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As of: August 7, 2019 5:57 PM Z

Magen David of Union Sq. v. 3 W. 16th St., LLC

Supreme Court of New York, Appellate Division, First Department

April 11, 2019, Decided; April 11, 2019, Entered

8954, 600573/08

Reporter

171 A.D.3d 526 *; 96 N.Y.S.3d 529 **; 2019 N.Y. App. Div. LEXIS 2761 ***; 2019 NY Slip Op 02806 ****; 2019 WL 1560420

[****1] Magen David of Union Square, et al., Plaintiffs, The **Sixteenth Street Synagogue**, Plaintiff-Appellant, v 3 West 16th Street, LLC, Defendant-Respondent.

Notice: THE LEXIS PAGINATION OF THIS DOCUMENT IS SUBJECT TO CHANGE PENDING RELEASE OF THE FINAL PUBLISHED VERSION.

THIS OPINION IS UNCORRECTED AND SUBJECT TO REVISION BEFORE PUBLICATION IN THE OFFICIAL REPORTS.

Prior History: [Magen David of Union Square v. 3 West 16th Street, LLC, 2009 N.Y. Misc. LEXIS 4040, 2009 NY Slip Op 30408\(U\) \(N.Y. Sup. Ct., Feb. 19, 2009\)](#)

Core Terms

prior appeal, counterclaim, CONSTITUTES

Counsel: [***1] Lambert & Shackman, PLLC, New York (Thomas C. Lambert of counsel), for appellant.

McLaughlin & Stern LLP, New York (Paul H. Levinson of counsel), for respondent.

Judges: Sweeny, J.P., Webber, Gesmer, Singh, JJ.

Opinion

[*526] [**529] Order, Supreme Court, New York County (Barry R. Ostrager, J.), entered on or about February 22, 2018, which granted defendant's motion to vacate the note of issue and for summary judgment on the third counterclaim for declaratory judgment that defendant is the fee simple owner [**530] of the property with the exclusive right of possession, unanimously affirmed, without costs.

[*527] On one of at least two prior appeals in this

action, this Court expressly held that "[a]lthough the prior appeal did not specifically address [the third] counterclaim, the underlying issues were necessarily resolved in that appeal, and that resolution constitutes the law of the case" ([132 AD3d 503, 504, 18 N.Y.S.3d 24 \[1st Dept 2015\]](#), *lv dismissed 28 N.Y.3d 977, 39 N.Y.S.3d 851, 62 N.E.3d 563 [2016]* [internal quotation marks omitted]). This Court further held that "[t]he doctrine of res judicata also bars the Synagogue's claim of an equitable ownership interest in the Building," since the Synagogue's predecessor in interest, in discontinuing a prior action, gave up that claim (*id. at 504*).

THIS CONSTITUTES THE DECISION AND ORDER OF THE [***2] SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: APRIL 11, 2019

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Steven Shackman