

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION, FIRST DEPARTMENT

In the Matter of the Application of,

DOWNTOWN NEW YORKERS INC.;
CHRISTOPHER BROWN; MEGAN KESSLER; and
DAEMON O'NEIL,

Petitioners-Appellants-Cross-
Respondents,

For Judgment Pursuant to CPLR Article 78

-against-

THE CITY OF NEW YORK; BILL DE BLASIO, in his
official capacity as Mayor of the City of New York; THE
NEW YORK CITY DEPARTMENT OF HOMELESS
SERVICES; and STEVEN BANKS, in his official
capacity as Commissioner of the New York City
Department of Homeless Services,

Respondents-Respondents.

RAMONE BUFORD, LARRY THOMAS, and
TRAVIS TRAMMELL,

Intervenors/Petitioners-Appellants-
Cross-Respondents,

LOU PASTURES,

Intervenor/Respondent-Respondent,

GARY KOKALARI; ROBERT MONTANO; EMILY
SAMUELS; and WEST SIDE COMMUNITY
ORGANIZATION, INC.,

Proposed Intervenors/
Respondents-Respondents-Cross-
Appellants.

Appellate Division
Case/Docket No. 2020-
04588

Originating Court
Index No. 158550/2020

Hon. Debra A. James
(Part 59)

Motion No.: 1022

**AFFIRMATION OF
RANDY M. MASTRO
IN OPPOSITION TO
INTERVENORS/
PETITIONERS-
APPELLANTS-
CROSS-
RESPONDENTS'
IMPROPER CROSS-
MOTION TO
STRIKE**

RANDY M. MASTRO, an attorney duly admitted to practice in the courts of this State and not a party to this action, hereby affirms under penalty of perjury, pursuant to CPLR § 2106, as follows:

1. I am a partner in the law firm Gibson, Dunn & Crutcher LLP, 200 Park Avenue, New York, New York 10166-0193, attorneys for Intervenor/Respondent-Respondent Lou Pastures and Proposed Intervenor/Respondents-Respondents-Cross-Appellants Gary Kokalari, Robert Montano, Emily Samuels, and West Side Community Organization, Inc. (collectively, “Intervenor/Respondents”). I am fully familiar with the facts and circumstances stated here. I respectfully submit this affirmation in opposition to the improperly filed “cross-motion” of Intervenor/Petitioners-Appellants Ramone Buford, Larry Thomas, and Travis Trammell (“Intervenor/Petitioners”) seeking to strike from the record (i) a photograph of Mr. Buford taken when he opened the door of his new residence; and (ii) the street address of his new residence—even though we had already redacted from our moving papers his building and apartment numbers—as evidence supporting Intervenor/Respondents’ motion to dismiss this appeal on mootness and standing grounds. *See* App. Dkt. 43.

2. Our motion to dismiss Intervenor/Petitioners’ appeal is fully submitted and awaiting decision. *See* App. Dkts. 30, 31, 37 (Mot. No. 0674). But we feel compelled to submit a brief response now to this so-called “cross-motion”

first filed by Intervenors/Petitioners' counsel, Michael Hiller, late this past Friday evening, March 19, responding to a separate, substantially similar, but subsequently filed motion by the City Respondents-Respondents seeking to dismiss Mr. Hiller's clients' appeal on the same grounds—mootness and standing. *See* App. Dkts. 38, 43 (Mot. No. 0918).

3. In opposition to the City's separate motion, Mr. Hiller purported to file a clearly improper cross-motion to our fully submitted motion. *See* CPLR 2214(b), CPLR 2215; Rule 1250.4(a)(6) (requiring cross-motions to be returnable on the same date as the original motion and to be filed at least three business days before the return date). He did so a full week after our motion was fully submitted, and several days after he filed an improper four-page sur-reply letter, without the Court's permission, that never mentioned anything he now raises in this belated "cross-motion." He even filed a follow-up letter the day before his improper "cross-motion" to correct a typo in his earlier improper sur-reply letter (App. Dkt. 42), yet again never mentioned any of the concerns in his "cross-motion."

4. Mr. Hiller apparently hopes to bury under a mountain of paper—and a flood of fabrications—the simple fact that, as he has now been forced to admit, his last remaining Intervenor/Petitioner client at the Lucerne, Ramone Buford, voluntarily moved out of that hotel in late February. As a result, Intervenors/Petitioners no longer have standing to appeal, and Mr. Hiller's clients' appeal is

now moot and must be dismissed, and the stay lifted restraining the City from moving homeless men out of the Lucerne during the pendency of this appeal.

5. Mr. Hiller has the audacity to complain about the irrefutable evidence we submitted on reply establishing Mr. Buford’s new residence, including photographs of him answering the door at his new apartment. *See App. Dkt. 37.* But Mr. Hiller omits the fact that such evidence had to be submitted precisely because he objected to our original motion on bogus “hearsay” grounds, claiming news accounts and my affirmation were not sufficient proof of his client’s voluntary move out of the Lucerne (App. Dkt. 31), even though Mr. Hiller knew or should have known his client’s whereabouts and showed a shocking lack of candor with this Court about it.

6. Nevertheless, we extended Mr. Buford the courtesy, not required under any filing rule, of redacting the specific building and apartment numbers of his new address, leaving just the street name. So his belated “cross-motion” as to us—originally purporting to set its own return date *three weeks* after the City motion’s return date, and *four weeks* after ours—is a transparent attempt to delay the resolution of our clients’ straightforward and fully submitted motion to dismiss. That he seeks to strike a generic street reference that runs across many Manhattan avenue blocks on so-called “privacy” ground is both frivolous and vexatious. Similarly, that he also seeks to strike a photograph of Mr. Buford, even though

admittedly an accurate depiction of his appearance at his new apartment when he voluntarily opened his door to strangers, is equally frivolous and vexatious.

7. That Mr. Buford now makes the bald and baseless claim that he fears for his physical safety—attributing his fear, in part, to our clients, all law-abiding, peaceful and long-time Upper West Side residents—is nothing short of ludicrous, especially since Mr. Buford so obviously craves the limelight, dubbing himself the “Homeless Hero,” making regular media and other public appearances, and tweeting his many followers daily.¹ *See* App. Dkt. 37 ¶ 4, Exs. 3-6. The one thing he and his counsel really feared, though, is that his voluntary departure from the Lucerne would be verified and that his appeal would then be dismissed as a result. That is why he asked a reporter to pull a story that quoted him confirming his relocation (App. Dkt. 37 ¶ 5 n.3), that is why his counsel consciously avoided

¹ The only person who needs to fear for his physical safety in this case is me, whose Manhattan home was vandalized in the middle of the night—apparently, by supporters of Mr. Buford’s cause—simply because I, as an attorney, advocated on behalf of my clients. *See* R623-625, R629-630, R1138-1139; *see also* Julia Marsh, *Vandals Tag Lawyer’s Home over NYC Residents’ Bid to Oust Homeless*, N.Y. Post (Oct. 21, 2020), <https://nypost.com/2020/10/21/vandals-tag-nyc-lawyers-home-over-bid-to-oust-homeless>. These vandals defaced the front of my residence, splattering it with red paint and raw eggs, and used stencils to post profanities and slogans like “Housing Is A Human Right” on my home’s exterior and adjoining sidewalk. *Id.* Fortunately, no one in my family was injured at the time. Shortly thereafter, the New York State Bar Association issued a public statement denouncing those responsible for this heinous crime. *See* Christian Nolan, *NYSBA Decries Spate of Attorney Harassment*, NYSBA (Oct. 27, 2020), <https://nysba.org/nysba-decries-spate-of-attorney-harassment>. And the only person in this case who has threatened anyone is Mr. Buford, captured on videotape accosting one of my clients on the street near the Lucerne simply because she was trying to talk to another Lucerne resident. *See* R1500-1506, R1512; <https://www.youtube.com/watch?v=uY2cGZlZvA>.

telling the truth about his client's move in responding to us and this Court (App. Dkts. 31, 40, 41, 42), and that is why this appeal must now be dismissed. Indeed, their claim that it took them nearly a month to connect rings particularly hollow when one considers they are both prolific Twitter users who regularly follow each other on that site and could have connected simply by tweeting one another.² *See, e.g.,* App. Dkt. 37 ¶ 4, Exs. 3 & 4. Their continuing lack of candor with this Court simply further exposes their "unclean hands" here.

WHEREFORE, we respectfully request a prompt decision on our fully submitted motion to dismiss and/or to lift the stay currently in place precluding the City from moving homeless men out of the Lucerne Hotel, where they are being temporarily housed, during the pendency of this appeal (Mot. No. 0674).

² Indeed, they did recently connect on Twitter when Mr. Buford tagged Mr. Hiller on a March 5 tweet. *See* App. Dkt. 37, Ex. 4. Yet they think so little of this Court that they expect it to believe it was somehow impossible for them to connect over the past month about this relocation issue going to the very heart of this appeal's continued viability.

Dated: March 22, 2021
New York, New York

Respectfully submitted,

GIBSON, DUNN & CRUTCHER LLP



By: _____

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