

**Arnav Indus. Inc. v Pitari**

2009 NY Slip Op 33083(U)

December 16, 2009

Supreme Court, New York County

Docket Number: 602491/02

Judge: Walter B. Tolub

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

PRESENT: \_\_\_\_\_

PART \_\_\_\_\_

Index Number : 602491/2006

ARNAV INDUSTRIES

vs.

PITARI, JODY

SEQUENCE NUMBER : 002

REARGUMENT/RECONSIDERATION

INDEX NO. \_\_\_\_\_

MOTION DATE \_\_\_\_\_

MOTION SEQ. NO. \_\_\_\_\_

MOTION CAL. NO. \_\_\_\_\_

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

IS DECIDED

IN ACCORDANCE WITH ACCOMPANYING MEMORANDUM DECISION

FILED

DEC 17 2009

NEW YORK COUNTY CLERK'S OFFICE

Dated: 12/16/09

[Signature] 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 15

-----X  
ARNAV INDUSTRIES, INC.,

Plaintiff,

Index No.: 602491/02  
DECISION/ORDER

-against-

JODY PITARI,

Defendant.

-----X  
**HON. WALTER B. TOLUB, J.S.C.:**

In this residential landlord/tenant action, plaintiff landlord moves for leave to reargue its previous motion for partial summary judgment (motion sequence number 002). For the following reasons, this motion is denied.

BACKGROUND

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NEW YORK  
COUNTY CLERK'S OFFICE

The court discussed the relevant facts of this action in its decision dated March 26, 2009, that disposed of plaintiff/landlord Arnav Industries, Inc. (Arnav)'s prior motion for partial summary judgment and defendant/tenant Jody Pitari (Pitari)'s cross motion for the same relief (motion sequence number 001), and need not repeat that discussion here. See Notice of Motion, Exhibit A. Currently at issue is the portion of the court's March 26 decision that found as follows:

Here, Plaintiff has failed to meet its burden [of proof on its summary judgment motion]. Plaintiff failed to demonstrate that it has a valid Certificate of Occupancy. CPLR § 301 provides that no multiple dwelling shall be occupied until the issuance of a certificate that the dwelling conforms to the requirements of this chapter, building codes and rules and to all other applicable law (CPLR § 301). Plaintiff has presented no evidence that once the plans for alterations were approved and permits were issued, it had any Certificate of Occupancy other than the one issued in 1926 (CPLR §§ 301, 302) and the Temporary Certificates of Occupancy issued in 2006.

Moreover, Plaintiff did not file for a Temporary Certificate of Occupancy until 2006, fifteen years after the alterations were made. The February Certificate expired on May 25, 2006. The next Certificate was not issued until October 12, 2006 and expired on January 10, 2007. Currently there is no Certificate of Occupancy in place for the Building that this Court is aware of and as such, Plaintiff's motion must be denied.

*Id.* at 5-6. In its current motion, Arnav seeks leave to reargue on the ground that the court misapprehended the relevant facts and law in the above portion of the March 26 decision.

#### DISCUSSION

Pursuant to CPLR 2221, a motion for leave to reargue may be granted only upon a showing "that the court overlooked or misapprehended the facts or the law or for some reason mistakenly arrived at its earlier decision." *See William P. Pahl Equipment Corp. v Kassis*, 182 AD2d 22, 27 (1st Dept 1992); citing *Schneider v Solowey*, 141 AD2d 813 (2d Dept 1988). "Reargument is not designed to afford the unsuccessful party successive opportunities to reargue issues previously decided." *Id.* at 27; citing *Pro Brokerage, Inc. v Home Insurance Co.*, 99 AD2d 971 (1st Dept 1984). Nor does a reargument motion provide a party "an opportunity to advance arguments different from those tendered on the original application." *See Rubinstein v Goldman*, at 328 *supra.*; quoting *Foley v Roche*, 68 AD2d 558, 568 (1st Dept 1979).

Here, Arnav first argues that the court misapprehended the fact that "the building's permanent certificate of occupancy remains in full force and effect." *See* Notice of Motion, Mitrani Affirmation, ¶ 3. To support this allegation, Arnav presents the report of architect Robert Lenahan (Lenahan), who opines that the absence of a vacate order against the building in the Department of Building's (DOB's) records means that "the permanent certificate of occupancy for this building has always remained in full force and effect." *Id.*, Lenahan Affidavit,

¶ 5. Lenahan also opines that the DOB's refusal to issue a new amended permanent certificate of occupancy is due to an open alteration in the building that is unrelated to Pitari's apartment. *Id.*, ¶¶ 7-8. In response, Pitari points out that Arnav has still failed to present a current certificate of occupancy for the building. *See Grimble Affirmation in Opposition*, ¶ 8. Arnav's reply papers restate its original argument. *See Mitrani Reply Affirmation*, ¶ 2. However, the court finds that Arnav's argument is unavailing. Arnav has simply not presented any documentary evidence to support either of the opinions advanced in Lenahan's affidavit. The court further notes that Lenahan's affidavit actually confirms the courts earlier factual findings that Arnav has thus far failed to present either a permanent or temporary certificate of occupancy for the building. Accordingly, the court rejects Arnav's first argument as baseless.

Arnav next argues that the court erred in applying the law governing CPLR § 301 by stopping its analysis of Pitari's rent bar defense upon the finding that Arnav had failed to present a certificate of occupancy as part of its prima facie case. *See Notice of Motion, Mitrani Affirmation*, ¶ 8. However, to support this argument, Arnav merely annexes a copy of the memorandum of law that it submitted in support of its earlier motion. *Id.*; Exhibit C. As previously stated, "[r]eargument is not designed to afford the unsuccessful party successive opportunities to reargue issues previously decided." *William P. Pahl Equipment Corp. v Kassis*, 182 AD2d at 27, citing *Pro Brokerage, Inc. v Home Insurance Co.*, 99 AD2d 971. Because the court has already considered and rejected the legal arguments that Arnav now baldly reasserts, the court finds that those arguments cannot serve as the basis for the instant motion to reargue. Accordingly, the court rejects Arnav's second argument, and finds that Arnav's motion should be denied in full.


DECISION

ACCORDINGLY, for the foregoing reasons it is hereby

ORDERED that the motion, pursuant to CPLR 2221 (d), of plaintiff Arnav Industries, Inc. is in all respects denied.

Dated: New York, New York  
December 16<sup>th</sup>, 2009

ENTER:

  
\_\_\_\_\_  
Hon. Walter B. Tolub, J.S.C.

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