

**MHR Capital Partners LP v Presstek, Inc.**

2007 NY Slip Op 33756(U)

November 15, 2007

Supreme Court, New York County

Docket Number: 0600490/2005

Judge: Richard B. Lowe

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

PRESENT: HON. RICHARD B. LOWE III

PART 54

Index Number : 600490/2005  
MHR CAPITAL PARTNERS LP  
vs.  
PRESSTEX INC  
SEQUENCE NUMBER : # 010  
REARGUE

Justice

INDEX NO.

600490-05

MOTION DATE

9/19/07

MOTION SEQ. NO.

#010

MOTION CAL. NO.

ere read on this motion to/for

PAPERS NUMBERED

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

Answering Affidavits — Exhibits

Replying Affidavits

Cross-Motion:  Yes  No

Upon the foregoing papers, It is ordered that this motion

MOTION IS DECIDED IN ACCORDANCE  
WITH ACCOMPANYING MEMORANDUM DECISION

FILED  
NOV 23 2007  
COUNTY CLERK'S OFFICE  
NEW YORK

HON. RICHARD B. LOWE, III

Dated: 11/15/07

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  
COUNTY OF NEW YORK: IAS PART 56

-----X  
MHR CAPITAL PARTNERS LP, MHR  
INSTITUTIONAL PARTNERS LP, MHRM LP,  
Delaware limited partnerships, and MHR FUND  
MANAGEMENT LLC, a Delaware limited  
liability corporation,

Plaintiffs,

Index No. 600490/05

-against-

PRESSTEK, INC. and SILVER ACQUISITIONS  
CORP., Delaware corporations,  
Defendants.

-----X  
**Hon. Richard B. Lowe, III:**

Plaintiffs MHR Capital Partners LP, MHR Institutional Partners LP, MHRM LP,  
and MHR Fund Management LLC (collectively, the MHR entities) move, pursuant to CPLR  
2221, for an order granting the MHR entities leave to reargue the motion by defendant Presstek,  
Inc. (Presstek) for summary judgment, and, upon reargument, vacating the decision and order of  
this court, dated July 19, 2007 and filed July 26, 2007 (the Order)<sup>1</sup> (which granted summary  
judgment in Presstek's favor), and entering a new order denying Presstek's motion.

In the Order, this court determined that all of the claims asserted by the MHR  
entities in this action were already fully and fairly litigated in the context of a bankruptcy  
proceeding, and could not be relitigated here under principles of res judicata and/or collateral  
estoppel. Accordingly, the court granted Presstek's motion for summary judgment.

In support of reargument, the MHR entities contend that the court overlooked or  
misapprehended significant facts or law in determining that res judicata and collateral estoppel

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<sup>1</sup> 2007 NY Slip Op 32322(U), 2007 WL 2815416

applied. Presstek opposes the motion and contends that the Order was proper in all respects.

### DISCUSSION

Pursuant to CPLR 2221 (d), a motion for leave to reargue shall “be based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion. . . .” “A motion for reargument, addressed to the discretion of the court, is designed to afford a party an opportunity to establish that the court overlooked or misapprehended the relevant facts, or misapplied any controlling principle of law. Its purpose is not to serve as a vehicle to permit the unsuccessful party to argue once again the very questions previously decided” (Pro Brokerage, Inc. v Home Ins. Co., 99 AD2d 971, 971 [1st Dept 1984] quoting Foley v Roche, 68 AD2d 558, 567 [1<sup>st</sup> Dept 1979]). It does not offer an unsuccessful party an opportunity to reargue issues previously decided or to present arguments not previously advanced (Pryor v Commonwealth Land Title Ins. Co., 17 AD3d 434 [2d Dept 2005]; McGill v Goldman, 261 AD2d 593 [2d Dept 1999]).

In support of reargument, the MHR entities argue that, in the context of the bankruptcy proceeding, neither the Bankruptcy Court nor the District Court reached the issue of whether the purchaser, was a “good faith purchaser” under 11 USC § 363 (m), and, accordingly, this court erred in according preclusive effect to the orders of those courts. However, the MHR entities previously advanced this argument, and this court considered and rejected it, holding instead that the MHR entities had already exercised their full and fair opportunity to litigate the claims (including the good faith purchaser issue) that they are now reasserting in this action. In deciding against the MHR entities, this court, in the Order, cited to and relied upon various well-

reasoned decisions, such as Aryeh v Altman (36 AD3d 492 [1<sup>st</sup> Dept 2007] [collateral estoppel barred a subsequent challenge to the status of a party as a good-faith purchaser where this issue was raised and decided by the Bankruptcy Court in proceedings culminating in an order approving a reorganization plan]), Vanderbilt Realty Corp. v Gordon (134 AD2d 586 [2d Dept 1987] [because the defendant had a full and fair opportunity to litigate the same issue in the Bankruptcy Court, it was collaterally estopped to challenge the validity of a foreclosure sale]) and LaSalle Bank Natl. Assn. v Middlebelt Plymouth Venture, L.L.C. (221 F Supp 2d 792 [ED Mich 2002] [the bankruptcy court's determination that a defendant was a good faith purchaser was a valid, final judgment and collaterally estopped plaintiff from raising defendant's alleged bad faith in a subsequent proceeding]).

To summarize, the court has reviewed the MHR entities' contentions, and upon review, concludes that they have not demonstrated that the court overlooked any material fact, misapprehended the law, or, for any other reason, mistakenly arrived at its determination with regard to the application of res judicata and/or collateral estoppel (see Opton Handler Gottlieb Feiler Landau & Hirsch v Patel, 203 AD2d 72 [1st Dept 1994]). The various arguments advanced on this reargument motion, were previously proposed and fully considered and rejected by the court (Pro Brokerage, Inc. v Home Ins. Co., *supra*; Foley v Roche, *supra*). Accordingly, the court denies the MHR entities' motion for leave to reargue.


### CONCLUSION

It is ORDERED that the motion by plaintiffs MHR Capital Partners LP, MHR Institutional Partners LP, MHRM LP, and MHR Fund Management LLC for an order granting leave to reargue the decision and order of this court, dated July 19, 2007 (filed July 26, 2007), is

denied. This constitutes the decision and the order of the court.

Dated: November 15, 2007

ENTER:



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J.S.C.

HON. RICHARD B. LOWE, JR.

FILED

NOV 23 2007

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NEW YORK