

Lamela v Verticon, Ltd.
2017 NY Slip Op 33232(U)
January 19, 2017
Supreme Court, Ulster County
Docket Number: 11-4377
Judge: James P. Gilpatric
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**STATE OF NEW YORK
SUPREME COURT**

ULSTER COUNTY

JAMES LAMELA and ROBERT LAMELA

DECISION & ORDER

Plaintiffs,

INDEX NO.: 11-4377

- against -

**VERTICON, LTD; SATIN FINE FOODS, INC.; SATIN
REALTY ASSOCIATES, LLC; COOLER PANEL PROS,
INC.; and, ACCURATE REFRIGERATION DESIGN, LLC,**

Defendants.

**VERTICON, LTD, SATIN FINE FOODS, INC.,
and SATIN REALTY ASSOCIATES, LLC**

Third-Party Plaintiff,

- against -

**FILED
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JAN 27 2017**

LAMELA & SONS, INC.,

Third-Party Defendant.

**NINA POSTUPACK
ULSTER COUNTY CLERK**

**Supreme Court, Ulster County
R.J.I. No.: 55-11-01695**

Present: James P. Gilpatric, J.S.C.

Appearances:

**Mainetti, Mainetti & O'Connor
Attorneys for Plaintiffs
130 N. Front Street
Kingston, NY 12401**

**Penino & Moynihan, LLP
Attorneys for Defendant Cooler Panel Pros, Inc.
1025 Westchester Ave., Suite 403
White Plains, NY 10604**

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UC Supreme Court

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Attorneys for Defendant Verticon, LTD, Satin Fine Foods, Inc.
and Satin Realty Associates, LLC
8 Southwoods Boulevard, Suite 300
Albany, NY 12211-2364
By: William J. Greagan, Esq.

Carter, Conboy, Case, Blackmore, Maloney & Laird, P.C.
Attorneys for Defendant Accurate Refrigeration Design LLC
20 Corporate Woods Boulevard
Albany, NY 12211-2362

Stockton, Barker & Mead, LLP
Attorneys for Third-Party Defendants Lamela & Sons, Inc.
433 River Street, Suite 6002
Troy, NY 12180
By: Robert S. Stockton, Esq.

Gilpatric, J.:

This Court, on September 8, 2016, issued a Decision and Order on the motion and cross-motion that had been fully presented to the Court by third-party plaintiff and third-party defendant denying third-party defendant Lamela & Sons' motion for summary judgment dismissing the third-party complaint and, granting third-party plaintiffs' motion for summary judgment the extent that third-party plaintiff Satin Defendants was entitled to summary judgment on the issue of indemnification as against third-party defendant Lamela & Sons in the amount of \$1,199,999.00, plus reasonable legal fees to be determined at a hearing before this Court.

Thereafter it was brought to the attention of this Court by the third-party plaintiff that a typographical error on page 8 of said Decision and Order had occurred. Third-party plaintiff stated that said order listed in the second and fourth paragraphs on page 8 the damages to be \$1,199,999.00 [emphasis added] when in fact the damages presented to the Court were \$1,999,999.00 [emphasis added]. Third-party defendants responded by letter and exhibits to this issue.

Based upon this Court's review of the papers submitted on the motion and cross-motion, and the parties correspondences as to this issue, the Court concurred with third-party plaintiffs

and issued an Amended and Corrected Decision and Order, dated October 17, 2016, based upon the September 8, 2016 Decision and Order with aforementioned correction listed above.

Third-party defendant Lamela & Sons, Inc. (hereinafter "Lamela & Sons") now moves pursuant to CPLR § 2221 to reargue and reverse this Court's October 17, 2016 Amended and Corrected Decision and Order. The defendants/third-party plaintiffs oppose the motion.

A motion to reargue is addressed to the sound discretion of the Court. It does not rely on new proof; rather its purpose is to provide the movant with an opportunity to convince the Court that it overlooked or misunderstood a factual or legal issue (Pro Brokerage Inc. v. Home Ins. Co., 99 AD2d 971 [1st Dept 1984], *appeal dismissed* 64 NY2d 646 [1984]). However, it is not designed to allow a party the opportunity to argue a new theory of law not previously advanced by it (Frisenda v X Large Enterprise Inc., 280 AD2d 514, 515 [2nd Dept 2001]). Reargument is not designed to afford the unsuccessful party successive opportunities to reargue issues previously decided or to present arguments different from those originally asserted. (*see Pahl Equipment Corp. V. Kassis*, 182 AD2d 22 [1st Dept. 1992]).

Here, the third-party defendant Lamela & Sons now argues that the Court both overlooked and/or misapprehended the facts and law for the issues presented on the underlying motions. Upon review of the submissions the Court finds no reason to grant reargument. The Court is not persuaded that it overlooked or misunderstood a factual or legal issue before it. Therefore, the the third-party defendant Lamela & Sons' motion to reargue is denied in its entirety. Any remaining arguments have either been considered or determined to be without merit.

Accordingly, it is

ORDERED that the third-party defendant Lamela & Sons' motion to reargue is hereby denied.

This shall constitute the decision and order of the Court. The original decision and order and all other papers are being delivered to the Supreme Court Clerk for transmission to the Ulster

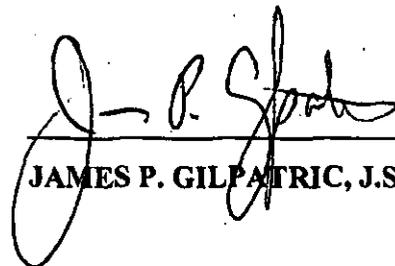
County Clerk for filing. The signing of this decision and order shall not constitute entry or filing under CPLR 2220. Counsel is not relieved from the applicable provisions of that rule regarding notice of entry.

SO ORDERED.

Dated: January 19, 2017
Kingston, New York

FILED
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JAN 27 2017
NINA POSTUPACK
ULSTER COUNTY CLERK

ENTER,



JAMES P. GILPATRIC, J.S.C.

Papers considered:

- 1.) Notice of Motion for Leave to Reargue by Third-Party Defendant, dated December 5, 2016;
- 2.) Affirmation of Robert S. Stockton, Esq., dated December 5, 2016, with annexed exhibits;
- 3.) Affidavit in Opposition to Third-Party Defendant's Motion of William J. Greagan, Esq., dated January 6, 2017, with annexed exhibits.