CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK: HOUSING PART H
-- X
DON LEBOWITZ, ZEV MARIUS LEBOWITZ, et al.,

Petitioners,

Index No. 50526/2014

- against -

DECISION/ORDER

MECHELLE WIMBUSH, et al.,

Respondent.
-- X
Present: Hon. Jack Stoller
Judge, Housing Court

Recitation, as required by CPLR §2219(a), of the papers considered in the review of this motion.

Papers	Numbered
Notice of Motion and Supplemental Affirmation and Affidavit Annexed	1, 2, 3
Affirmation In Opposition	4
Reply Affirmation	5

Upon the foregoing cited papers, the Decision and Order on this Motion are as follows:

Zev Marius Lebowitz, et al., the petitioners in this proceeding ("Petitioners"), commenced this holdover proceeding against Mechelle Winbush, the respondent in this proceeding ("Respondent"), seeking possession of 321 West 103rd Street, Apt. B, New York, New York ("the subject premises") on the basis of personal use. Respondent answered and moved for leave to obtain discovery. The Court denied the motion by an order ("the first order"). Respondent retained new counsel and now moves again for leave to obtain discovery.

In an affidavit in support of the motion, Respondent avers that Petitioners have been engaged in a course of harassment of them. Given that discovery is favored in personal use holdover proceedings, Bouton v. De Almo, 12 Misc.3d 132A (App. Term 1st Dept. 2006),

Wei-Hua Wu v. Sanchez, 32 Misc.3d 1205(A) (Civ. Ct. Kings Co. 2011), Smilow v. Ulrich, 11 Misc.3d 179, 184 (Civ. Ct. N.Y. Co. 2005), Respondent sets forth a need for discovery as a *prima facie* matter.

In opposition, Petitioner argues, *inter alia*, that law of the case bars Respondent from obtaining discovery at this posture of the proceeding. In particular, Petitioner cites MH Residential 1, LLC v. Barrett, 41 Misc.3d 24, 26 (App. Term 1st Dept. 2013) for the proposition that law of the case requires denial a motion for leave to obtain discovery following a denial of a prior order for similar relief absent a material change of circumstances not shown therein. Petitioner also challenges the scope of Respondent's new proposed demand for document production as overbroad.

In reply, Respondent offers to withdraw its demand for document production without prejudice to requests for documents to be made at a deposition, leave for which Respondent had also moved in her second motion.

The first order found that the proposed demands for document production were "palpably improper because they lack specificity, are [overbroad], and seek irrelevant and confidential information ... the [C]ourt vacates these demands, rather than prune them." The first order did not make a finding that Respondent had no need for discovery, just that the specific demands Respondent proposed were unreasonable and overbroad. This is a different issue than merely granting Respondent leave to depose Petitioners and reserving their right to demand documents at such time. Prior orders do not have preclusive effect according to law of the case doctrine if they do not determine the merits of the issues subsequently raised. Allstate Ins. Co. v. Liberty

Lines Tr., Inc., 50 A.D.3d 712, 713 (2nd Dept. 2008).

Accordingly, the Court grants Respondent's motion to the extent that Respondent has leave to depose Zev Marius Lebowitz, and the Court directs that the parties schedule such a deposition on or before August 31, 2015, as may best be practicable.[1] The Court calendars this matter for a conference on September 10, 2015 at 2:15 p.m. in part H, Room 523 of the Courthouse located at 111 Centre Street, New York, New York, to address the issue as to whether it is necessary to depose any witnesses other than Zev Marius Lebowitz, and as to what document production may or may not be appropriate.

This constitutes the decision and order of this Court.

Dated: New York, New York
July 24, 2015

HON. JACK STOLLER
J.H.C.

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[1] In the worst-case scenario, Respondent may notice a deposition if Respondent does not receive cooperation, but the Court has no anticipation that this will be a problem.