Huper v New York City Hous. Auth.
2026 NY Slip Op 32001(U)
May 8, 2026
Supreme Court, New York County
Docket Number: Index No. 154515/2020
Judge: Hasa A. Kingo
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. HASA A. KINGO** **PART** **65M**

Justice

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ANGELA HUPER,

Plaintiff,

- v -

NEW YORK CITY HOUSING AUTHORITY, NEW YORK CITY HOUSING DEVELOPMENT CORPORATION

Defendant.

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INDEX NO. 154515/2020

MOTION DATE 05/01/2026

MOTION SEQ. NO. 004

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 004) 84, 85, 86, 87, 88, 89, 90, 91

were read on this motion for REARGUMENT/RECONSIDERATION.

Upon the foregoing papers, defendant New York City Housing Authority's motion for leave to reargue this court's decision and order entered January 21, 2026, and for a protective order pursuant to CPLR § 3103(a), is decided as follows:

Defendant New York City Housing Authority ("NYCHA") moves pursuant to CPLR § 2221 for leave to reargue this court's January 21, 2026 decision and order, which granted plaintiff Angela Huper's ("plaintiff") motion to compel discovery. Upon reargument, NYCHA seeks an order vacating the prior discovery order and denying plaintiff's motion to compel. NYCHA also seeks a protective order pursuant to CPLR § 3103(a) precluding plaintiff from obtaining discovery concerning NYCHA buildings and developments other than the subject building, system-wide smoke-detector practices, alleged "systemic failures," and materials relating to NYCHA's response to Department of Investigation ("DOI") findings and recommendations. In the alternative, NYCHA seeks clarification narrowing the order to smoke-detector records for the subject building for a limited period of time.

Plaintiff opposes the motion in all respects and argues that NYCHA has not shown that the court overlooked or misapprehended any matter of fact or law, that NYCHA improperly advances new arguments concerning governmental immunity, that the discovery ordered is material and necessary to the claims and defenses in this action, and that NYCHA has failed to make the particularized showing required for a protective order.

BACKGROUND AND PROCEDURAL HISTORY

This personal-injury action arises from a fire that occurred on June 28, 2019, in apartment 3C at 344 East 28th Street, New York, New York, a NYCHA multiple dwelling. Plaintiff alleges that she fell asleep in the apartment, that a fire ignited, and that she sustained severe burn injuries

because she did not receive timely warning due to the absence of a properly working smoke detector. Plaintiff alleges that NYCHA negligently owned, operated, managed, inspected, maintained, repaired, and controlled the premises and failed to comply with statutory and regulatory duties concerning smoke detectors and fire safety.

By motion previously decided on January 21, 2026, plaintiff sought to compel NYCHA to respond to outstanding discovery demands, including demands directed to smoke-detector inspection, repair, maintenance, complaints, work orders, violations, policies, manuals, fire-safety records, and materials concerning NYCHA's knowledge of allegedly missing or non-functioning smoke detectors. This court granted plaintiff's motion and directed NYCHA to produce non-privileged documents responsive to plaintiff's Combined Demands, specifically Sections D, J, and K, including categories of records relating to smoke detectors, fire detectors, carbon monoxide detectors, inspections, repairs, maintenance, complaints, work orders, violations, policies, and related materials.

NYCHA now moves for reargument. NYCHA contends that the court misapprehended the nature of plaintiff's claim, the scope of permissible disclosure in a smoke-detector personal-injury case, and the legal effect of Administrative Code of the City of New York § 27-2045. NYCHA argues that the duty imposed upon landlords is limited to providing and installing an operational smoke detector at the inception of occupancy, while maintenance of a battery-operated detector is the tenant's obligation. NYCHA further argues that discovery concerning other apartments, other buildings, other developments, DOI materials, NYCHA-wide policies, and systemic failures is irrelevant, overbroad, unduly burdensome, and designed to support claims barred by governmental immunity.

Plaintiff responds that NYCHA's motion is merely an effort to relitigate arguments already rejected. Plaintiff further argues that NYCHA's governmental-immunity argument was not raised on the prior motion and is improper on reargument. Plaintiff maintains that the requested discovery is relevant to notice, foreseeability, causation, duty, NYCHA's practices, NYCHA's own records, and whether NYCHA knew of widespread problems concerning missing or defective smoke detectors before the subject fire. Plaintiff also relies on *Brown v City of New York*, in which the Appellate Division, First Department, held that discovery concerning NYCHA records and DOI investigative materials may be material and necessary even where the materials involve a different building or a separate incident, where the requested documents may bear upon notice of similar safety issues (*Brown v City of New York*, 2026 NY Slip Op 00188, *1-2 [1st Dept 2026]).

ARGUMENTS

NYCHA argues that reargument is warranted because the court overlooked that plaintiff's pleadings do not allege that NYCHA caused the fire, but instead allege that NYCHA failed to provide a functioning smoke detector. NYCHA asserts that the governing statutes impose on the landlord only a duty to install a smoke detector, and that the obligation to maintain a battery-operated smoke detector rests with the occupant. NYCHA relies upon cases that it contends stand for the proposition that a landlord satisfies its statutory duty by providing a functional smoke detector and that the tenant bears the statutory obligation to maintain it. NYCHA contends that plaintiff's broad discovery demands are therefore not material and necessary because they seek

information concerning generalized smoke-detector practices, other apartments, other NYCHA developments, DOI investigations, internal policies, and system-wide management decisions rather than the specific smoke detector in apartment 3C.

NYCHA also argues that plaintiff's demands are palpably improper because they contain numerous subparts, seek "all" documents concerning expansive categories, lack reasonable geographic and temporal limitations, and include categories that NYCHA says have no relation to the claims, such as records from City agencies, board minutes, mayoral communications, parks, sidewalks, streetlights, hydrants, geological surveys, and unrelated maintenance or employment information. NYCHA maintains that the court should not prune palpably improper demands and should instead vacate the prior order or enter a protective order. In the alternative, NYCHA asks the court to clarify that its obligation is limited to smoke-detector records for the subject building for three years before the fire.

NYCHA further argues that discovery concerning system-wide failures and NYCHA's response to DOI recommendations improperly seeks to challenge discretionary, policy-based governmental decision-making. NYCHA argues that discretionary governmental planning and policy decisions may not form the basis for tort liability.

Plaintiff argues that NYCHA's motion is procedurally defective because it does not identify a proper basis under CPLR § 2221 and because it advances new arguments, including governmental immunity, that were not raised in opposition to the original discovery motion. Plaintiff contends that reargument is not a vehicle to present new theories or repeat previously rejected arguments. Plaintiff further argues that NYCHA is acting in its proprietary capacity as landlord and owner of a multiple dwelling, not in a governmental capacity, and therefore governmental immunity does not bar discovery into NYCHA's maintenance, inspection, repair, and fire-safety practices. Plaintiff asserts that NYCHA's statutory and common-law obligations as a landlord include keeping the premises safe, complying with fire-safety obligations, maintaining required records, and responding to known smoke-detector hazards.

Plaintiff also argues that the discovery is relevant because the complaint alleges a missing or defective smoke detector, and NYCHA's knowledge of similar missing or non-working smoke detectors, DOI findings, violations, work orders, complaints, inspections, repairs, replacements, lawsuits, notices of claim, and internal records may bear on notice, foreseeability, causation, and negligent maintenance. Plaintiff maintains that NYCHA has not submitted a competent affidavit from a recordkeeper establishing undue burden, has not asserted privilege, has not served a privilege log, and has not shown hardship, embarrassment, prejudice, or disadvantage sufficient to support a protective order.

DISCUSSION

A motion for leave to reargue is addressed to the sound discretion of the court and must be based upon matters of fact or law allegedly overlooked or misapprehended by the court in deciding the prior motion (CPLR § 2221[d][2]). Reargument is not designed to afford an unsuccessful party successive opportunities to reargue issues previously decided, nor is it a vehicle to present arguments different from those originally advanced (*William P. Pahl Equip. Corp. v Kassis*, 182

AD2d 22, 27 [1st Dept 1992], *lv dismissed* 80 NY2d 1005 [1992]; *Foley v Roche*, 68 AD2d 558, 567-568 [1st Dept 1979]). A motion to reargue may be granted only where the movant demonstrates that the court overlooked or misapprehended controlling law or relevant facts, or otherwise mistakenly arrived at its prior determination (CPLR § 2221[d][2]; *Matter of Setters v AI Props. & Devs. [USA] Corp*., 139 AD3d 492, 492 [1st Dept 2016]).

Here, NYCHA has not demonstrated that the court overlooked or misapprehended the governing standard for disclosure. CPLR § 3101(a) directs "full disclosure of all matter material and necessary in the prosecution or defense of an action." The words "material and necessary" are to be interpreted liberally to require disclosure of any facts bearing on the controversy that will assist preparation for trial by sharpening the issues and reducing delay and prolixity (*Allen v Crowell-Collier Publ. Co*., 21 NY2d 403, 406-407 [1968]. The Court of Appeals has reaffirmed that New York's disclosure provisions are broad, although not unlimited, and that discovery must be appropriately tailored to the controversy (*Forman v Henkin*, 30 NY3d 656, 661-662 [2018]). The Appellate Division, First Department, likewise recognizes that information need not be admissible at trial to be discoverable where it may lead to evidence bearing on notice, causation, or other disputed issues (*Mendelowitz v Xerox Corp*., 169 AD2d 300, 304 [1st Dept 1991]; *Matter of Steam Pipe Explosion at 41st St. & Lexington Ave*., 127 AD3d 554, 555 [1st Dept 2015]).

Measured against these principles, the central premise of NYCHA's motion is unpersuasive. NYCHA argues that because Administrative Code § 27-2045 places certain maintenance responsibilities for battery-operated smoke detectors upon the occupant, discovery concerning NYCHA's inspections, repairs, complaints, work orders, policies, violations, DOI materials, and other smoke-detector records is necessarily irrelevant. That argument construes the pleadings and the scope of discovery too narrowly. Plaintiff's claim is not limited to an abstract statutory question of who ordinarily replaces a battery. Plaintiff alleges that NYCHA failed to provide and ensure the existence of an approved and operational smoke detector, negligently maintained and inspected the premises, and failed to act despite knowledge of missing or non-functioning smoke detectors. Discovery directed to whether NYCHA knew of missing, disabled, removed, defective, uninspected, unrepaired, or falsely documented smoke detectors is reasonably calculated to bear on notice, foreseeability, causation, the nature of NYCHA's undertaking, and the factual circumstances surrounding the subject apartment and building.

NYCHA is correct that Appellate Division, First Department, authority recognizes that Administrative Code § 27-2045 places maintenance obligations for battery-operated smoke detectors upon occupants and that a landlord may satisfy its statutory duty where it provides a functional detector at the inception of occupancy (*Poree v New York City Hous. Auth*., 139 AD3d 528, 529 [1st Dept 2016]; *Peyton v State of Newburgh, Inc*., 14 AD3d 51, 53 [1st Dept 2004]). NYCHA is also correct that *Figueroa* held, on the summary-judgment record there presented, that regular inspections did not establish that the landlord assumed a duty to ensure the smoke detector remained in good working order absent evidence that the landlord's conduct placed plaintiff in a more vulnerable position (*Figueroa v Parkash*, 179 AD3d 583, 583-584 [1st Dept 2020]). However, those cases do not compel the conclusion that the discovery sought here is categorically irrelevant. They address liability on developed records, not the antecedent question of what discovery may be obtained to test the factual predicate for liability. The scope of discovery is broader than the scope of proof ultimately admitted at trial or the showing necessary to survive

summary judgment (*Allen v Crowell-Collier Publ. Co*., 21 NY2d at 406-407; *Forman v Henkin*, 30 NY3d at 661).

Nor does NYCHA's reliance upon *Jagopat* compel vacatur of the prior order. In *Jagopat*, the Appellate Division, First Department, held that a demand for records concerning the entire length of the Bruckner Expressway was palpably improper where the plaintiff was required to establish prior written notice of a specific roadway defect at a specific location (*Jagopat v City of New York*, 110 AD3d 507, 508 [1st Dept 2013]). That case arose in the particular context of a prior-written-notice highway defect claim, where generalized complaints about similar conditions elsewhere could not establish the statutory notice required for the specific defect (*id*.). This action does not turn on a prior-written-notice statute applicable to highway defects. Plaintiff alleges negligence, statutory violations, and a failure to provide, inspect, repair, replace, and respond to missing or defective fire-safety equipment in NYCHA housing. While discovery must be reasonably limited, *Jagopat* does not establish a categorical rule barring discovery concerning similar safety conditions, DOI materials, or broader NYCHA practices where such records may bear on notice, foreseeability, causation, and the reasonableness of NYCHA's conduct.

Indeed, the Appellate Division, First Department's recent decision in *Brown v City of New York* is instructive. There, in a NYCHA premises case, the Appellate Division, First Department, held that discovery concerning documents related to a DOI investigation was proper where the requests were reasonably calculated to lead to information bearing on the claims, even though some materials concerned a later accident in a different NYCHA building, because they could produce evidence of NYCHA's prior notice of similar safety issues (*Brown v City of New York*, 2026 NY Slip Op 00188, *2 [1st Dept 2026]). The Appellate Division, First Department, also held that the possible availability of documents through FOIL did not preclude a party from seeking them directly from NYCHA in disclosure (*id*.). *Brown* does not mean that every system-wide request is automatically proper, but it squarely undermines NYCHA's position that records relating to other NYCHA locations, DOI materials, and internal investigative documents are irrelevant as a matter of law whenever the accident occurred in one building (*id*.).

The court also rejects NYCHA's argument that governmental immunity bars the discovery at issue. A governmental entity may act in either a governmental or proprietary capacity, and when it acts as a landlord or property owner, it is generally held to the same principles of tort liability as a private landowner (*Miller v State of New York*, 62 NY2d 506, 511-512 [1984]; *Jacqueline S. v City of New York*, 81 NY2d 288, 294-295 [1993]). The ownership, maintenance, inspection, and repair of residential premises are proprietary functions (*Miller v State of New York*, 62 NY2d at 511-512). Plaintiff's action challenges NYCHA's conduct as landlord and property owner in connection with smoke detectors and fire-safety conditions in a residential apartment building. That is not, on this record, a claim seeking to impose liability upon NYCHA for legislative, quasi-judicial, or high-level governmental planning determinations.

NYCHA's governmental-immunity cases do not warrant a different conclusion. *Weiss v Fote* protects duly authorized governmental planning decisions from judicial second-guessing where the claim attacks discretionary planning judgments (*Weiss v Fote*, 7 NY2d 579, 585-586 [1960]). *Tango v Tulevech* distinguishes discretionary governmental acts from ministerial negligence (*Tango v Tulevech*, 61 NY2d 34, 40-41 [1983]). *Matter of World Trade Ctr. Bombing*

Litig. applies governmental immunity where the record reflects policy-based discretionary security decisions (*Matter of World Trade Ctr. Bombing Litig*., 17 NY3d 428, 452-453 [2011]). Those authorities do not transform all NYCHA records concerning smoke-detector practices, inspections, violations, work orders, complaints, or DOI investigative materials into immune governmental-policy materials. Nor does the mere fact that DOI issued recommendations and NYCHA accepted or implemented some recommendations render all discovery concerning those recommendations improper. The issue at this stage is not whether plaintiff may ultimately impose liability based upon high-level discretionary policy choices, but whether the requested materials may contain information bearing upon NYCHA's notice, conduct, inspections, maintenance practices, and response to known smoke-detector hazards (CPLR § 3101[a]; *Allen v Crowell-Collier Publ. Co*., 21 NY2d at 406-407).

NYCHA's motion is also procedurally deficient to the extent it relies on governmental immunity as a new ground for reargument. Reargument is not a vehicle for advancing new theories that could have been raised on the original motion (*William P. Pahl Equip. Corp. v Kassis*, 182 AD2d at 27; *Foley v Roche*, 68 AD2d at 567-568). NYCHA has not shown that governmental immunity was unavailable when the original discovery motion was litigated, nor has it demonstrated an intervening change in controlling law. Thus, even apart from the substantive limitations of the argument, it does not provide a proper basis for reargument.

The court next addresses NYCHA's request for a protective order. CPLR § 3103(a) authorizes the court to make a protective order denying, limiting, conditioning, or regulating disclosure to prevent unreasonable annoyance, expense, embarrassment, disadvantage, or other prejudice. The party seeking a protective order bears the burden of making a factual showing that the disclosure sought is improper or that protection is necessary (CPLR § 3103(a); *Kavanagh v Ogden Allied Maintenance Corp*., 92 NY2d 952, 954 [1998]; *Cynthia B. v New Rochelle Hosp. Med. Ctr*., 60 NY2d 452, 461-462 [1983]). Conclusory assertions of burden, expense, or overbreadth are insufficient; the movant must provide a particularized showing (*Kavanagh v Ogden Allied Maintenance Corp*., 92 NY2d at 954).

NYCHA has not made the necessary particularized evidentiary showing. It has not submitted an affidavit from a records custodian explaining where responsive records are maintained, what searches would be required, what volume of documents exists, what costs or time would be involved, what records are unavailable, or why production would be unduly burdensome. Counsel's characterization of the demands as burdensome does not satisfy NYCHA's burden (*see Brown v City of New York*, 2026 NY Slip Op 00188, *2 [1st Dept 2026] [rejecting deficient NYCHA search affidavit where it failed to include relevant details required by *Jackson v City of New York*, 185 AD2d 768, 770 [1st Dept 1992]). Nor has NYCHA asserted a specific privilege, produced a privilege log, or identified a statutory protection that would categorically bar disclosure (CPLR § 3122[b]).

That said, the court acknowledges that discovery must remain proportional to the issues framed by the pleadings and must be sufficiently particularized to avoid needless burden and confusion. Although the court adheres to its prior determination that plaintiff is entitled to broad discovery concerning smoke detectors, fire-safety practices, DOI materials, complaints, violations, work orders, inspection records, and related policies, the court clarifies that the prior order does

not require NYCHA to produce documents that have no reasonable connection to smoke detectors, fire detection, carbon monoxide detection, fire safety, the subject apartment, the subject building, the subject development, NYCHA's practices regarding smoke-detector installation, inspection, repair, replacement, maintenance, documentation, complaints, violations, or DOI findings and recommendations concerning those subjects. The phrase "include but not be limited to" in the prior order is not a license for discovery untethered to the claims in this action (CPLR § 3101[a]; *Forman v Henkin*, 30 NY3d at 661-662).

Thus, to the extent any request in Sections D, J, or K seeks documents concerning sidewalks, streetlights, traffic lights, geological surveys, Department of Parks and Recreation materials, unrelated capital projects, hydrants, or other matters bearing no reasonable relationship to smoke detectors, fire detection, carbon monoxide detection, fire safety, the subject fire, the subject apartment, the subject building, the subject development, or NYCHA's knowledge and handling of missing or non-functioning smoke detectors, NYCHA need not produce those unrelated materials. That clarification does not vacate the prior order. Rather, it gives effect to CPLR § 3101(a)'s requirement that disclosure be material and necessary while preserving plaintiff's entitlement to obtain records that may bear upon notice, foreseeability, causation, NYCHA's undertaking, and the reasonableness of NYCHA's conduct.

The court declines NYCHA's request to limit disclosure categorically to only the subject apartment, only the subject building, or only three years before the fire. A rigid limitation of that kind is not warranted on this record. Plaintiff has identified a DOI report predating the incident that allegedly addressed missing and non-working smoke detectors and safety deficiencies in NYCHA public housing, and plaintiff seeks underlying data, records, and related materials that may bear on whether NYCHA had notice of smoke-detector problems before the fire. The First Department has recognized that discovery concerning a different building or related DOI materials may be proper where it may bear on notice of similar safety issues (*Brown v City of New York*, 2026 NY Slip Op 00188, *2 [1st Dept 2026]). However, NYCHA remains entitled to serve a proper response identifying, with specificity, any demand it contends seeks documents outside the clarified scope of this order, and it must provide a *Jackson*-compliant affidavit if it claims that responsive documents do not exist, cannot be located, or were destroyed (*Jackson v City of New York*, 185 AD2d 768, 770 [1st Dept 1992]).

Accordingly, NYCHA has failed to establish that this court overlooked or misapprehended controlling law or material facts warranting vacatur of the January 21, 2026 decision and order. The branch of NYCHA's motion seeking leave to reargue and, upon reargument, denial of plaintiff's motion to compel is denied. The branch seeking a protective order barring system-wide, building-wide, development-wide, DOI-related, or policy-related discovery is denied except to the limited extent that the court clarifies that NYCHA is not required to produce documents wholly unrelated to smoke detectors, fire detection, carbon monoxide detection, fire safety, the subject incident, the subject premises, the subject development, or NYCHA's knowledge, policies, procedures, complaints, violations, inspections, repairs, work orders, or DOI materials concerning missing, defective, disabled, removed, uninspected, unrepaired, or non-functioning smoke detectors.

Accordingly, it is hereby

ORDERED that defendant New York City Housing Authority's motion for leave to reargue is denied to the extent it seeks vacatur of this court's January 21, 2026 decision and order and denial of plaintiff's motion to compel; and it is further

ORDERED that the branch of NYCHA's motion seeking a protective order pursuant to CPLR § 3103(a) is denied, except to the limited extent set forth herein; and it is further

ORDERED that the January 21, 2026 decision and order is clarified to provide that NYCHA shall produce all non-privileged documents responsive to plaintiff's Combined Demands, specifically Sections D, J, and K, to the extent such documents concern smoke detectors, fire detectors, carbon monoxide detectors, fire safety, the subject apartment, the subject building, the subject development, the subject fire, complaints, violations, inspections, repairs, replacements, work orders, policies, procedures, manuals, training materials, DOI materials, or other records bearing upon NYCHA's knowledge, notice, practices, or response concerning missing, defective, disabled, removed, uninspected, unrepaired, or non-functioning smoke detectors; and it is further

ORDERED that NYCHA is not required by the January 21, 2026 decision and order to produce documents that bear no reasonable relationship to smoke detectors, fire detection, carbon monoxide detection, fire safety, the subject incident, the subject premises, the subject development, or NYCHA's knowledge, notice, policies, procedures, practices, complaints, violations, inspections, repairs, work orders, or DOI materials concerning those subjects; and it is further

ORDERED that, to the extent NYCHA withholds any otherwise responsive document on the basis of privilege, statutory protection, or other recognized protection from disclosure, NYCHA shall serve a privilege log compliant with CPLR § 3122(b); and it is further

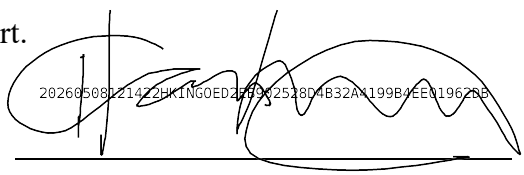
ORDERED that, to the extent NYCHA contends that responsive documents do not exist, cannot be located, were destroyed, or are otherwise unavailable, NYCHA shall serve an affidavit by a person with knowledge that complies with *Jackson v City of New* York, 185 AD2d 768 (1st Dept 1992), identifying the nature, timing, location, and scope of the search undertaken and the basis for the claimed nonexistence or unavailability; and it is further

ORDERED that NYCHA shall complete production consistent with the January 21, 2026 decision and order, as clarified herein, within thirty days of service of this decision and order with notice of entry; and it is further

ORDERED that the parties shall appear for their previously scheduled conference on June 9, 2026 at 2:15 PM in Room 308 of the courthouse located at 80 Centre Street; and it is further

ORDERED that all relief not expressly granted herein is denied.

This constitutes the decision and order of the court.



5/8/2026

DATE

HASA A. KINGO, J.S.C.

CHECK ONE:		CASE DISPOSED			X	NON-FINAL DISPOSITION	
		GRANTED	X	DENIED		GRANTED IN PART	OTHER
APPLICATION:		SETTLE ORDER				SUBMIT ORDER	
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN				FIDUCIARY APPOINTMENT	REFERENCE