

<b>Matter of Brigham v New York City Loft Bd.</b>
2021 NY Slip Op 31131(U)
April 8, 2021
Supreme Court, New York County
Docket Number: 100205/2019
Judge: Erika M. Edwards
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ERIKA M. EDWARDS PART 11

Justice

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INDEX NO. 100205/2019

In the Matter of the Application of

MOTION DATE 12/22/2020

THOMAS BRIGHAM,

MOTION SEQ. NO. 002

Petitioner,

For a Judgment Under Article 78 of the Civil Practice Law and Rules,

- v -

DECISION + ORDER ON MOTION

NEW YORK CITY LOFT BOARD, NEW YORK CITY DEPARTMENT OF BUILDINGS, B. JAFFE REAL ESTATE CO. L.P.,

Respondents.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 127, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173

were read on this motion to/for STAY

Upon the foregoing documents, after oral argument held on April 8, 2021, the court denies Petitioner's order to show cause in its entirety.

Petitioner Thomas Brigham ("Petitioner"), who appears pro se, resides in a unit located in an interim multiple dwelling ("IMD") that is undergoing alterations necessary to legalize residential occupancy by complying with safety regulations required to obtain a residential certificate of occupancy, pursuant to Article 7-C of the Multiple Dwelling Law ("Loft Law"). Petitioner has two Article 78 proceedings pending before this court and multiple applications related to this IMD.

Petitioner brought this Article 78 proceeding against Respondents New York City Loft Board ("Loft Board"), New York City Department of Buildings ("DOB") and B. Jaffe Real

Estate Co. L.P. (“Jaffe”) (collectively, “Respondents”) seeking court orders (a) vacating the portion of the Loft Board’s Order No. 4817 rejecting the application for a finding of unreasonable interference and annulling any ruling resulting from ex parte dealings between the Loft Board and Jaffe; (b) annulling the Loft Board’s compliance notice to DOB prior to its vote on the application; (c) directing the Loft Board to order that the structures along the west wall of Petitioner’s loft constitute unreasonable interference with legalization; (d) making certain corrections to the Loft Board’s Order; (e) annulling the temporary certificate of occupancy; (f) directing DOB to issue a finding regarding Petitioner’s report of a fire hazard and an inspection dated April 17, 2018; (g) directing DOB to perform a fire hazard inspection; and (h) for other and further relief as this court deems just and proper, including costs and disbursements.

In a decision and order, dated December 23, 2020, the court disposed of the Petition by ruling that the portion of the Petition seeking annulment of Respondent’s determination that the installation of sheetrock on the west wall and dust and debris conditions did not constitute unreasonable interference with Petitioner’s use of the unit involved whether it was supported by substantial evidence requiring the court to transfer this portion of the matter to the Appellate Division, First Department for disposition, pursuant to CPLR 7804(g). Additionally, the court determined that Petitioner’s arguments regarding alleged ex parte communications were also transferred as such arguments were inextricably intertwined with the substantial evidence questions. The court also determined that Petitioner’s request to annul the temporary certificate of occupancy was moot, since DOB’s affidavit submitted at the court’s request indicated that the temporary certificate of occupancy expired in April, 2019. Finally, the court denied Petitioner’s requests for orders directing DOB to take certain actions and determined them to be in the nature

of a mandamus to compel, which is not warranted in this matter. As such the case was marked disposed since the court decided all issues raised in the Petition.

Petitioner now moves by order to show cause for an order staying the proceedings initiated by Respondents the Loft Board and/or DOB based upon a temporary certificate of occupancy and Jaffe's claim that the conditions at Petitioner's unit were compliant, and he requests a follow-up affidavit from DOB regarding whether the Special Audit had concluded that no work is needed at the subject premises.

Respondents oppose Petitioner's order to show cause. Jaffe argues in substance that Petitioner's order to show cause must be denied because it is procedurally improper as the relief requested is unrelated to the underlying claims in the Article 78 Petition; the relief is premature as there has been no determination made by the Loft Board or DOB; and the relief requested is properly before DOB and the Loft Board for their consideration of Petitioner's three pending applications before the Loft Board. Additionally, Jaffe accuses Petitioner of bad faith in trying to delay the legalization process and the efforts to get a temporary certificate of occupancy which would require Petitioner to pay rent. Jaffe also argues that Petitioner does not have standing to contest work conducted in other units and the Net Lessee, which is a company separate from Jaffe, is a necessary party which Petitioner failed to include in this proceeding.

The Loft Board and DOB argue in substance that the court should dismiss Petitioner's order to show cause because he failed to demonstrate entitlement to the injunctive relief requested and it is unclear which proceeding Petitioner requests to stay. However, if Petitioner seeks a stay of the narrative statement process, then it is an entirely different administrative proceeding than the one challenged in the underlying Article 78 Petition and it is duplicative to the relief requested in Petitioner's other Petition pending before this court. Additionally, the Loft

Board and DOB argue in substance that Petitioner failed to demonstrate his entitlement to the injunctive relief requested because he has not demonstrated the likelihood of success on the merits, irreparable injury, or that the balance of equities favor such relief. They also argue that he failed to demonstrate his entitlement to a supplemental affidavit and that the court previously denied the requested relief against DOB.

Here, the court denies Petitioner's order to show cause because it is procedurally improper. Based on the relief sought in Petitioner's Petition, the court's previous ruling was a final determination of Petitioner's claims, even though a portion of the relief requested was transferred to the Appellate Division, First Department. The court denied the remainder of the relief requested. As such, this matter is deemed disposed by the court. The court agrees with Respondents that Petitioner now seeks additional relief which is separate and distinct from the relief requested in his Petition and is thus outside the scope of the Petition. Therefore, the court denies the order to show cause as it is procedurally improper.

Additionally, the court denies Petitioner's request for a stay based on the temporary certificate of occupancy because the court determined that the issues raised regarding the temporary certificate of occupancy were moot since it had expired.

The court also denies Petitioner's request for a follow-up affidavit from DOB regarding the Special Audit. This is a new request, which was not the subject of the underlying Petition and Petitioner has not demonstrated his entitlement to such an order.

Additionally, the court finds that Petitioner's claims are premature. He has several actions pending before this court and the Loft Board and he is improperly intermingling the issues raised in the various proceedings. Petitioner has not exhausted his administrative remedies before the Loft Board or DOB regarding the relief requested in his order to show cause. He cannot simply

attempt to add issues that he raised in pending applications onto this Article 78 proceeding which was already decided by the court. Once he has exhausted his administrative remedies, then he may bring a new Article 78 proceeding to challenge any potential adverse determination in accordance with the applicable provisions of the CPLR.

Finally, when considering Petitioner’s application on its merits, including arguments raised, but not set forth herein, he failed to demonstrate his entitlement to any of the relief requested.

Therefore, the court denies Petitioner’s order to show cause in its entirety, without costs or disbursements to any party.

As such, it is hereby

ORDERED that the court denies Petitioner Thomas Brigham’s order to show cause in its entirety, without costs or disbursements to any party; and it is further

ORDERED that this constitutes the decision and order of the court.

4/8/2021

DATE



ERIKA M. EDWARDS, J.S.C.

**HON. ERIKA M. EDWARDS  
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