates of the notices of violations range from September 19, 2012, to January 3, 2024; thus, respondents argue that the proceeding is time-barred since it was brought by petitioners more than nine months after the most recent notice (NYSCEF Doc. No. 44, p14). In addition, as stated above, respondents argue that the language petitioner alleges was removed from Administrative Code § 28-219.1 remains in the Code, and DOB can reject certificates of correction until petitioners pay civil penalties.

In opposition, petitioners assert that they are not challenging the issuance of AEUHAZ penalties; instead, they are contesting DOB’s refusal to fulfill its duty to review certificates of correction for DOB violations returnable at OATH (NYSCEF Doc. No. 52, ¶¶ 19-20). According to petitioners, the statute of limitations period commenced when, without providing a date, they attempted to file certificates of correction for the first time on DOB Now and a message notified them that they could not submit certificates until they paid AEUHAZ civil penalties (*id.*, ¶ 21). Petitioners aver that they are harmed by DOB’s continued rejection of their certificates of correction which constitutes a “shake-down” and a violation of their duty under the law (*id.*, ¶¶ 16, 18, 20). Petitioners claim that they tried to file certificates of corrections “shortly before” bringing this Article 78 proceeding and that it was “well within the four-month time frame” (*id.*, ¶ 22). Petitioners aver that Administrative Code § 28-219.1 now omits previous language which allowed DOB to reject certificates until AEUHAZ civil penalties were paid (*id.*, ¶¶ 16-17).

In reply, respondents reiterate that the statute of limitations began to run from the date on which they issued the AEUHAZ civil penalties as opposed to when petitioners first attempted to file certificates. Respondents further argue that petitioners do not state a specific date on which they attempted to file certificates or provide proof of such attempts, and their bare conclusions are insufficient. Respondents claim that the actual, concrete injury here is the issuance of AEUHAZ civil penalties which occurred more than four months prior to commencement of this proceeding; thus, this proceeding should be dismissed. Also, respondents reiterate that the language allowing DOB to reject filings of certificates of correction remains intact under Administrative Code § 28-219.1. Respondents aver that both Local Law 126 and Local Law 50 were passed by the New York City Council's 2018-2021 Legislative Session, and there was no mention of an intent to repeal the pre-payment requirement in the relevant statute. Also, respondents point out that the two local laws do not conflict and it is possible to give effect to both.

A party must commence an Article 78 proceeding “within four months after the determination to be reviewed becomes final and binding upon the petitioner” (CPLR 217[1]; see *Matter of Best Payphones, Inc. v Department of Info. Tech. & Telecom. of City of N.Y.*, 5 NY3d 30, 34 [2005] [*Best Payphones*]). The short time frame is due to the strong public policy that government agencies “should not be unnecessarily clouded by potential litigation” (*Best Payphones*, 5 NY3d at 34). The Court of Appeals recognizes two requirements for setting the time when an agency action is “final and binding upon the petitioner. . . . First, the agency must have reached a definitive position on the issue that inflicts actual, concrete injury and second, the injury inflicted may not be prevented or significantly ameliorated by further administrative action or by steps available to the complaining party” (*id.*). If there is no “final agency decision”, then Article 78 review is unavailable (CPLR 7801[1]). Further, if a petitioner does not exhaust administrative remedies, then the case is dismissed (*see e.g., Matter of Ross v DHCR*, 125 AD3d 434, 435 [1st Dept 2015]). As this is a hybrid proceeding, the statute of limitations in an action for declaratory judgment is determined by “the gravamen of the claim or status of the defendant party” (*Gress v Brown*, 20 NY3d 957, 959 [2012]).

Here, the court finds respondents' arguments persuasive that the statute of limitations runs from the issuance of the violations and civil penalties through the DOB summonses and petitioners did not timely challenge these determinations (*see Matter of Rabi v New York City Dept. of Hous. Preserv. & Dev.*, 196 AD3d 432, 432 [1st Dept 2021]). Contrary to petitioners' assertions, respondent is authorized by Administrative Code § 28-219.1 to reject certificates of correction until civil penalties are paid. Local Law 126 of 2021 added the requirement (NYSCEF Doc. No. 42, p 165), which was conformed to the statute when it was amended by Local Law 50 in 2022 (https://www.nyc.gov/assets/buildings/rules/rule_amendment_hazardous_violations.pdf). The court takes into consideration that the official version of the statute on the NYC Law Department and the American Legal Publishing Corporation websites contains the relevant language. Also, the summonses at issue here all state that civil penalties must be paid “in order to” file certificates of correction (*see e.g.,* NYSCEF Doc. No. 39). The court finds that petitioners' cause of action accrued when they were notified by the DOB commissioner through summonses, or notices of violation, of the AEUHAZ violations and civil penalties (*see Kunkel v New York City Dept. of Bldgs.*, 2023 NY Slip Op 30934[U], *3 [Sup Ct, NY County 2023]). Here, the DOB summonses show that the agency reached a “definitive position” as to issuing

AEUHAZ violations and civil penalties without mention of further administrative action inasmuch as the decisions were final and binding (*Best Payphones*, 5 NY3d at 34-35). Therefore, the court grants the motion to dismiss on the grounds that the filing of this Article 78 petition in September 2024 was untimely when the most recent summons was dated January 3, 2024.

“The supreme court may render a declaratory judgment having the effect of a final judgment as to the rights and other legal relations of the parties to a justiciable controversy whether or not further relief is or could be claimed” (CPLR 3001). The purpose of a declaratory judgment is to “serve some practical end in quieting or stabilizing an uncertain or disputed jural relation either as to present or prospective obligations” (*Touro College v Novus University Corp.*, 146 AD3d 679, 679 [1st Dept 2017]). A declaratory judgment requires a justiciable controversy which exists when a petitioner has “an interest sufficient to constitute standing to maintain the action but also that the controversy involve present, rather than hypothetical, contingent or remote, prejudice to [petitioners]” (*id.* at 680). It is within the court’s discretion to grant a declaratory judgment (*Pappas v B&G Holding Co.*, 2024 NY Slip Op 51218[U], *4 [Sup Ct, Bronx County 2024]).

The court rejects petitioners’ argument that the justiciable controversy here is whether petitioners owe money to respondents and whether respondents can withhold services to petitioners until that money is paid. Here, petitioners claim that DOB should declare AEUHAZ civil penalties as discharged and uncollectable debt due to the expiration of a statute of limitations. The court exercises its discretion in denying petitioner’s request for declaratory relief as it is not proper. A declaratory judgment may not be used as a “vehicle for an advisory opinion” (*Long Island Lighting Co. v Allianz Underwriters Ins. Co.*, 35 AD3d 253, 253 [1st Dept 2006]). Further, the court notes that a declaratory judgment action is not the proper mechanism to challenge an administrative agency decision, when other remedies like an Article 78 proceeding are available (*Greystone Mgt. Corp. v Conciliation and Appeals Bd. of City of N.Y.*, 94 AD2d 614, 616 [1st Dept 1983]). Here, petitioners tried to commence a hybrid Article 78 proceeding wherein the substance is challenging DOB’s determination to issue AEUHAZ civil penalties (*see id.*). Also, to the extent that petitioners seek declaratory relief, they had to serve a summons in addition to the notice of petition, as well as, a combined petition and complaint (*Matter of New York Times Co. v City of N.Y. Police Dept.*, 103 AD3d 405, 407 [1st Dept 2013]). Thus, the court grants the motion to dismiss the request for declaratory relief for lack of subject matter jurisdiction because petitioners did not serve a summons (*Matter of 301 E. 66th St. Condominium Corp. v. City of New York*, 224 AD3d 423, 426 [1st Dept 2024]).

Petitioners request a writ of mandamus to compel DOB to remove and expunge AEUHAZ civil penalties from its records and allow petitioners to file certificates of correction without having to first pay civil penalties. In their motion, respondents argue that petitioners fail to state a cause of action for mandamus because petitioners have not established a clear and absolute right to the removal and expungement of AEUHAZ civil penalties (NYSCEF Doc. No. 44, p 18-19). Further, respondents aver that they are authorized by Administrative Code § 28-219.1 to reject certificates of correction until civil penalties are paid to DOB, even where the immediately hazardous violation is corrected (*id.*). Respondents emphasize that petitioners do not show that the extraordinary nature of mandamus relief is warranted here (*id.*).

In opposition, petitioners argue that the language in the statute upon which DOB relies on when it rejected petitioners' certificates of correction no longer permits such agency action (NYSCEF Doc. No. 52, ¶ 60). Petitioners claim that Local Law 50 of 2022 (NYSCEF Doc. No. 54) omits previous language and that the American Legal Publishing Corporation version is not official (*id.*, ¶ 62). They annex what they argue is the official Westlaw version of the relevant code which does not contain the language at issue (*id.*, ¶ 63; NYSCEF Doc. No. 55). Petitioners also annex testimony from the DOB Commissioner before City Council regarding Local Law 50 in support of their argument that DOB supported the bill and had an interest in removing obstacles that prevent owners from correcting violations (NYSCEF Doc. No. 56). In reply, respondents reiterate that Local Law 50 in 2022 did not remove the language added to Administrative Code § 28-219.1 through Local Law 126 in 2021. Respondents aver that the American Legal Publishing Corporation is the sole vendor licensed by the City to publish the Administrative Code; as such, that version should be relied upon.

“A writ of mandamus is an extraordinary remedy that is available only in limited circumstances” *Alliance to End Chickens as Kaporos v New York City Police Dept.*, 32 NY3d 1091, 1093 [2018] [*Alliance to End Chickens*]). An Article 78 proceeding that seeks a mandamus is “used to compel performance of a duty that is merely ministerial in nature and involved no exercise of judgment or discretion” (*Siegel-NY Prac § 558. Mandamus, New York Practice, Special Proceedings*). “Discretionary acts involve the exercise of reasoned judgment which could typically produce different acceptable results whereas a ministerial act envisions direct adherence to a governing rule or standard with a compulsory result” (*Alliance to End Chickens*, 32 NY3d at 1093). Mandamus is used “to compel a body to perform a mandated duty, not how that duty shall be performed” (*id.*).

Here, petitioners have not identified any authority establishing that they have a clear right to the issuance of a final determination that they do not have to pay AEUHAZ civil penalties (see *Matter of New York City Yacht Club v New York City Dept. of Buildings*, 172 AD3d 606, 607 [1st Dept 2019] [*NYC Yacht Club*]). The court finds that Administrative Code § 28-219.1 authorized DOB to reject petitioners' certificates of correction. Also, the court notes that the summonses clearly advise petitioners that they cannot file certificates of correction until they pay civil penalties (see NYSCEF Doc. No. 21). DOB's determinations to issue violations and civil penalties for petitioners' failure to comply with various sections of the Administrative Code after DOB inspections are discretionary actions, not mandatory, non-discretionary acts (*NYC Yacht Club*, 172 AD3d at 606). The decision to enforce violations of building codes rests within the discretion of public officials charged with enforcement, which is DOB in the instant matter (see *Matter of Young v Town of Huntington*, 121 AD2d 641, 642 [2d Dept 1986]). The court concludes that, after considering the allegations in the petition as true, petitioner does not state a cause of action for mandamus as it pertains to the certificates of correction and civil penalties (see *Matter of McCudden v Canisius Coll.*, 236 AD3d 1441, 1443 [4th Dept 2025]). Therefore, the court grants the motion to dismiss the writ for mandamus for failure to state a cause of action. For the reasons above, it is hereby

ORDERED that the petition pursuant to CPLR Article 78 is denied; and it is further

ORDERED that the respondents' cross-motion pursuant to CPLR 3211 is granted, and this proceeding is dismissed; and it is further

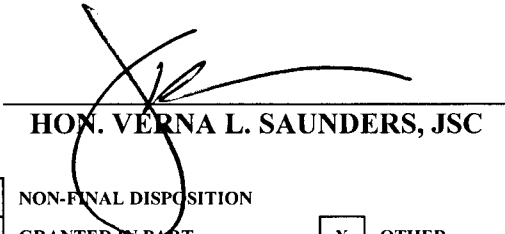
ORDERED that the Clerk of the Court shall enter judgment dismissing the proceeding; and it is further

ORDERED that, within twenty (20) days after this decision and order is uploaded to NYSCEF, counsel for respondents shall serve a copy of this decision and order, with notice of entry, upon all parties and upon the Clerk of the Court; and it is further

ORDERED that service upon the Clerk of the Court shall be made in accordance with the procedures set forth in the Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases (accessible at the "E-Filing" page on the court's website at the address www.nycourts.gov/supctmanh).

This constitutes the Decision and Order of this court.

August 21, 2025


HON. VERNA L. SAUNDERS, JSC

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