

SUPREME COURT OF THE STATE OF NEW YORK – NEW YORK COUNTY

PRESENT: Joan B. Lobis

PART 6

Index Number : 650354/2008

LANDMARK WEST! INC.

vs
CITY OF NEW YORK

Sequence Number : 004

LEAVE TO INTERVENE

INDEX NO. _____

MOTION DATE 1/25/10

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

_____ were read on this motion to/for _____

Notice of Motion/ Order to Show Cause – Affidavits – Exhibits ...

Answering Affidavits – Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

1-12

13-14

15-16

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

MOTION DECIDED IN ACCORDANCE WITH
ACCOMPANYING DECISION AND ORDER

Dated: 4/7/10

JBL
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY: IAS PART 6**

-----X
LANDMARK WEST! INC., 103 CENTRAL PARK
WEST CORPORATION, 18 OWNERS CORP., 91
CENTRAL PARK WEST CORPORATION and
THOMAS HANSEN,

Plaintiffs,

Index No. 650354/08

Decision and Order

-against-

CITY OF NEW YORK BOARD OF STANDARDS
AND APPEALS, NEW YORK CITY PLANNING
COMMISSION, HON. ANDREW CUOMO, as
Attorney General of the State of New York, and
CONGREGATION SHEARITH ISRAEL, also
described as the Trustees of Congregation Shearith
Israel,

Defendants.

-----X
JOAN B. LOBIS, J.S.C.:

Petitioners in this proceeding seek to reargue a decision and order dated August 4, 2009 served with notice of entry dated October 6, 2009, which denied their application to void certain decisions of respondents (Motion Sequence 003). In a separate motion, Motion Sequence 004, Nizam Peter Kettaneh and Howard Lepow seek leave to intervene, having separately challenged the same actions of respondents in an earlier filed Article 78 proceeding, Kettaneh v. Board Standards and Appeals, Index No. 113227/08. The underlying relief sought in the Kettaneh proceedings was denied in a decision, order, and judgment signed on July 10, 2009 and entered on July 24, 2009. Both determinations by this court are currently on appeal to the Appellate Division. The motions are jointly considered. For the reasons stated below, the motion to reargue and the motion to intervene are denied.

The special proceedings involved in these motions are part of protracted opposition to Congregation Shearith Israel's plan to build on the site of what is known as the Sephardic Temple, located on West 70th Street. Landmark's motion is denied as it fails to demonstrate that the court overlooked or misapprehended matters of relevant fact or law as required by C.P.L.R. Rule 2221. The points raised by movant were incorporated into the court's analysis in the August 4, 2009 decision. Petitioners' remedy is to perfect their appeal.

Since the proposed intervenors have not sought to intervene until months after both petitions were determined by this court, they have not sought relief in a timely matter nor have they satisfied the requirement in C.P.L.R. § 1012 that their interest is or may be inadequately represented. This belated application seems more like an attempt to bootstrap their own application for reargument of the Kettaneh proceeding rather than a bona fide application to intervene in the Landmark West! proceeding. The motion is denied.

This constitutes the decision and order of the court.

Dated: April 7, 2010



JOAN B. LOBIS, J.S.C.