

Belfon v Niblack

2026 NY Slip Op 31912(U)

May 1, 2026

Supreme Court, Kings County

Docket Number: Index No. 527197/2024

Judge: Inga M. O'Neale

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part 7 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 1st day of May, 2026.

P R E S E N T:

HON. INGA M. O'NEALE

Justice.

-----X
KENNETH BELFON AND LORNA BELFON,

Petitioners,

-against-

Index No.: 527197/2024

Motion Sequence: 3

PRESTON NIBLACK, IN HIS CAPACITY AS THE COMMISSIONER OF FINANCE OF THE CITY OF NEW YORK, CITY OF NEW YORK, DEPARTMENT OF HOUSING, PRESERVATION AND DEVELOPMENT OF THE CITY OF NEW YORK, AND NEW YORK CITY DEPARTMENT OF BUILDINGS,

Respondents.

-----X
The following e-filed papers read herein:

NYSCEF Doc Nos.

Notice of Motion, Cross- Motions,
and Affirmations _____

34-37, 40

Affirmations in Opposition _____

42

Affirmations in Reply _____

43

Upon the foregoing papers, respondents Preston Niblack, in his capacity as the Commissioner of Finance of the City of New York (Commissioner), the City of New York (City), the Department of Housing and Preservation and Development of the City of New York (HPD), and the New York City Department of Buildings (DOB) (collectively respondents) move in motion (mot.) sequence (seq.) three for an order, pursuant to CPLR 2201, for leave to reargue, and upon reargument, vacating this court's August 8, 2025 decision and order (August 8, 2025 Decision) which denied respondents' request - - in mot.

seq. two - - to dismiss Kenneth Belfon and Lorna Belfon (petitioners) petition, pursuant to CPLR 3211 (a)(1) and (a) (7). In the alternative, respondents seek leave to appeal in accordance with CPLR 5701(b)(1) and (c). Petitioners oppose.

Factual Background

On or around May 28, 2020, HPD issued a partial Vacate Order for dangerous conditions related to a cellar apartment property located at 236 East 45th Street, Brooklyn, NY 11203 (Subject Premises). As a result of the Vacate Order, HPD provided relocation services through August 6, 2023 for a displaced individual, Nigel Joseph (Joseph). HPD alleges the cost of the relocation totaled \$78,712.89. On or about June 20, 2024, HPD filed a Notice of Lien seeking to recuperate these expenses.

Petitioners subsequently commenced an Article 78 proceeding on October 14, 2024, seeking to reverse HPD's determination of the lien pursuant to CPLR 7805. Petitioners then moved for a judgment reversing HPD's determination of the relocation lien and vacating or discharging any and all orders pertaining to relocation liens related to the subject building. Respondents cross-moved to dismiss the petition for failure to state a cause of action, alleging petitioners failed to pursue their exclusive remedies for discharging a relocation lien under Sections 19 or 59 of the New York State Lien law.

In issuing the August 8, 2025 Decision, the Article 78 petition was converted into a verified complaint for a judgment regarding the propriety of the relocation lien, and a motion requiring respondents to show cause why the relocation lien should not be vacated and canceled pursuant to Article 3, Section 59 of the Lien Law. The August 8, 2025 Decision further denied respondents' motion to dismiss the petition. Respondents now seek

reargument, asserting the Court improperly converted the proceeding into an action for a declaratory judgment instead of a foreclosure action. Specifically, respondents argue that the subject relocation lien can only be discharged pursuant to Article 3, Section 59 of the Lien Law, which provides for a plenary foreclosure action, and Article 2, Section 19 of the Lien Law, which authorizes summary discharge of the lien on the grounds specified in that provision. In essence, respondents argue that the relocation lien is subject to mechanic lien laws. Petitioners oppose, arguing that an 2021 amendment to Section 26-305 of the Administrative Code of the City of New York (Administrative Code) changed how relocation liens are filed and enforced, and the subject lien must now be enforced as a tax lien. Petitioners argue that while the Vacate Order was issued in 2020, the Notice of Lien was filed in 2024, and thus must be governed by the post-amendment statute.

Discussion

CPLR 2221(d) allows a party to seek reargument at “the sound discretion of the court and may be granted upon a showing that the court overlooked or misapprehended the relevant facts or misapplied any controlling principle of law” (*McGill v Goldman*, 261 AD2d 593, 594 [2d Dept 1999]; see *Mi Ja Lee v Glicksman*, 14 AD3d 669, 670 [2d Dept 2005]; see also *Matheus v Weiss*, 20 AD3d 454, 454-55 [2d Dept 2005]). “A motion for leave to reargue is not designed to provide an unsuccessful party with successive opportunities to reargue issues previously decided or to present arguments different from those originally presented” (*FPG CH 94 Amity, LLC v Pizzarotti, LLC*, 218 AD3d 651, 654 [2d Dept 2023]).

HPD has the power to issue vacate orders and provide relocation services (*see* Administrative Code of the City of NY §§ 26-301; 26-305). On September 14, 2021, Administrative Code §26-305 was amended in part pursuant to Local Law 159 of 2019. Specifically, Administrative Code §26-305 (4) reads:

To the extent that such expenses arise from any vacate order issued prior to the effective date of the local law that added paragraph d of this subdivision, they shall, unless fully recovered by the department, and except as herein provided, constitute a lien or liens upon such building and the lot upon which it stands, with the effect and enforcement of such lien or liens governed by the provisions of law regulating mechanics liens and by the provisions of paragraphs (a), (b) and (c) of this subdivision. To the extent that such expenses arise from a vacate order issued on and after the effective date of the local law that added paragraph d of this subdivision, they shall constitute a debt recoverable from the owner of the building at which the vacate order was issued with the effect and enforcement of such debt governed by paragraph (d) of this subdivision.

As such, expenses arising from vacate orders issued prior to the September 14, 2021 amendment constitute a mechanic's lien, and expenses for vacate orders post-amendment constitute a tax lien.

Parties do not dispute that the subject Vacate Order was issued on or around May 28, 2020, and that the notice for the subject relocation lien was filed on or about June 20, 2024. HPD alleges it provided relocation services through and including August 6, 2023. Pursuant to Administrative Code §26-305(4)(a), the latest date on which any expense covered by the lien was incurred is deemed to be the date on which all of the expenses contained in the notice of lien were incurred. While petitioners argue that the notice of lien was filed post amendment, and thus should be enforced as a tax lien, the language of the

statute references the date of vacate orders, not the date of the notice of lien or date when expenses incurred. As the subject relocation lien is for expenses incurred as a result of a 2020 Vacate Order, the lien should be enforced as a mechanic lien. As such, respondents' motion for reargument is granted.

Upon reargument, respondents' motion to dismiss is, again, denied. Courts routinely convert cases where the improper form was used and respondents made no claims for personal jurisdiction, as referenced in the August 8, 2025 Order (*see Oshinsky v Nicholson*, 55 AD2d 619, 619 [2d Dept 1976]; *Nassau County v Sterling*, 59 AD2d 902, 902 [2d Dept 1977]; CPLR 103[c]). Thus, in accordance with the foregoing, the instant matter shall be converted into a foreclosure action, requiring a trial (*see Matter of Retek v City of New York*, 14 AD3d 708, 709 [2d Dept 2005]). While respondents argue that Section 59 of the Lien Law requires petitioners to serve notice to compel respondents to commence a foreclosure action, petitioners have, however improperly, commenced an Article 78 proceeding to discharge the lien thus putting the respondents on notice that petitioners sought to challenge the lien.

Petitioners' argument that the subject lien is facially defective is unavailing. While petitioners allege they never intended to create a tenancy with Joseph and that relocation services apply only to tenants, whether Joseph is a tenant is an issue of fact, not a factor that would render the subject lien facially defective (*see Matter of Rivera v Dept. of Hous. Preserv. and Dev. of City of New York*, 29 NY3d 45, 46 [2017]).

Conclusion

Accordingly, it is

ORDERED, to the extent that respondents' mot. seq. three seeks reargument, such reargument is granted, and upon reargument it is further

ORDERED, that respondents/defendants motion to dismiss is denied, except that the August 8, 2025 Order is modified to the extent that the instant proceeding shall be converted into a foreclosure action, rather than an action for declaratory judgment. The titles of the parties and the papers shall be converted to reflect the conversion.

The Court, having further considered the parties' remaining contentions, if any, finds them unavailing. All relief, not expressly granted herein has been considered, and is denied.

This constitutes the decision and order of the Court.

E N T E R



MAY 01 2026

JSC

Hon. Inga M. O'Neale
Justice, Supreme Court

KINGS COUNTY CLERK
FILED
2026 MAY - 5 A 9:41