

Hughey v RHM-88, LLC
2010 NY Slip Op 30827(U)
April 1, 2010
Supreme Court, NY County
Docket Number: 115793/04
Judge: Doris Ling-Cohan
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: **JUSTICE DORIS LING-COHAN**

PART 36

Justice

Hugley

INDEX NO.

115793/04

MOTION DATE

MOTION SEQ. NO.

011

MOTION CAL. NO.

RHM-88, LLC et al.

The following papers, numbered 1 to _____ were read on this motion to/for reargue

PAPERS NUMBERED

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

1, 2

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

3, 4

Upon the foregoing papers, it is ordered that this motion *& cross-motion* to reargue are decided in accordance with the attached memorandum decision.

FILED

APR 08 2010

NEW YORK COUNTY CLERK'S OFFICE

RECEIVED

APR 08 2010

MOTION SUPPORT OFFICE
NYS SUPREME COURT - CIVIL

[Handwritten signature]

Dated: 4/7/10

JUSTICE DORIS LING-COHAN

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 36

----- X
KEITH HUGHEY and ZIPPORIA HUGHEY,

oil

Plaintiffs,

Index No. 115793/04

- against-

Motion Seq. No.: 011

RHM-88, LLC, and PRITCHARD INDUSTRIES,
INC., ONE UNITED NATIONS PLAZA
CONDOMINIUM, "JOHN DOE #1," "JOHN
DOE #2," "JOHN DOE #4," and "JOHN
DOE #5,"

DECISION AND ORDER

FILED

Defendants.

----- X
RHM-88, LLC,

APR 08 2010
NEW YORK
COUNTY CLERK'S OFFICE

Third-Party Plaintiff,

Third-Party

-against-

Index No. 590043/06

UNITED NATIONS DEVELOPMENT CORPORATION,

Third-Party Defendant.

----- X
ONE UNITED NATIONS PLAZA CONDOMINIUM,

Second Third-Party Plaintiff,

Third-Party

-against-

Index No. 591098/06

CUSHMAN & WAKEFIELD, INC.,

Second Third-Party Defendant.

----- X
UNITED NATIONS DEVELOPMENT CORPORATION,

Fourth-Party Plaintiff,

Fourth-Party

-against-

Index No. 590355/06

CUSHMAN & WAKEFIELD, INC.,

Fourth-Party Defendant.

----- X

UNITED NATIONS DEVELOPMENT CORPORATION,

Second Fourth-Party Plaintiff,

Fourth-Party
Index No. 591127/06

-against-

PRITCHARD INDUSTRIES, INC.,

Second Fourth-Party Defendant,

-----X

DORIS LING-COHAN, J.S.C.:

Defendant Pritchard Industries Inc. (Pritchard), moves for leave to reargue the decision and order of this court entered on April 27, 2009. Defendant, second third-party plaintiff United Nations Plaza Condominium (UNPC) cross-moves to reargue.

Pritchard's motion for leave to reargue is denied.

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

(Foley v Roche, 68 AD2d 558, 567 [1st Dept 1979]).

Pritchard offers no basis to support its contention on reargument that the court misapprehended the facts or misapplied existing law by not implying limitations in Pritchard's service contract into its unconditional contractual duty to indemnify.

UNPC's cross-motion for reargument is granted, and, upon reargument, the court grants UNPC's motion for a conditional order of common law indemnity against Pritchard, and otherwise adheres to its prior decision. As indicated in this court's

prior decision, UNPC arguably established that it was not actively and directly negligent in the maintenance or repair of the subject sidewalk and the canopy drainage systems and that such maintenance or repair was delegated to Cushman & Wakefield, Inc. ("C&W"), UNPC's property manager, who hired Pritchard. As vicarious liability does not abrogate UNPC's right to seek indemnification against a subcontractor, in the absence of a finding of liability with respect to C&W's responsibilities as property manager and upon a finding that Pritchard was negligent and such negligence was a proximate cause of plaintiff's injuries, common-law indemnification is appropriate. See *Ortega v. Catamount Const. Corp.*, 264 AD2d 323 (1st Dept 1999); *Rogers v. Dorchester Assoc.*, 32 NY2d 553 (1973); *D'Ambrosio v. City of New York*, 55 NY2d 454 (1982).

UNPC moves on reargument for an order dismissing the complaint as against it on the ground that plaintiff was required to serve a notice of claim because UNPC is an alter ego of the City of New York. The court adheres to the reasoning in the prior decision, with respect to this argument.

UNPC also argues, for the first time, that it is a sham entity comprised of the two individual condominium share owners, defendant RHM-88, LLC, and the City of New York, and that its board of managers has not been named or served. Plaintiff responds that he included Doe defendants to represent the individual members of UNPC's board of managers.

The board of managers of UNPC may not retain counsel to appear in the name of UNPC, make a motion, assert a third-party action, and then argue that it is not a legal entity. It is at least an unincorporated association, which has a board of managers, and thus may sue and be sued. By its actions, the UNPC board of managers has appeared in this action and is subject to the jurisdiction of this court. Moreover, on a motion to reargue, movant may not assert new arguments, not previously presented to the court.

Accordingly, it is

ORDERED that Pritchard's motion for leave to reargue is denied; and it is

ORDERED that UNPC's motion for reargument is granted, and, upon reargument, UNPC's motion for a conditional order of common law indemnity against Pritchard is granted, and the court otherwise adheres to its prior decision; and it is further

ORDERED that within 30 days of entry of this order, UNPC shall serve a copy upon all parties, with notice of entry.

Dated: April 7, 2010



Hon. Doris Ling-Cohan, J. S. C.

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