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Help Social Serv. Corp. v. Harris

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[*1]

Help Social Serv. Corp. v Harris
2020 NY Slip Op 51047(U)
Decided on September 14, 2020
Civil Court Of The City Of New York, Queens County
Guthrie, J.
Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431.
This opinion is uncorrected and will not be published in the printed Official Reports.

Decided on September 14, 2020

Civil Court of the City of New York, Queens County

<p>Help Social Service Corp., Petitioner,</p> <p>against</p> <p>Ashle Harris, Respondent, "John Doe" and "Jane Doe", Respondents.</p>

L & T 60095/19

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Clinton J Guthrie, J

Recitation, as required by CPLR § 2219(a), of the papers considered in the review of Petitioner's motion to reargue pursuant to CPLR § 2221, or, in the alternative for an order clarifying the court's July 10, 2020 Decision/Order

Papers Numbered

Notice of Motion & Affirmation/Exhibit Annexed 1

Affirmation in Opposition 2

Reply Affirmation 3

Upon the foregoing cited papers, the decision and order on Petitioner's motion is as follows.

PROCEDURAL HISTORY

In holdover proceeding is predicated on a 30 Day Notice Terminating Tenancy, the court rendered a Decision/Order dated July 10, 2020, which granted Respondent's motion to dismiss [*2] and denied Respondent's motion to amend the answer and for summary judgment as moot. [FN1] Petitioner now moves to reargue the court's July 10, 2020 Decision/Order, or, in the alternative, for an order clarifying the Decision/Order. After submission of opposition and reply, the court heard argument on Petitioner's motion via Skype on September 11, 2020 and reserved decision.

ANALYSIS

Pursuant to CPLR § 2221(d)(2), a motion for leave to reargue "shall be based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion, but shall not include any matters of fact not offered on the prior motion." Upon a review of the papers submitted upon Petitioner's motion, the court restores the proceeding for reargument. However, upon reargument, the court holds that it did not overlook or misapprehend any matters of fact or law in determining the prior motion by Decision/Order dated July 10, 2020. To the extent that Petitioner seeks a clarification of the that prior Decision/Order, the court specifies that the "subaward" and "sub-agreement" between the City University of New York (CUNY) and Petitioner, copies of which were submitted by both parties on the underlying motion, constituted "documentary evidence" (*see* CPLR § 3211(a) (1)) that conclusively established that CUNY, along with the New York City Human Resources Administration (HRA) and the New York City Department of Homeless Services (DHS), are "sufficiently entwined" with the subject premises and its operation so as to "constitute significant and meaningful government participation." *Matter of Volunteers of Am.-Greater NY, Inc. v. Almonte*, 65 AD2d 1155, 1157-1158 [2d Dept 2009]; *see also Berardino v. Ochlan*, 2 AD3d 556, 557 [2d Dept 2008].

Although Petitioner claims that the court's determination of government entwinement on the evidence of contracts between CUNY and Petitioner was premature without more fact-finding, the court disagrees. In *Almonte*, the Appellate Division, Second Department affirmed the Appellate Term, Second Department's determination that the requisite evidence of government entwinement was found in a contract between DHS and the petitioner therein. *Almonte*, 65 AD2d at 1157-1158. In *512 E. 11th St. HDFC v. Grimmet*, 181 AD2d 488, 489 [1st Dept 1992], also cited in the court's July 10, 2020 Decision/Order, the Appellate Division, First Department reversed the Appellate Term, First Department, and specifically held that dismissal was appropriate (in the context of a motion to dismiss) where the motion record established that the subject building was sufficiently entwined with the government to require a cause for eviction. Here, the motion record similarly substantiated the court's determination of government entwinement with the subject building and Petitioner's failure to state a cause of action beyond mere termination of tenancy. Therefore, Petitioner's argument that additional facts may have demonstrated that Petitioner was operating in a manner that was in derogation from the clear contractual duties and obligations vis-à-vis CUNY is of no consequence to due process considerations and without merit. *See e.g. Fuller v. Urstadt*, 28 NY2d 315, 318 [1971] ["[E]ven where direct State action is not involved but only supportive or interrelated State action, arbitrariness is forbidden."].

CONCLUSION

For the foregoing reasons, Petitioner's motion is granted to the sole extent of restoring this proceeding for reargument and for clarification of the July 10, 2020 Decision/Order as stated [*3] herein. The court otherwise adheres to the findings, holdings and determinations made in the July 10, 2020 Decision/Order and denies Petitioner's request to, in effect, vacate and/or recall that Decision/Order.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

Dated: September 14, 2020

Queens, New York

HON. CLINTON J. GUTHRIE

J H C

Footnotes

Footnote 1: Reported at 2020 NY Slip Op 50818[U].

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