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| Lewis v City of New York |
| 2026 NY Slip Op 31726(U) |
| April 21, 2026 |
| Supreme Court, New York County |
| Docket Number: Index No. 156516/2025 |
| Judge: Phaedra F. Perry-Bond |
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. PHAEDRA F. PERRY-BOND PART 35

Justice

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ROBERT LEWIS,

Petitioner,

- v -

CITY OF NEW YORK, NEW YORK CITY DEPARTMENT OF BUILDINGS, NEW YORK CITY DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT, NEW YORK CITY DEPARTMENT OF FINANCE

Respondents.

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INDEX NO. 156516/2025

MOTION DATE 05/19/2025

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 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, 58, 59, 60, 61, 62, 63, 64, 65, 66

were read on this motion to/for ARTICLE 78 (BODY OR OFFICER)

Upon the foregoing documents, the Petition is denied and the cross-motion to dismiss is granted.

I. Background

Petitioner owns a four-story residential building at 726 St. Nicholas Avenue, New York, New York (the "Premises"). In early 2022, the front stone façade of the Premises began falling to the ground. On February 23, 2022, the New York City Department of Buildings ("DOB") issued a Notice of Violation and Order to Immediately Remove (the "February 23 Notice") requiring a sidewalk shed be installed in front of the Adjoining Properties and directing other corrective work to stabilize the façade.

On February 28, 2022, DOB issued a Full Vacate Order and Immediate Emergency Declaration (the "Initial Emergency Order") requiring partial demolition of the façade based on an inspection by an engineer hired by the City of New York (the "City"). On March 9, 2022, the DOB

issued an Amended Immediate Emergency Declaration (the “Amended Emergency Order”) requiring full demolition of the façade instead of the previously ordered partial demolition. The same day, the New York City Department of Housing Preservation and Development (“HPD”) sent out a notice of solicitation seeking bids for the required demolition work. Petitioner claims no construction work has ever commenced, but photographs and certified engineer daily reports show that emergency work took place throughout March and April of 2022 (*see* NYSCEF Doc. 54).

On August 20, 2022, the New York City Department of Finance (“DOF”) issued a property tax bill (the “August Statement of Account”) containing a charge and tax for repair work at the Premises, which totaled \$1,696.79. DOF sent another Statement of Account on November 19, 2022 (the “November Statement of Account”) that contained new charges for repair work and demolition in the amount of \$376,813.00, accompanying charges of \$25,000.00, and \$33,442.15, for a total of \$435,255.15. Another Statement of Account was sent on February 18, 2023 which reflected an outstanding balance of \$443,962.75. Petitioner received another Statement of Account was sent on June 3, 2023 (the “June Statement of Account”) which set a payment due date of October 1, 2023. Subsequent Statements of Account were sent in August 2023, November 2023, February 2024, June 2024, August 2024, and November 2024, all of which reflected the outstanding charges listed in the June Statement of Account. The unpaid charges became a tax lien when the charges were not paid by the due date and after Petitioner failed to timely object to or challenge those charges pursuant to Administrative Code § 27-2144. On April 17, 2025, Petitioner received a 30-day warning notice of lien sale.

Prior to bringing this action, Petitioner filed multiple actions *pro se* in Federal Court. He first sued the City on July 5, 2023 in the Southern District of New York (the “First Federal Action”), but Chief United States District Judge Laura Taylor Swain dismissed that action when

Petitioner failed to resubmit the signature page of his Complaint. Judge Swain vacated the dismissal on January 16, 2024 and granted Petitioner another thirty days to submit the signature page. After Petitioner again failed to submit the signature page or otherwise communicate with the Court, Judge Swain again dismissed the Complaint on February 3, 2025.

Petitioner filed another complaint against the City in the Southern District of New York on March 27, 2024 (the “Second Federal Action”). The City moved to dismiss, and United States Magistrate Judge Robert W. Lehrburger recommended to United States District Judge Analisa Torres that the complaint be dismissed because Petitioner’s allegations should only be brought via Article 78 proceeding, and because Petitioner failed to state a claim for deprivation of due process. Judge Torres adopted Magistrate Judge Lehrburger’s report and recommendation and dismissed the Complaint without prejudice (*see Lewis v City of New York*, 762 F.Supp.3d 290 [SDNY 2025]).

Petitioner now files this Article 78 petition claiming Respondents improperly imposed a lien on the Premises for expenses not actually incurred. Petitioner also seeks a declaratory judgment stating the procedures set out in the City regulations for the imposition of liens and construction-related expenses are unconstitutional infringements on due process rights. Finally, Petitioner seeks a permanent injunction. Respondents cross-move to dismiss arguing Petitioner failed to exhaust his administrative remedies and that Petitioner fails to state a cause of action for violation of due process or a permanent injunction.

II. Discussion

Respondent’s cross motion to dismiss is granted. The Petition for Article 78 relief is dismissed for failure to exhaust administrative remedies. It is undisputed that Petitioner never objected to or challenged the numerous Statements of Account sent to him in the manner and within the time required by New York City Administrative Code § 27-2129 (*see, e.g. Trump*

Presidential, Inc. v NYC Department of Housing Preservation and Development, 170 AD3d 866, 867-868 [2d Dept 2019]). As held by the Court of Appeals, the doctrine requiring the exhaustion of administrative remedies prior to filing an Article 78 petition “furthers the salutary goals of relieving the courts of the burden of deciding questions entrusted to an agency, preventing premature judicial interference with the administrators’ efforts to develop, even by some trial and error, a coordinated, consistent and legally enforceable scheme of regulation and affording the agency the opportunity, in advance of possible judicial review, to prepare a record reflective of its ‘expertise and judgment’” (*see Watergate II Apartments v Buffalo Sewer Authority*, 46 NY2d 52, 57 [1978]). The failure to challenge and object to the Statements of Account prior to filing this Petition precludes his claims under article 78 (*see also Mulgrew v Board of Educ. of City School District of City of New York*, 232 AD3d 517 [1st Dept 2024]; *Shahid v City of New York*, 144 AD3d 1163 [2d Dept 2016]).

Petitioner’s argument that the objection procedure is not an adequate administrative remedy is unavailing and contrary to precedent (*Trump Presidential, Inc. v NYC Department of Housing Preservation and Development*, 170 AD3d 866, 867-868 [2d Dept 2019]; *Shahid v City of New York*, 144 AD3d 1163 [2d Dept 2016]). Moreover, in dismissing Petitioner’s Complaint in the Second Federal Action, Judge Torres found that Petitioner was notified of the finalized repair charges on his quarterly tax statements, that Petitioner had an opportunity to challenge the imposition of repair costs, and that the multi-step opportunities to contest the charges were deemed sufficient due process in analogous cases (*see Lewis v City of New York*, 762 F.Supp.3d 290, 306 n. 7 [SDNY 2025]). Petitioner’s argument, therefore, that the administrative remedies available to him do not need to be exhausted because of due process issues, has already been considered and has been explicitly rejected.

The declaratory judgment cause of action is dismissed because it could have and should have been brought as an article 78 action (*see, e.g. Pagan v Board of Educ. of City School Dist. Of City of N.Y.*, 56 AD3d 330, 330 [1st Dept 2008] [where breach of contract action sought a declaration that termination of her employment as New York City public school teacher was null and void, claims were premised on contention that administrative determination was wrongful and therefore should have been brought in article 78 proceeding]). The declaratory judgment seeks in essence a declaration that Respondents' actions violated lawful procedure or made through an error of law, which is verbatim a claim under article 78 (*see California Suites, Inc. v Russo Demolition Inc.*, 98 AD3d 144, 152-153 [1st Dept 2012]). Petitioner cannot challenge that he received no notice, because his own allegations admit he received quarterly tax statements advising him of the outstanding charges – rather he alleges that the notice provided was too confusion or insufficient to constitute due process. But again, the alleged violations of substantive and procedural due process were already rejected by Judge Torres in the Second Federal Action (*see Lewis v City of New York*, 762 F.Supp.3d 290, 306-307 [SDNY 2025]).

Finally, because a request for a permanent injunction cannot exist without a substantive underlying cause of action, the cause of action seeking a permanent injunction is dismissed (*see Schindler v Rothfeld*, 153 AD3d 436 [1st Dept 2017] citing *Weinreb v 37 Apts. Corp.*, 97 AD3d 54 [1st Dept 2012]). Because the cross-motion to dismiss is granted, the Petition is denied.

Accordingly, it is hereby,

ORDERED and ADJUDGED that the Petition is denied; and it is further

ORDERED that Respondents' cross-motion to dismiss is granted, and the hybrid Petition/Complaint is dismissed in its entirety; and it is further

ORDERED that within ten days of entry, counsel for Respondents shall serve a copy of this Decision and Order, with notice of entry, on all parties via NYCEF.

This constitutes the Decision and Order of the Court.

4/21/26

DATE

HON. PHAEDRA F. PERRY-BOND, J.S.C.

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