

**Osibodu v Fehintola**

2025 NY Slip Op 34949(U)

December 10, 2025

Civil Court of the City of New York, Kings County

Docket Number: Index No. LT-050900-23/KI

Judge: Juliet P. Howard

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NYSCEF DOC. NO. 19  
Civil Court of the City of New York  
County of Kings Housing Part J

RECEIVED NYSCEF: 12/10/2025  
Index # LT-050900-23/KI



Obadeyi Osibodu; Ann Osibodu  
Petitioner(s)  
-against-  
Olatunde Fehintola  
Respondent(s)

**Decision / Order**

Recitation, as required by CPLR 2219(a), of the papers considered in the review of respondent’s motion sequence #2 to reargue, renew and dismiss.

**Papers Numbered**

- Notice of Motion, Attorney Affirmation, Exhibit A.....NYSCEF Docs. #14 to 16
- Affirmation in Opposition.....NYSCEF Doc. #17
- Reply Affirmation.....NYSCEF Doc. #18

Upon the foregoing cited papers, the decision and order on Respondent’s motion to reargue, renew and dismiss is decided as follows:

Respondent moves Pursuant to CPLR §2221(d) for leave to reargue the decision of this court dated September 24, 2025; and, upon granting of re-argument, granting the relief requested in Respondent’s motion to dismiss; and pursuant to CPLR §2221(e) granting Respondent leave to renew the decision of this court entered on September 24, 2025 (NYSCEF #13); and, upon granting of renewal, granting Respondent’s motion to dismiss. Oral argument was heard on respondent’s motion sequence #2 on October 29, 2025, after being fully briefed by counsel for both sides. The clerk of the court is directed to process motion sequence #2 and enter in UCMS that the motion was submitted on October 29, 2025.

**HISTORY & MOTION TO REARGUE/RENEW AND DISMISS**

Respondent previously filed a motion to dismiss due to petitioner’s alleged “misdescription of the premises” in the pleadings. This court issued a decision denying respondent’s motion in full. Respondent now moves by motion to reargue and renew, and upon re-argument and renewal, for reversal of this Court’s September 24, 2025 decision, granting the relief sought in respondent’s original motion to dismiss. Petitioner opposes the motion in its entirety.

Respondent relies on CPLR 2221 (e) as the basis for their argument to renew, which provides that a motion for leave to renew 1) shall be identified specifically as such; 2) shall be based upon new facts not offered on the prior motion that would change the prior determination or shall demonstrate that there has been a change in the law that would change the prior determination; and 3) shall contain reasonable justification for the failure to present such facts on the prior motion.

Here, the new fact respondent asserts is a new eviction holdover proceeding under Index number LT-326737- 25/KI filed by Petitioner on October 8, 2025 between the same parties. See LT-326737-25/KI where the Petition is attached as Exhibit A (NYSCEF #16). The new proceeding also names Olatunde Fehintola as Respondent. The petition for the new proceeding describes the premises from which removal is sought as “*749 East 52nd Street Basement - Ground Fl. Rm. A Front, Brooklyn, New York 11203.*” (Italics added for emphasis) Respondent asserts that for the purposes of describing a specific unit within the subject premises, the new description differs from the description in this proceeding (where the premises is described as “*One Room #1 Front, Apt 1st Floor on the 1st floor*”) in every conceivable way. While Petitioner alleged the description was accurate in their opposition to Respondent’s motion to dismiss, respondent asserts that Petitioner’s new and conflicting description in the new proceeding constitutes “contradictory indications” requiring a dismissal of this proceeding.

Here respondent cites to CPLR 2221 (d)(2) where a party may seek leave of the court to reargue a prior motion if, among other things, the motion is “based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion . . . .” Respondent is correct that a motion to reargue is within the sound discretion of the court that decided the prior motion. *See Schneider v. Solowey*, 141 A.D.2d 813 (A.D.2d Dep’t 1988). Respondent asserts that the contents of petitioner’s new proceeding serve as an admission of the inaccuracy of the subject premises’ description in this proceeding and therefore respondent seeks

to reargue that the description of the subject premises in the within proceeding is inaccurate,

based on petitioner’s admission in the new pleadings filed in 2025 and accordingly, respondent states this court should grant leave to reargue, and upon reargument, now dismiss the petition.

Petitioner argues respondent has failed to meet standards for either re-argument or renewal and essentially seeks to relitigate issues that were fully briefed and properly decided by this court. The pleadings in the within proceeding described the subject premises as: "749 East 52nd street, One Room #1 Front, Apt. 1st floor, Brooklyn, NY 11203." NYSCEF Doc #3.

Respondent in their motion to dismiss argued that the description was vague, ambiguous, or inaccurate, that that the premises should have been described as a “basement unit.” Petitioner’s counsel in this proceeding explains that while waiting for a decision in this proceeding, the petitioner sought new counsel and filed a new action in hopes of regaining possession of the subject apartment. Here this court found in its decision filed September 24, 2025 "That the premises is sufficiently described... Petitioner did not make the same mistake as the petitioner in 1723 Dean LLC, which Respondent is trying to convince the court is improper. The court is not convinced... *The court finds that a marshal would be able to execute the warrant with the premises as described as it appears to be the first story of this two-family home.*" (Italics added for emphasis) In *1723 Dean LLC v Mike Doe*, Civil Court, Kings County, Index No. 082738/119 the court found there were contradictory indicators within the same petition which created confusion; here the court did not find such contradictory indicators and therefore, did not dismiss the petition.

Petitioner’s counsel in this holdover proceeding asserts that petitioner’s new counsel for the 2025 proceeding, out of abundance of caution, and not to cause any further delays with future motion practice, elected to provide additional descriptive detail, describing the premises as "749 East 52nd Street Basement-Ground Fl. Rm. A Front, Brooklyn, New York 11203." Petitioner

asserts that both descriptions refer to the same physical unit – a street-level apartment occupied

by respondent at the subject address.

Petitioner asserts respondent’s argument that the different description in the new proceeding constitutes an “admission of inaccuracy” by petitioner is inaccurate and that this argument lacks merit. Petitioner argues the new counsel’s decision to provide additional descriptive details amplifying the description of the unit, does not constitute an admission that the original description was deficient or defective. The unit, argues petitioner, can accurately be described as both "1st floor" (being the first floor above grade) and "Basement-Ground Fl." (being at ground/street level). These are not contradictory descriptions but rather different ways of describing the same physical space asserts petitioner. This strategic decision by new counsel in a separate holdover, argues counsel, does not invalidate this court’s determination that the original description was sufficient.

However, petitioner asserted previously that the subject building was a two-family home with a garage and no basement. Petitioner in its initial opposition asserted that respondent occupies the first floor of the two-story home, and the marshal would have no confusion as to which unit to execute a warrant. Petitioner argued that the marshal would have been able to locate the subject premises without reference to any additional information including a certificate of occupancy.

However, this new proceeding filed by the same petitioner and between the same parties, now describes the subject unit as a basement unit, which is in contradiction to petitioner’s initial argument that the subject building was a two-family home with a garage and no basement. This court in its decision entered on September 24, 2025 held that “*The court finds that a marshal would be able to execute the warrant with the premises as described as it appears to be the first story of this two-family home.*” (NYSCEF Doc # 13, page 4) However, the newly discovered information included in the new pleadings between the same parties, clearly describes the subject

premises as a basement, thus contradicting the pleadings and description of the subject unit in

this proceeding.

The standard under RPAPL § 741(3) is whether the description enables a marshal to locate the premises "without additional information outside the four corners of the petition." 272 *Sherman, LLC v. Vasquez*, 4 Misc.3d 370 (Civ. Ct. N.Y. Co. 2004). This court found that a marshal executing a warrant at this address would have no difficulty locating the premises. Petitioner asserts the building is a one-family home and Respondent occupies the street-level unit. Petitioner asserts the fact that this same unit could also be described with different terminology does not render the original description inadequate. Many apartments, argues petitioner, can be described in multiple ways (e.g., "2nd floor rear" vs. "Apt. 2R" vs. "Unit 2-Rear") and the existence of alternative descriptions does not invalidate a sufficient description.

A motion to renew made pursuant to CPLR 2221 (e) provides the moving party with the opportunity to seek alteration of a prior determination of the Court based on a showing of new facts not offered on the prior motion that would change the prior determination. See, CPLLR 2221 (e) Respondent argues that the new holdover proceeding filed by petitioner and including same parties and same unit, relies on petitioner’s false characterization of the new “descriptive detail” as “additional,” rather than contradictory. Respondent cites the following caselaw and states the caselaw has repeatedly distinguished the basement level from the first floor. *See Skmmny LLC v. Pope*, 2020 NYLJ Lexis 796 (Civil Court, Queens Co. 2020) (here court distinguishes basement and first floor as part of RPAPL 741(3) analysis); N.Y. Mult. Dwell. Law § 173 (McKinney) (“first story above the basement”); *Ahmed v. Reid*, 178 N.Y.S.3d 425 (Civil Court, Bronx Co. 2022) (“Petitioner should have, in the first instance, avoided any ambiguity by describing respondent's unit in more detail (e.g., “top floor aka first floor apartment” or “first floor apartment which is above the ground floor apartment”). As respondent points out in their moving papers, petitioner could have moved to amend the pleadings to conform with the current

description of the subject premises as a “basement” unit, but opted to move forward with the

description alleged in these pleadings as a first floor unit and then petitioner, opted to

subsequently file a new holdover proceeding for the same unit against the same respondent, with

a new and contradictory description of the property as a “basement” unit.

RPAPL § 741(3) requires a Petitioner to describe the premises from which removal is sought. It is well established that the petition must contain sufficiently accurate and detailed description of the premises to ensure a Marshal executing a warrant to be able to locate unequivocally the premises without additional information outside the four corners of the petition. *See* 272 *Sherman, LLC v. Vasquez*, 4 Misc.3d 370, 777 N.Y.S.2d 853 (Civ. Ct. New York Co. 2004); *Papacostopulous v. Morrelli*, 122 Misc. 2d 93, 472 N.Y.S.2d 284 (Civ. Ct. Kings Co. 1984). *See also, US Airways, Inc. v. Everything Yogurt Brands, Inc.*, 18 Misc. 3d 136(A), 136A (AT 2<sup>nd</sup> Dept, 2008) where the court held: “Clearly, if the warrant is to be executed properly, the premises must be identified properly, and with certainty, so that the officer executing the warrant will be enabled to locate the premises from such description” (3 Dolan, Rasch’s Landlord and Tenant – Summary Proceedings § 41:14, at 25 [4th ed]).

Accordingly, based on this new fact, and after reargument and renewal the court is constrained to now grant respondent’s motion to renew and reargue and upon reargument the court grants respondents motion sequence #2 to dismiss this proceeding. This dismissal is without prejudice. Petitioner is free to proceed in a plenary action and/or proceed on the existing holdover LT-326737- 25/KI between the same parties. The filing of the new holdover proceeding based on the same allegations but with a contradictory description of the subject premises, constrains this court to amend its prior decision and order as stated above.

This court found previously “... that a marshal would be able to execute the warrant with the premises as described as it appears to be the first story of this two-family home.”

However, the new pleadings between the same parties now describe the same unit as a basement

apartment. Accordingly, now that additional information and relevant facts have been brought to this court's attention, the court is constrained, after permitting reargument and renewal to amend its original order entered on September 24, 2025. This court now grants respondent's motion sequence # 2 to the following extent and after permitting reargument and renewal, the court grant's respondent's motion to dismiss the proceeding without prejudice. Petitioner is free to proceed in a plenary action and/or to proceed under the existing holdover Index No. LT-326737-25/KI between the same parties.

This constitutes the decision and order of this court which is to be uploaded to NYSCEF.

December 10, 2025

*JPH*

<b>DATE</b>	<b>Juliet P. Howard, JHC</b>					
CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED			<input type="checkbox"/>	NON-FINAL DISPOSITION
MOTION SEQ. #: 2	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input type="checkbox"/>	GRANTED IN PART
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input type="checkbox"/>	GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/>	SETTLE ORDER			<input type="checkbox"/>	SUBMIT ORDER
	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN			<input type="checkbox"/>	FIDUCIARY APPOINTMENT
	<input type="checkbox"/>				<input type="checkbox"/>	OTHER
	<input type="checkbox"/>				<input type="checkbox"/>	OTHER
	<input type="checkbox"/>				<input type="checkbox"/>	STAY CASE
	<input type="checkbox"/>				<input type="checkbox"/>	REFERENCE
NOTES	Mot seq # 2 granted and proceeding dismissed per order.					

**ENTERED**  
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