

1746 E13 St. LLC v Khaimov

2025 NY Slip Op 33472(U)

July 10, 2025

Supreme Court, Kings County

Docket Number: Index No. 525824/2019

Judge: Francois A. Rivera

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At an IAS Term, Part 52 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 10th day of July 2025

HONORABLE FRANCOIS A. RIVERA

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1746 E13 STREET LLC, 5601 14TH AVE LLC,
6801 21 AVE LLC, 6301 23 AVE LLC, INDEX NO.:
1350 54TH STREET LLC, 690 OCEAN PKW LLC,
3051 OCEAN AVE LLC, OSGOOD LLC
57-63 WADSWORTH LLC, 261 WADSWORTH LLC

Plaintiffs,

- against -

ITOMOR KHAIMOV, a/k/a ANTHONY
MARCHELLO, a/k/a TONY MARCHELLO,
a/k/a TOMMY KERSH

Defendant

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DECISION & ORDER

Index No.: 525824/2019

Oral Argument: 4/17/2025

Ms. 16 & 17

By order to show cause signed on March 26, 2025, under motion sequence sixteen, and made returnable on April 17, 2025, 1746 E13 Street LLC, 5601 14th Ave LLC, 6801 21 Ave LLC, 6301 23 Ave LLC, 1350 54th Street LLC, 690 Ocean Pkw LLC, 3051 Ocean Ave LLC, Osgood LLC, 57-63 Wadsworth LLC, and 261 Wadsworth LLC (hereinafter the plaintiffs) have jointly moved for an order consolidating for trial the instant action with the action captioned 6801 21 Avenue LLC v. Itomor Khaimov , a/k/a Anthony Marcello, a/k/a Tony Marcello, a/k/a Tommy Kersh filed under index no. 505492/2024 (hereinafter the later action).

By notice of cross-motion filed on April 4, 2024, under motion sequence seventeen, and made returnable on April 17, 2025, defendant Itomor Khaimov, proceeding pro se, seeks, among other things, leave to amend the defendant’s answer as well as leave to reargue and/or renew defendant’s position on multiple Court orders¹. The

¹ The notice of motion under motion sequence number seventeen seeks the following relief:

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- (a) pursuant to CPLR 3025 (b) granting leave to pro se Itomor Khaimov to file its Second Amended Answer to add Defense and Counterclaims against Plaintiffs and to submit the Second Amended Answer via NYSCEF a copy of which is annexed to these moving papers as Exhibit "A", and to amend caption adding Counter-Plaintiff and Counter-Respondents; and
- (b) pursuant to CPLR 6314, CPLR 5015 (a) (2), CPLR 5015 (a) (3) vacating this Court's Preliminary Injunction issued via orders; 1) Decision and Order (Doc. 17) dated and entered on November 26, 2019 (the "November 26 Order") issued by Hon. Carolyn E. Wade; and 2) Decision and Order (Doc. 46) dated and entered on July 27, 2020 and (Doc. 50) dated July 27, 2020 and entered on July 30, 2020 (the "July 27 Order"), issued by Hon. Loren Baily-Schiffman; and 3) First Amended Order (Doc. 51) dated August 6, 2020 and entered on August 18, 2020 (the "August 6 Order") issued by Hon. Loren Baily Schiffman; and 4) Second Amended Order (Doc. 108) dated and entered June 17, 2021 (the "June 17 Order") issued by Hon. Loren Baily-Schiffman; and 5) Order (Doc. 323) and entered June 16, 2022 (the "June 16 Order") issued by Hon. Robin K. Sheares; and or 6) in alternative granting Respondent leave to reargue so much of the court's November 26 Order, July 27 Order, August 6 Order, June 17 Order and June 16 Order pursuant to C.P.L.R. § 2221(d); and
- (c) for an order pursuant to CPLR 6315 and CPLR 6312 (b) (3) and CPLR 6312 (c) awarding Respondent's damages and fees incurred in rearguing this motion based on the erroneously ordered temporary restraining order; and 1) in alternative granting respondent leave to reargue so much of the court's Jan. 5 Order and Jan. 25 Amd. Order and February 1 Judgment pursuant to CPLR 2221 (d) and, upon the granting of same vacating the decisions/orders; and 2) pursuant to CPLR 2201 and CPLR 5519(c), staying and tolling all proceedings in the instant matter, including the Trial hearing scheduled for Monday, April 21, 2025, at 10:30 am pending the hearing and determination of Respondent's Appeal (2nd Appellate Division Docket No. 2023-01840 - 2023-01841) (Notice of Appeal AD2 NYSCEF. DOC. NO. 1), and (Brief for Defendant-Appellant Itomor Khaimov AD2 NYSCEF. DOC. NO. 32); and
- (d) for an order pursuant to CPLR 5015 (a) (2) and CPLR 5015 (a)(3) vacating this Court's Order (Motion seq. 8) (Doc. 330) dated June 22, 2022 and entered July 1, 2022 (the "June 22 Order") issued by Hon. Lawrence Knipel; and or 1) in alternative granting Respondent leave to reargue so much of the court's June 22 Order pursuant to CPLR. 2221 (d), CPLR 3124, CPLR 3126, CPLR 3104 (a), 22 NYCRR § 130-1.1; and 2) pursuant to CPLR 5519 (c) and/or CPLR 2201, staying and tolling all proceedings in the instant matter, including the Trial assigned to Justice Francois A. Rivera, Part 52 and scheduled for a trial hearing for Monday, April 21, 2025, at 10:30 am pending the hearing and determination of Respondent's Appeal (2nd Appellate Division Docket No. 2023-05175) (Notice of Appeal AD2 NYSCEF. DOC. NO. 1), which was fully briefed on March 10, 2024 and (Brief for Defendant-Appellant Itomor Khaimov AD2 NYSCEF. DOC. NO. 7); and
- (e) for an order pursuant to CPLR 5015 (a) (2) and CPLR 5015 (a) (3) vacating the Order (Motion seq. 12) issued by Hon. Rachel E. Freier, dated April 14, 2023 and entered April 20, 2023 (hereinafter "April 14 Order") (Doc. 407) as denied Respondent's discover motion (seq. 12) for compel and strike Plaintiffs' Note of Issue and Statement of readiness and to remove from the trial court calendar and other relief thereto; and or 1) in alternative granting Respondent leave to reargue so much of the court's April 14 Order pursuant to CPLR 2221(d) and, upon the granting of same vacating the decision/order; and 2) pursuant to CPLR 3124, directing Plaintiffs, by a date certain, to provide previously requested documents for the inspection (See. Notice of second Set of Discovery (Doc. 331); and Notice to Admit (Doc. 332); and First Set of Interrogatories (Doc. 333); and 3) pursuant to CPLR 5519 (c) and/or CPLR 2201, staying and tolling all proceedings in the instant matter, including the Trial assigned to Justice Francois A. Rivera, Part 52 and scheduled for a trial hearing for Monday, April 21, 2025, at 10:30 am pending the hearing and determination of Respondent's Appeal (2nd Appellate Division Docket No. 2023-05175) (Notice of Appeal AD2 NYSCEF. DOC. NO. 1), which was fully briefed on March 10, 2024, and (Brief for Defendant-Appellant Itomor Khaimov AD2 NYSCEF. DOC. NO. 7); and
- (f) for an order pursuant to CPLR 5015(a)(2) and CPLR 5015(a)(3) vacating the Order (Motion seq. 14) issued by Hon. Robin K. Sheares, dated December 7, 2023 and entered on December 15, 2023, as denied Respondent's motion (seq. 14) for summary judgment other relief thereto, (hereinafter "December 7 Order") (Doc. 506); and or 1) in alternative granting Respondent leave to reargue so much of the court's December 7 order pursuant to CPLR 2221

cross-motion also serves as opposition to the plaintiff's order to show cause under motion sequence sixteen.

LAW AND APPLICATION

Motion Sequence Number Sixteen

On February 18, 2025, the court conducted a pre-trial conference. On that date the Court issued an order setting a date for the commencement of a bench trial of the instant action to begin on Monday, April 21, 2025.

Thereafter, the plaintiffs jointly filed motion sequence number sixteen, and the defendant filed motion sequence number seventeen. Both movants set the return date for oral argument on their respective motions to be heard on Thursday, April 17, 2025, exactly two business days before the trial was scheduled to begin. Neither the plaintiffs nor the defendant sought a stay or temporary restraining order delaying the

(d) and, upon the granting of same vacating the decision/order; and 2) pursuant to CPLR 5519 (c) and/or CPLR 2201, staying and tolling all proceedings in the instant matter, including the Trial hearing scheduled for Monday, April 21, 2025, at 10:30 am (Doc. 542) pending the hearing and determination of Respondent's Appeal (2nd Appellate Division Docket No. 2024-00059) (Notice of Appeal AD2 NYSCEF. DOC. NO. 1); and

(g) pursuant to CPLR 3211 (a) (4), dismissing/denying Plaintiff's motion (seq. 16) brought by an Order to Show Cause, which seeks Consolidation of the within action "Action No 1." with an action pending in Civil Court of the State of New York, County of Kings captioned 6801 21 AVENUE LLC v. ITOMOR KHAIMOV, a/k/a ANTHONY MARCELLO, a/k/a TONY MARCELLO, a/k/a TOMMY KERSH under Index No. 505492/2024 "Action No 2." on the ground that there is a prior actions pending 525824/2019 1746 E13 Street LLC et al v. Itomor Khaimov et al and pending 2024-11694 - Appellate Division - 2nd Dept (See. Notice of Appeal NYSCEF DOC. NO. 1); and or 1) in alternative, pursuant to CPLR 3211(a)(4) dismissing plaintiffs action captioned 6801 21 AVENUE LLC v. ITOMOR KHAIMOV, a/k/a ANTHONY MARCELLO, a/k/a TONY MARCELLO, a/k/a TOMMY KERSH under Index No. 505492/2024, this retaliatory SLAPP action must be dismissed because there is another action pending between the parties where the same relief has been requested; and

(h) granting such other and further relief as may be just.

(i) Respondent respectfully demand that the Hon. Court will issue a fully explained decision and present a case laws present court judge ruled by thereto.

commencement of trial pending the determination of motion sequence numbers sixteen and seventeen.

It is also noted that on Monday, April 21, 2025, the following occurred. The plaintiffs and defendant both appeared. The plaintiffs announced their readiness to proceed to trial. The defendant orally requested an adjournment, which the Court denied. The bench trial began, both parties gave opening statements, the plaintiffs called a witness to the stand, and that witness began testifying.

Considering the foregoing, the plaintiffs' motion seeking an order to consolidate the instant action with the action captioned 6801 21 Avenue LLC v. Itomor Khaimov, a/k/a Anthony Marcello, a/k/a Tony Marcello, a/k/a Tommy Kersh filed under Index No. 505492/2024 was abandoned by the plaintiffs' strategic decision to go forward with the trial of the instant action before motion sequence number sixteen was decided.

Furthermore, in the exercise of discretion, consolidation would have been palpably prejudicial to the defendant. The later action was commenced in 2024, nearly five years later, and seeks an order of ejectment of the defendant and an award for use and occupancy. When the defendant came to trial, it was not to face a potential judgment of ejectment and an award of use and occupancy. To seek consolidation without seeking a stay for the defendant to prepare for these issues would be prejudicial. Moreover, while one of the plaintiffs and the defendant are parties in the other action, the other action does not share common issues of law with the instant action.

Defects in Defendant's Motion Papers

The defendant's motion papers do not comply with the following statutes and court rules. CPLR 2101 pertains to the form of papers and provides as follows:

(a) Quality, size, and legibility. Each paper served or filed shall be durable, white and, except for summonses, subpoenas, notices of appearance, notes of issue, orders of protection, temporary orders of protection and exhibits, shall be eleven by eight and one-half inches in size. The writing shall be legible and in black ink. Beneath each signature shall be printed the name signed. The letters in the summons shall be in clear type of no less than twelve-point in size. Each other printed or typed paper served or filed, except an exhibit, shall be in clear type of no less than ten-point in size.

(b) Language. Each paper served or filed shall be in the English language which, where practicable, shall be of ordinary usage. Where an affidavit or exhibit annexed to a paper served or filed is in a foreign language, it shall be accompanied by an English translation and an affidavit by the translator stating his qualifications and that the translation is accurate.

22 NYCRR § 202.5 (a) (1) provides in pertinent part as follows:

In addition to complying with the provisions of CPLR 2101, every paper filed in court shall have annexed thereto appropriate proof of service on all parties where required, and if typewritten, shall have at least double space between each line, except for quotations and the names and addresses of attorneys appearing in the action, and shall have at least one-inch margins. In addition, every paper filed in court, other than an exhibit or printed form, shall contain writing on one side only, except that papers that are fastened on the side may contain writing on both sides, and shall contain print no smaller than 12-point, or 8 ½ x 11-inch paper, bearing margins no smaller than one inch.

22 NYCRR § 202.8-b pertains to the length of papers and provides as follows:

(a) Where prepared by use of a computer, unless otherwise permitted by the court: (i) affidavits, affirmations, briefs and memoranda of law in chief shall be limited to 7,000 words each: (ii) reply affidavits, affirmations, and memoranda shall be no more than 4,200 words and shall not contain any

arguments that do not respond or relate to those made in the memoranda in chief.

(b) For purposes of paragraph (a) above, the word count shall exclude the caption, table of contents, table of authorities, and signature block.

(c) Every brief, memorandum, affirmation, and affidavit which was prepared by use of a computer shall include on a page attached to the end of the applicable document, a certification by the counsel who has filed the document setting forth the number of words in the document and certifying that the document complies with the word count limit. The counsel certifying compliance may rely on the word count of the word-processing system used to prepare the document.

(d) Where typewritten or handwritten, affidavits, affirmations, briefs and memoranda of law in chief shall be limited to 20 pages each; and reply affidavits, affirmations, and memoranda shall be limited to 10 pages each and shall not contain any arguments that do not respond or relate to those made in the memoranda in chief.

(e) Where a party opposing a motion makes a cross-motion, the affidavits, affirmations, briefs, or memoranda submitted by that party shall be limited to 7,000 words each when prepared by use of a computer or to 20 pages each when typewritten or handwritten. Where a cross-motion is made, reply affidavits, affirmations, briefs or memoranda of the party who made the principal motion shall be limited to 4,200 words when prepared by use of a computer or to 10 pages when typewritten or handwritten.

(f) The court may, upon oral or letter application on notice to all parties permit the submission of affidavits, affirmations, briefs or memoranda which exceed the limitations set forth above. In the event that the court grants permission for an oversize submission, the certification required by paragraph (c) above shall set forth the number of words in the document and certify compliance with the limit, if any set forth by the court.

Discussion

The defendant's instant cross motion under sequence seventeen does not comply with 22 NYCRR §§ 202.5 (a) (1) and 202.8-b.

It fails to comply with 22 NYCRR 202.5 (a) (1) because the margins are less than one inch. Furthermore, on the top of the page and within the one-inch margin of each page is a logo of the scales of justice. Below the logo is printed either one of the following texts “Vincit Omnia Veritas” or “Principium est potissima pars cujusque rei.” In the bottom of each page and within the one-inch margin is either the text, “The principle of the thing is its most powerful part,” or “Evil prevails when good men fail to act.”

It fails to comply with 22 NYCRR 202.8-b as follows. Defendant submitted an affidavit in support that is seventy-two pages, a memorandum in support that is eighty-two pages, and an affidavit in reply that is twenty-seven pages. All these documents are above the page limits set forth in the Court rule and were submitted without the Court’s permission. The Court further notes that the instant cross motion contains text printed in red ink and, as previously noted, text printed in a foreign language without appropriate translation contrary to the requirements of CPLR 2101 (a) and (b).

In the future, all motion papers filed by the defendant hereafter must comply with the requirements of 22 NYCRR §§ 202.5 (a) (1) and 202.8-b as well as with CPLR 2101 (a) and (b). Furthermore, the motion papers should not contain any logos or text in any language within the one-inch margin of any page. A failure to comply with this directive on any future filings may result in a rejection of any such motion papers.

Motion Sequence Number Seventeen
Motion to Amend the Answer

The defendant seeks, among other things, leave to amend its answer pursuant to CPLR 3025 (b) to add a defense and counterclaims.

CPLR 2214 (a) provides that a notice of motion shall “specify the time and place of the hearing on the motion, the supporting papers upon which the motion is based, the relief demanded and the grounds therefor” (*Abizadeh v. Abizadeh*, 159 AD3d 856, 857 [2nd Dept 2018]). CPLR 2214 (c) provides, in pertinent part:

Each party shall furnish to the court all papers served by that party. The moving party shall furnish all other papers not already in the possession of the court necessary to the consideration of the questions involved . . . Only papers served in accordance with the provisions of this rule shall be read in support of, or in opposition to, the motion, unless the court for good cause shall otherwise direct.

“Leave to amend pleadings under CPLR 3025 (b) should be freely granted unless the proposed amendment would unfairly prejudice or surprise the opposing party or is palpably insufficient or patently devoid of merit” (*Cirillo v Lang*, 206 AD3d 611, 612 [2d Dept 2014]). “In exercising its discretion, the court should consider how long the party seeking the amendment was aware of the facts upon which the motion was predicated [and] whether a reasonable excuse for the delay was offered” (*Yong Soon Oh v Hua Jin*, 124 AD3d 639, 640 [2d Dept 2015]).

CPLR 3025 (b) provides, among other things, that “[a] party may amend his or her pleading . . . at any time by leave of court or by stipulation of all parties” and specifies that “[a]ny motion to amend or supplement pleadings shall be accompanied by the

proposed amended or supplemental pleading clearly showing the changes or additions to be made to the pleading” (see *G4 Noteholder, LLC v. LDC Props., LLC*, 153 AD3d 1326, 1327 [2d Dept 2017]).

Here, the defendant stated that the proposed amended pleading was annexed as exhibit A to the motion. Annexed as exhibit A to the motion were two amended complaints. Neither amended complaint explained nor showed the changes that were being sought from the original complaint. This branch of the motion may be denied due to the defendant’s failure to annex a proposed amended pleading clearly showing the changes to be made to the pleading.

Moreover, as previously indicated, the motion to amend was made and scheduled for oral argument on April 17, 2025, two days before the trial was scheduled to begin. “Where [an] application for leave to amend is made long after the action has been certified for trial, judicial discretion in allowing such amendments should be discreet, circumspect, prudent, and cautious” (*Migdal v MNT Properties, LLC*, 206 AD3d 903, 904 [2d Dept 2022], quoting *Tabak v Shaw Indus., Inc.*, 149 AD3d 1132, 1133 [2d Dept 2017]; see *Yong Soon Oh v Hua Jin*, 124 AD3d 639, 640-641 [2d Dept 2015]). “In exercising its discretion, the court should consider how long the party seeking the amendment was aware of the facts upon which the motion was predicated [and] whether a reasonable excuse for the delay was offered” (*Yong Soon Oh v Hua Jin*, 124 AD3d 639, 640 [2d Dept 2015], quoting *Cohen v Ho*, 38 AD3d 705, 706 [2d Dept 2007]). “Moreover, when leave . . . is sought on the eve of trial, judicial discretion should be exercised sparingly (*id.* at 641, quoting *Morris v Queens Long Is. Med. Group, P.C.*, 49

AD3d 827, 828 [2d Dept 2008]). In the case at bar, the defendant offered no explanation or excuse for delaying making the motion to amend his pleading until the eve of trial.

The branch of the motion seeking leave to amend is therefore denied.

Motion to, Among Other Things, Vacate the Orders Dated November 26, 2019, July 27, 2020, August 6, 2020, June 17, 2021, June 16, 2022

By the language utilized in the defendant's notice of motion, the defendant also seeks (b) pursuant to CPLR 6314, CPLR 5015 (a) (2), CPLR 5015 (a) (3) vacating this Court's Preliminary Injunction issued via orders; 1) Decision and Order (Doc. 17) dated and entered on November 26, 2019 (the "November 26 Order") issued by Hon. Carolyn E. Wade; and 2) Decision and Order (Doc. 46) dated and entered on July 27, 2020 and (Doc. 50) dated July 27, 2020 and entered on July 30, 2020 (the "July 27 Order"), issued by Hon. Loren Baily-Schiffman; and 3) First Amended Order (Doc. 51) dated August 6, 2020 and entered on August 18, 2020 (the "August 6 Order") issued by Hon. Loren Baily Schiffman; and 4) Second Amended Order (Doc. 108) dated and entered June 17, 2021 (the "June 17 Order") issued by Hon. Loren Baily-Schiffman; and 5) Order (Doc. 323) and entered June 16, 2022 (the "June 16 Order") issued by Hon. Robin K. Sheares; and or 6) in alternative granting Respondent leave to reargue so much of the court's November 26 Order, July 27 Order, August 6 Order, June 17 Order and June 16 Order pursuant to CPLR 2221 (d).

The defendant cites CPLR 6314, CPLR 5015 (a) (2), CPLR 5015 (a) (3) as the statutory authority for the relief requested on this branch of the motion.

CPLR 6314 provides that a defendant enjoined by a temporary restraining order or a preliminary injunction may move at any time to vacate or modify it. The statute does not prescribe a standard for vacating or modifying such an injunction. However, “it is a basic principle of equity that, in a proper proceeding, the court that issued an injunction may modify its provisions to conform to changed conditions” (*Board of Trustees of Town of Huntington v W. Wilton Wood, Inc.*, 97 AD2d 781, 782 [2d Dept 1983]). “A motion to vacate or modify a preliminary injunction is addressed to the sound discretion of the court and may be granted upon ‘compelling or changed circumstances that render continuation of the injunction inequitable’” (*Wynkoop v 622A President St. Owners Corp.*, 169 AD3d 1103, 1105 [2d Dept 2019], quoting *Thompson v 76 Corp.*, 54 AD3d 844, 846 [2d Dept 2008]).

The defendant alleges, among other things, that the court’s issuance of any restraining order was procedurally and substantively improper. He also alleges vague and conclusory claims of unethical and deceptive conduct by plaintiffs’ counsel. Ultimately, the defendant did not demonstrate compelling or changed circumstances that would render continuation of any restraining order issued in the action as inequitable.

CPLR 5015 (a) (2) and (3) provide in pertinent part as follows:

(a) On motion. The court which rendered a judgment or order may relieve a party from it upon such terms as may be just, on motion of any interested person with such notice as the court may direct, upon the ground of:

2. newly discovered evidence which, if introduced at the trial, would probably have produced a different result and which could not have been discovered in time to move for a new trial under section 4404; or

3. fraud, misrepresentation, or other misconduct of an adverse part.

“[T]o succeed on a motion pursuant to CPLR 5015 (a) (2) to vacate an order or judgment on the ground of newly discovered evidence, the movant must establish that the evidence could not have been discovered earlier through the exercise of due diligence and that the newly discovered evidence would probably have produced a different result” (*Wall St. Mtge. Bankers, Ltd. v Rodgers*, 148 AD3d 1088, 1089 [2d Dept 2017] [internal citations omitted]).

Here, the defendant did not provide any newly discovered evidence that could not have been provided earlier and that would have produced a different result.

“CPLR 5015 (a) (3) permits a court to vacate a judgment or order upon the ground of fraud, misrepresentation, or other misconduct of an adverse party” (*HSBC Bank USA N.A. v Kantor*, 215 AD3d 643, 644 [2d Dept 2015]).

Here, the defendant also failed to meet his burden of establishing fraud, misrepresentation, or other misconduct by the plaintiffs, which could warrant vacatur of any order entered in the instant action, pursuant to CPLR 5015 (a) (3) (*see Pierre v Weir*, 237 AD3d 988, 990 [2d Dept 2025]).

In the alternative, the defendant seeks an order pursuant to CPLR 2221 (d) granting leave to reargue so much of the court’s November 26 order, July 27 order, August 6 order, June 17 order, and June 16 order.

CPLR 2221 (a) provides in pertinent part as follows:

(a) A motion for leave to renew or to reargue a prior motion, for leave to appeal from, or to stay, vacate or modify, an order shall be made, on notice,

to the judge who signed the order, unless he or she is for any reason unable to hear it, except that:

1. if the order was made upon a default such motion may be made, on notice, to any judge of the court; and
2. if the order was made without notice such motion may be made, without notice, to the judge who signed it, or, on notice, to any other judge of the court.

The July 27, 2020, August 6, 2020, and June 17, 2021, were issued by Hon. Loren Baily-Schiffman, who has retired from the bench. Therefore, the Court may properly decide this branch of the defendant's motion.

Contrary to the requirements of CPLR 2221, the defendant did not explain what law or fact the Hon. Loren Baily-Schiffman either overlooked or misapprehended in rendering her decision. Consequently, the branch of the defendant's motion seeking reargument of the orders dated July 27, 2020, August 6, 2020, and June 17, 2021, is denied.

However, the order dated November 26, 2019, was issued by Hon. Carolyn E. Wade and the Order dated June 16, 2022, was issued by Hon. Robin K. Sheares. These two orders are addressed separately below.

Motion for Damages and Fees Incurred in Seeking Reargument on the Temporary Restraining Order

The defendant seeks an order pursuant to CPLR 6315 and CPLR 6312 (b) (3) and CPLR 6312 (c) awarding him damages and fees incurred in rearguing this motion based on the erroneously ordered temporary restraining order; and 1) in alternative granting respondent leave to reargue so much of the court's Jan. 5 Order and Jan. 25 Amd. Order

and February 1 Judgment pursuant to CPLR 2221 (d) and, upon the granting of same vacating the decisions/orders; and 2) pursuant to CPLR 2201 and CPLR 5519(c), staying and tolling all proceedings in the instant matter, including the Trial hearing scheduled for Monday, April 21, 2025, at 10:30 am pending the hearing and determination of Respondent's Appeal (2nd Appellate Division Docket No. 2023-01840 - 023-01841) (Notice of Appeal AD2 NYSCEF. DOC. NO. 1), and (Brief for Defendant-Appellant Itomor Khaimov AD2 NYSCEF. DOC. NO. 32).

The defendant cited CPLR 6315, CPLR 6312 (b) (3) and 6312 (c) as the statutory authority for the relief requested in this branch of the motion.

CPLR 6315 pertains to ascertaining damages sustained by reason of preliminary injunction or temporary restraining order and provides as follows:

The damages sustained by reason of a preliminary injunction or temporary restraining order may be ascertained upon motion on such notice to all interested persons as the court shall direct. Where the defendant enjoined was an officer of a corporation or joint-stock association or a representative of another person, and the amount of the undertaking exceeds the damages sustained by the defendant by reason of the preliminary injunction or temporary restraining order, the damages sustained by such corporation, association or person represented, to the amount of such excess, may also be ascertained. The amount of damages so ascertained is conclusive upon all persons who were served with notice of the motion and such amount may be recovered by the person entitled thereto in a separate action.

CPLR 6312 pertains to motion papers, undertaking, issues of fact, and provides as follows:

(a) Affidavit; other evidence. On a motion for a preliminary injunction the plaintiff shall show, by affidavit and such other evidence as may be submitted, that there is a cause of action, and either that the defendant threatens or is about to do, or is doing or procuring or suffering to be done, an act in violation of the plaintiff's rights respecting the subject of the action

and tending to render the judgment ineffectual; or that the plaintiff has demanded and would be entitled to a judgment restraining the defendant from the commission or continuance of an act, which, if committed or continued during the pendency of the action, would produce injury to the plaintiff.

(b) Undertaking. Except as provided in section 2512 and in actions brought under section two hundred sixty-five-a of the real property law, prior to the granting of a preliminary injunction, the plaintiff shall give an undertaking in an amount to be fixed by the court, that the plaintiff, if it is finally determined that he or she was not entitled to an injunction, will pay to the defendant all damages and costs which may be sustained by reason of the injunction, including:

1. if the injunction is to stay proceedings in another action, on any ground other than that a report, verdict or decision was obtained by actual fraud, all damages and costs which may be, or which have been, awarded in the other action to the defendant as well as all damages and costs which may be awarded him or her in the action in which the injunction was granted; or,
2. if the injunction is to stay proceedings in an action to recover real property, or for dower, on any ground other than that a verdict, report or decision was obtained by actual fraud, all damages and costs which may be, or which have been, awarded to the defendant in the action in which the injunction was granted, including the reasonable rents and profits of, and any wastes committed upon, the real property which is sought to be recovered or which is the subject of the action for dower, after the granting of the injunction; or,
3. if the injunction is to stay proceedings upon a judgment for a sum of money on any ground other than that the judgment was obtained by actual fraud, the full amount of the judgment as well as all damages and costs which may be awarded to the defendant in the action in which the injunction was granted.

(c) Issues of fact. Provided that the elements required for the issuance of a preliminary injunction are demonstrated in the plaintiff's papers, the presentation by the defendant of evidence sufficient to raise an issue of fact as to any of such elements shall not in itself be grounds for denial of the motion. In such event the court shall make a determination by hearing or otherwise whether each of the elements required for issuance of a preliminary injunction exists.

The statutes cited by the defendant do not support any item of relief requested by the defendant in this branch of the motion. Furthermore, the allegations of fact proffered for the relief requested are conclusory and unsubstantiated. The defendant also seeks an order pursuant to CPLR 2201 and 5519 (c) staying and tolling all proceedings, including the trial, pending the determination of the defendant's appeal before the Appellate Division Second Department.

“CPLR 5519(c) permits this court, *inter alia*, to grant a discretionary stay of proceedings to enforce the order or judgment appealed from, or to vacate, limit or modify any automatic stay obtained pursuant to CPLR 5519(a) or (b). The scope of the stay authorized by subdivision (c) is thus coextensive with the stay authorized by subdivision (a), namely, a stay of enforcement proceedings only, not a stay of acts or proceedings other than those commanded by the order or judgment appealed from” (*Schwartz v New York City Housing Authority*, 219 AD2d 47, 48 [2d Dept 1996]).

“CPLR 2201 provides that except where otherwise prescribed by law, the court in which an action or proceeding is pending may grant a stay of proceedings in a proper case, upon such terms as may be just” (*id.* [internal quotation marks and citation omitted]). The determination of whether to grant a request for a stay pursuant to CPLR 5519 or CPLR 2201 is discretionary. Here, in an exercise of discretion, the motion for a stay of all proceedings, including the trial, is denied. In sum, this branch of the defendant's motion is, therefore, denied.

By the language utilized in the defendant's notice of motion, the defendant also seeks for an order pursuant to CPLR 5015 (a) (2) and CPLR 5015 (a) (3) vacating this

Court's Order (Motion seq. 8) (Doc. 330) dated June 22, 2022 and entered July 1, 2022 (the "June 22 Order") issued by Hon. Lawrence Knipel; and or 1) in alternative granting Respondent leave to reargue so much of the court's June 22, 2022 order pursuant to CPLR. 2221(d), CPLR 3124, CPLR 3126, CPLR 3104 (a), 22 NYCRR § 130- 1.1; and 2) pursuant to CPLR 5519 (c) and/or CPLR 2201, staying and tolling all proceedings in the instant matter, including the Trial assigned to Justice Francois A. Rivera, Part 52 and scheduled for a trial hearing for Monday, April 21, 2025, at 10:30 am pending the hearing and determination of Respondent's Appeal (2nd Appellate Division Docket No. 2023-05175) (Notice of Appeal AD2 NYSCEF. DOC. NO. 1), which was fully briefed on March 10, 2024 and (Brief for Defendant-Appellant Itomor Khaimov AD2 NYSCEF. DOC. NO. 7).

For this branch of the defendant's motion, the defendant did not provide any newly discovered evidence, that could not have been provided earlier and would have produced a different result. For this branch of the defendant's motion, the defendant also failed to meet his burden of establishing fraud, misrepresentation, or other misconduct on the part of the plaintiff, which could warrant vacatur of any order entered in the instant action, pursuant to CPLR 5015 (a) (3) (*see Pierre v Weir*, 237 AD3d 988, 990 [2d Dept 2025]).

In the alternative, the defendant seeks an order pursuant to CPLR 2221 (d) granting leave to reargue the court's June 22, 2022, Order issued by Justice Knipel. This order will be addressed separately below.

By the language utilized in the defendant's notice of motion, the defendant also seeks (e) an order pursuant to CPLR 5015 (a) (2) and CPLR 5015 (a) (3) vacating the

Order (Motion seq. 12) issued by Hon. Rachel E. Freier, dated April 14, 2023 and entered April 20, 2023 (hereinafter “April 14 Order”) (Doc. 407) as denied Respondent’s discover motion (seq. 12) for compel and strike Plaintiffs’ Note of Issue and Statement of readiness and to remove from the trial court calendar and other relief thereto; and or 1) in alternative granting Respondent leave to reargue so much of the court’s April 14 Order pursuant to CPLR 2221 (d) and, upon the granting of same vacating the decision/order; and 2) pursuant to CPLR 3124, directing Plaintiffs, by a date certain, to provide previously requested documents for the inspection (See. Notice of second Set of Discovery (Doc. 331); and Notice to Admit (Doc. 332); and First Set of Interrogatories (Doc. 333); and 3) pursuant to CPLR 5519 (c) and/or CPLR 2201, staying and tolling all proceedings in the instant matter, including the Trial assigned to Justice Francois A. Rivera, Part 52 and scheduled for a trial hearing for Monday, April 21, 2025, at 10:30 am pending the hearing and determination of Respondent’s Appeal (2nd Appellate Division Docket No. 2023-05175) (Notice of Appeal AD2 NYSCEF. DOC. NO. 1), which was fully briefed on March 10, 2024 and (Brief for Defendant-Appellant Itomor Khaimov AD2 NYSCEF. DOC. NO. 7).

For this branch of the defendant’s motion, the defendant did not provide any newly discovered evidence, that could not have been provided earlier and would have produced a different result. For this branch of the defendant’s motion, the defendant also failed to meet his burden of establishing fraud, misrepresentation, or other misconduct on the part of the plaintiff, which could warrant vacatur of any order entered in the instant action,

pursuant to CPLR 5015 (a) (3) (*see Pierre v Weir*, 237 AD3d 988, 990 [2d Dept 2025]).

The request for a stay is also denied.

In the alternative, the defendant seeks an order pursuant to CPLR 2221 (d) granting leave to reargue the court's April 14, 2023, Order issued by Justice Rachel E. Freier. This order will be addressed separately below.

By the language utilized in the defendant's notice of motion, the defendant also seeks for an order pursuant to CPLR 5015 (a) (2) and CPLR 5015 (a) (3) vacating the Order (Motion seq. 14) issued by Hon. Robin K. Sheares, dated December 7, 2023 and entered on December 15, 2023, as denied Respondent's motion (seq. 14) for summary judgment other relief thereto, (hereinafter "December 7 Order") (Doc. 506); and or 1) in alternative granting Respondent leave to reargue so much of the court's December 7 order pursuant to CPLR 2221(d) and, upon the granting of same vacating the decision/order; and 2) pursuant to CPLR 5519 (c) and/or CPLR 2201, staying and tolling all proceedings in the instant matter, including the Trial hearing scheduled for Monday, April 21, 2025, at 10:30 am (Doc. 542) pending the hearing and determination of Respondent's Appeal (2nd Appellate Division Docket No. 2024-00059) (Notice of Appeal AD2 NYSCEF. DOC. NO. 1.

For this branch of the defendant's motion, the defendant did not provide any newly discovered evidence, that could not have been provided earlier and would have produced a different result. For this branch of the defendant's motion, the defendant also failed to meet his burden of establishing fraud, misrepresentation, or other misconduct on the part

of the plaintiff, which could warrant vacatur of any order entered in the instant action, pursuant to CPLR 5015 (a) (3) (*see Pierre v Weir*, 237 AD3d 988, 990 [2d Dept 2025]).

In the alternative, the defendant seeks an order pursuant to CPLR 2221 (d) granting leave to reargue the court's December 7, 2023, order issued by Justice Robin K. Sheares. This order will be addressed separately below.

By the language utilized in the defendant's notice of motion, the defendant also seeks (g) pursuant to CPLR 3211 (a) (4), dismissing/denying plaintiff's motion (seq. 16) brought by an order to show cause, which seeks consolidation of the within action "Action No 1." with an action pending in Civil Court of the State of New York, County of Kings captioned 6801 21 AVENUE LLC v. ITOMOR KHAIMOV, a/k/a ANTHONY MARCELLO, a/k/a TONY MARCELLO, a/k/a TOMMY KERSH under Index No. 505492/2024 "Action No 2." on the ground that there is a prior actions pending 525824/2019 1746 E13 Street LLC et al v. Itomor Khaimov et al and pending 2024-11694 - Appellate Division - 2nd Dept (See. Notice of Appeal NYSCEF DOC. NO. 1); and or 1) in alternative, pursuant to CPLR 3211 (a) (4) dismissing plaintiffs action captioned 6801 21 AVENUE LLC v. ITOMOR KHAIMOV, a/k/a ANTHONY MARCELLO, a/k/a TONY MARCELLO, a/k/a TOMMY KERSH under Index No. 505492/2024, this retaliatory SLAPP action must be dismissed because there is another action pending between the parties where the same relief has been requested.

Contrary to the defendant's contention, the other action is for an order of ejectment and an order granting an award of use and occupancy. The same relief is not being requested in the two actions. This branch of the motion is therefore denied.

For the reasons previously set forth herein, plaintiffs' motion seeking an order to consolidate the instant action with the action captioned 6801 21 Avenue LLC v. Itomor Khaimov, a/k/a Anthony Marcello, a/k/a Tony Marcello, a/k/a Tommy Kersh filed under Index No. 505492/2024 was rendered moot by the plaintiffs' decision to go forward with the trial before motion sequence number sixteen was decided. Assuming for the sake of argument that the motion was not rendered academic, it is denied in the exercise of discretion. The court, therefore, need not decide the defendant's request for relief in the alternative.

Motion to Reargue Orders Dated November 26, 2019, June 16, 2022, June 22, 2022, April 14, 2023, and December 7, 2023

The defendant seeks to reargue the following orders: the order dated November 26, 2019, issued by Hon. Carolyn E. Wade, the order dated June 16, 2022, issued by Hon. Robin K. Sheares, the order dated June 22, 2022, issued by Hon. Larry Knipel, the order dated April 14, 2023, issued by Hon. Rachel E. Freier, and the order dated December 7, 2023, issued by Hon. Robin K. Sheares. The above orders were issued by New York State Supreme Court Justices who are currently sitting and available to hear the defendant's motion for reargument of their respective decisions and orders. In accordance with CPLR 2221 the motions must be heard by those Justices.

However, because the defendant's motion papers are defective and because the motion papers are so voluminous as to be unwieldy and unmanageable, the Court directs

the following. If the defendant wishes to pursue reargument of the above-noted orders, he must do so by making a separate motion directed to each respective Justice whose specific order he wishes to reargue. Inasmuch as two orders were issued by Justice Sheares, the motion pertaining to Justice Sheares' two orders may be included in one set of motion papers.

The defendant must file the desired motions within thirty days of notice of entry of the instant decision and order, or they will be deemed abandoned. Each one of these motions should include a copy of the instant decision and order as an annexed exhibit and should also comply with the court's directives to remove the noted defects.

CONCLUSION

The order to show cause by 1746 E13 Street LLC, 5601 14th Ave LLC, 6801 21 Ave LLC, 6301 23 Ave LLC, 1350 54th Street LLC, 690 Ocean Pkw LLC, 3051 Ocean Ave LLC, Osgood LLC, 57-63 Wadsworth LLC, and 261 Wadsworth LLC for an order consolidating for trial the instant action with the action captioned 6801 21 Avenue LLC v. Itomor Khaimov , a/k/a Anthony Marcello, a/k/a Tony Marcello, a/k/a Tommy Kersh filed under Index No. 505492/2024 is denied as moot.

The branch of the cross-motion by defendant Itomor Khaimov for an order pursuant to CPLR 3025 granting leave to amend his answer is denied.

The branch of the cross-motion by defendant Itomor Khaimov for an order pursuant to CPLR 6314, CPLR 5015 (a) (2), CPLR 5015 (a) (3) vacating this Court's

Preliminary Injunction issued via orders; 1) Decision and Order dated November 26, 2019 issued by Hon. Carolyn E. Wade; and 2) Decision and Order dated July 27, 2020 issued by Hon. Loren Baily-Schiffman; and 3) First Amended Order dated August 6, 2020 issued by Hon. Loren Baily Schiffman; and 4) Second Amended Order dated June 17, 2021 issued by Hon. Loren Baily-Schiffman; and Decision and order entered June 16, 2022 by Hon. Robin K. Sheares is denied.

The branch of the cross-motion by defendant Itomor Khaimov for an order pursuant to CPLR 6314, CPLR 5015 (a) (2), CPLR 5015 (a) (3) vacating this Court's Preliminary Injunction issued via orders; 1) Decision and Order (Doc. 17) dated and entered on November 26, 2019 (the "November 26 Order") issued by Hon. Carolyn E. Wade; and entered June 16, 2022 (the "June 16 Order") issued by Hon. Robin K. Sheares is denied.

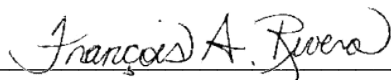
The branch of the cross-motion by defendant Itomor Khaimov for an order granting leave to reargue the order dated July 27, 2020, August 6, 2020, and June 17, 2021, issued by Hon. Schiffman is denied.

The branch of the cross-motion by defendant Itomor Khaimov for an order pursuant to CPLR 6315 and CPLR 6312 (b) (3) and CPLR 6312 (c) awarding him damages and fees incurred in rearguing this motion based on the erroneously ordered temporary restraining order and in alternative granting respondent leave to reargue so much of the court's Jan. 5 Order and Jan. 25 Amd. Order and February 1 Judgment pursuant to CPLR 2221 (d) is denied.

The branch of the cross motion by defendant Itomor Khaimov for an order granting leave to reargue the order dated November 26, 2019, issued by Hon. Carolyn E. Wade, the order dated June 16, 2022, issued by Hon. Robin K. Sheares, the order dated June 22, 2022, issued by Hon. Larry Knipel, the order dated April 14, 2023, issued by Hon. Rachel E. Freier, and the order dated December 7, 2023, issued by Hon. Robin K. Sheares is neither granted nor denied. Rather, the defendant must make the motion for re-argument separately before each Justice whose order the defendant wishes to reargue in accordance with the instant decision and order.

The foregoing constitutes the decision and order of this Court.

ENTER:



J.S.C.