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

PRESENT: Hon. BARBARA JAFFE PART 12
Justice

NEW YORK CITY PARENTS UNION, *et al.*,

Plaintiffs,

- v -

THE BOARD OF EDUCATION OF THE CITY SCHOOL DISTRICT OF THE CITY OF NEW YORK, *et al.*,

Defendants,

- and -

HARLEM SUCCESS ACADEMY CHARTER SCHOOL 1, *et al.*,

Intervenor-Defendants.

INDEX NO. 108538/2011
MOTION DATE
MOTION SEQ. NO. 004
CALENDAR NO.

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	
Answer — Affidavits — Exhibits	
Replying Affidavits	

Cross-Motion: ☐ Yes X No

Decided in accordance with accompanying order.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE

J.S.C.

DATED: Dated: 01/13/14

J.S.C.

BARBARA JAFFE
J.S.C.

Check one: ☐ FINAL DISPOSITION ☒ NON-FINAL DISPOSITION

Check if appropriate: ☐ DO NOT POST ☐ REFERENCE

[* 2]

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : IAS PART 12

----------x

NEW YORK CITY PARENTS UNION; CLASS SIZE MATTERS; NEW YORK COMMUNITIES FOR CHANGE; and LEONIE HAIMSON, NOAH GOTBAUM, STEPHANIE FIELDS, LASHAWN CHERRY, JACQUELINE PEREZ, CHRIS MOSS, AMANDA JACOBS, REGINA JACOBS, REGINA TIMBER, JERMAINE BLIGEN, NATASHA HOOPER, CHERYL AND ANGEL BLUE, SHARLENE HALE HALL, AMANDA COLON, ANGELA BALTIMORE, SANDRA E. HARPER, CYNTHIA GRIFFIN, HELENA CLAY, SONYA HAMPTON, ELLIOT WOFSE, HENRY CLEMENTE, YVONE WALKER, CYNTHIA BONANO, FAYE HODGE, and MUBA YAROFULANI, on Behalf of Their Children and Others Similarly Situated,

Plaintiffs,

- against -

THE BOARD OF EDUCATION OF THE CITY SCHOOL DISTRICT OF THE CITY OF NEW YORK, and DENNIS M. WALCOTT, as Chancellor of the City School District of the City of New York,

Defendants,

- and -

HARLEM SUCCESS ACADEMY CHARTER SCHOOL 1, HARLEM SUCCESS ACADEMY CHARTER SCHOOL 4, OCEAN HILL COLLEGIATE CHARTER SCHOOL, EMPOWER CHARTER SCHOOL, DEMOCRACY PREPARATORY CHARTER SCHOOL, NEW VISIONS CHARTER HIGH SCHOOL FOR HUMANITIES, NEW VISIONS CHARTER HIGH SCHOOL FOR ADVANCED MATHAND SCIENCE, TEACHING FIRMS OF AMERICA CHARTER SCHOOL, INVICTUS PREPARATORY CHARTER SCHOOL, SUMMIT ACADEMY CHARTER SCHOOL, DREAM CHARTER SCHOOL, BROOKLYN CHARTER SCHOOL, INWOOD ACADEMY FOR LEADERSHIP CHARTER SCHOOL, LA CIMA ELEMENTARY CHARTER SCHOOL, CONEY ISLAND PREPARATORY CHARTER SCHOOL, SOUTH BRONX CLASSICAL CHARTER SCHOOL, GIRLS PREPARATORY CHARTER SCHOOL, and NEW YORK CITY CHARTER SCHOOL CENTER,

Intervenor-Defendants.

----------x

Index No. 108538/11

Mot. seq. no. 004

DECISION & ORDER

BARBARA JAFFE, J.:

For plaintiffs:
Arthur Z. Schwartz, Esq.
Advocates for Justice
225 Broadway, Ste. 1902
New York, NY 10007
212-228-6320

For defendants:
Chlarens Orsland, ACC
Emily Sweet, ACC
Michael A. Cardozo
NYC Corporation Counsel
100 Church St., Rm. 2-174
New York, NY 10007
212-788-0904

For intervenor-defendants:
Andrew R. Dunlap, Esq.
Devora W. Allon, Esq.
Samara L. Penn, Esq.
Heather Thomas, Esq.
Kirkland & Ellis LLP
601 Lexington Ave.
New York, NY 10022
212-446-4000

Theodore V. Wells, Esq.
David W. Brown, Esq.
Ralia E. Polechronis, Esq.
David K. Kessler, Esq.
Jacob T. Lillywhite, Esq.
Paul, Weiss, Rifkind, *et al.*
1285 Avenue of the Americas
New York, NY 10019
212-373-3000

Bradford Jealous III, Esq.
Mayer Brown LLP
1675 Broadway
New York, NY 10019
212-506-2500

Avi Schick, Esq.
SNR Denton
1221 Avenue of the Americas
New York, NY 10020
212-398-8456

Plaintiffs move pursuant to CPLR 2221 for leave to reargue their opposition to defendants' and intervener-defendants' motions to dismiss, which I granted on April 30, 2013. Defendants oppose.

I. RELEVANT BACKGROUND

Plaintiffs, parents of children in New York City public schools and others, brought this action challenging defendant Department of Education's (DOE) practice of allowing charter schools to operate within public school buildings without charge. Because charter schools have access to more financial resources than those available to traditional public schools, the result of co-location is that children within the same building, but enrolled in different programs, are afforded different educational amenities.

In their complaint, plaintiffs allege that DOE's failure to collect rent from charter schools has cost the city more than $96 million, deprives traditional public school students' state constitutional rights to an adequate education, and violates Education Law § 2853(4)(c), which requires contracts with co-located charter schools to be "at cost." They thus sought a declaration that the co-location policy is unlawful, an injunction compelling DOE to charge rent, and damages.

In my April 2013 decision (*New York City Parents Union v Board of Educ. of the City Sch. Dist. of the City of NY*, 2013 NY Slip Op 32890[U] [Sup Ct, New York County 2013]), I held that plaintiffs did not plead facts sufficient to state a constitutional claim and that their challenges to the DOE's budgetary policies must be heard, in the first instance, at the administrative level by the Commissioner of Education.

II. PLAINTIFFS' GROUNDS FOR REARGUMENT

Plaintiffs seek leave to reargue my ruling that their statutory challenge to co-location must first be brought before the Commissioner. (NYSCEF 55, 64). Relying on *Shaw v Walcott*, index No. 100393/13, June 7, 2013 (Sup Ct, New York County 2013), plaintiffs urge me to reconsider my ruling, contending their challenge, like that advanced in *Shaw*, presents only a matter of statutory construction. (NYSCEF 55, 64).

III. ANALYSIS

Reargument is proper when the court overlooked or misapprehended fact or law in determining the prior motion. (CPLR 2221[d][2]). As *Shaw* was decided after I rendered my decision, I could not have overlooked or misapprehended it.

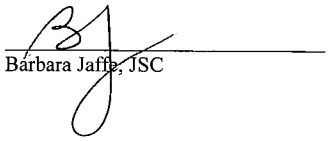
Even if plaintiffs sought renewal based on *Shaw*, as *Shaw* neither binds me nor signals any change in the law, renewal is unwarranted. (*See Jackson v Westminster House Owners Inc.*, 52 AD3d 404, 405 [1st Dept 2008] [renewal improper; appellate decision was neither new law nor clarification of prior law]; *Pinewood Apt. Assoc. v Wilcox*, 51 AD3d 751 [2d Dept 2008] [change in administrative agency's interpretation of statute would not have altered prior determination in which court did not defer to agency and interpreted said statute differently]; *cf.* [*Patterson v New York State Dept. of Correctional Services*, 71 AD3d 1349, 1350 [3d Dept 2010], *lv denied* 15 NY3d 703 [Court of Appeals decision constituted sufficient change; renewal proper]; *515 Ave. I Corp. v 515 Ave. I Tenants Corp.*, 44 AD3d 707, 708 [2d Dept 2007] [same]). In any event, *Shaw* is significantly distinguishable.

IV. CONCLUSION

Accordingly, it is hereby

ORDERED, that plaintiffs' motion for leave to reargue is denied.

ENTER:



Barbara Jaffe, JSC

DATED: January 13, 2014
New York, New York