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

PRESENT: MARTIN SHULMAN J.S.C. PART 1
Justice

Index Number : 101059/2004
PLUDEMAN, KEVIN
VS.
NORTHERN LEASING SYSTEMS
SEQUENCE NUMBER : 015
PARTIAL SUMMARY JUDGMENT

INDEX NO. 101059/04
MOTION DATE
MOTION SEQ. NO. 015
MOTION CAL. NO.

this motion to/for

	PAPERS NUMBERED
Notice of Motion/ ~~Order to Show Cause~~ — Affidavits — Exhibits ..1-6	1
Answering Affidavits — Exhibits 1	2
Replying Affidavits	

Cross-Motion: ☐ Yes ☒ No

Upon the foregoing papers, it is ordered that this motion is decided in accordance with the attached decision and order.

FILED
AUG 31 2010
COUNTY CLERK'S OFFICE
NEW YORK

Dated: August 30, 2010

MARTIN SHULMAN 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: PART 1

KEVIN PLUDEMAN, CHRIS HANZSEK d/b/a HANZSEK AUDIO, SARA JANE HUSH, OZARK MOUNTAIN GRANITE & TILE CO. and DENNIS E. LAUCHMAN, on behalf of themselves and all others similarly situated,

Plaintiffs,

-against-

NORTHERN LEASING SYSTEMS, INC., JAY COHEN, STEVEN BERNARDONE, RICH HAHN, and SARA KRIEGER,

Defendants.

Index No: 101059/04

Decision and Order

Hon. Martin Shulman, J.S.C.:

Defendants move to reargue this court's decision and order dated March 25, 2010[1] granting plaintiffs' motion for partial summary judgment on their breach of contract/overcharge claim. Plaintiffs oppose the motion, which is denied for the reasons stated below.

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. *Foley v. Roche*, 68 A.D.2d 558 (1st Dept. 1979); CPLR 2221(d). Motions for leave to reargue are not designed to provide an unsuccessful party with successive opportunities to reargue issues previously decided, or to present arguments different from those originally

[1] *Pludeman v Northern Leasing Systems, Inc.*, 27 Misc.3d 1203(A), 2010 WL 1254550 (Sup. Ct., NY Cty.). The instant decision and order incorporates the defined terms used in the March 25, 2010 decision granting plaintiffs' motion for partial summary judgment.

presented. *Pro Brokerage, Inc. v. Home Ins. Co.*, 99 A.D.2d 971 (1st Dept. 1984); *William P. Pahl Equipment Corp. v. Kassis*, 182 A.D.2d 22 (1st Dept. 1992).

Here, defendants argue this court overlooked or misapprehended the following: 1) language in the EFL which compels the finding that the insurance paragraph found at page 3 thereof and providing the basis for LDW charges is part of the lease; and 2) plaintiffs' purported judicial admissions that the EFL contains more than one page.

Turning to the first point, in support of the instant motion, defendants proffer for the court's consideration a self-described "connect the dots" approach to contract interpretation. Focusing again on the reference to "paragraph 11" in the language preceding the EFL's merger clause, defendants attempt to overcome this court's observation that page 1 of the EFL contains no reference to the relevant insurance provision authorizing the LDW charges. By defendants' logic, the LDW charges are proper because the contract consists of, at a minimum: page 1, as found by the court; paragraph 11[2] since it is referenced on page 1; paragraph 12 ("Remedies") since it is referenced in paragraph 11; paragraphs 10(b) ("Insurance") and 16 ("Return of Property") since they are referenced in paragraph 12; and paragraph 9(b) ("Risk of Loss") since it is referenced in paragraph 10.

The court rejects this tortured interpretation. First, defendants' interpretation of the EFL is premised upon the incorrect conclusion that this court "in effect recognized that the reference on page 1 of the EFL to paragraph 11 causes that paragraph to be included in the contract . . ." See Defendants' Supporting Memorandum of Law at p. 4.

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[2] Paragraph 11 of the EFL is entitled "Default" and found at page 3 thereof.

Nowhere in the March 25, 2010 decision and order does this court make such a finding. Rather, the decision concludes as follows: "[T]his court construes Plaintiffs' form leases to be one-page contracts as a matter of law . . ."

The within conclusion is consistent with this court's rationale underlying the March 25, 2010 decision and order, to wit, "in cases of doubt or ambiguity, a contract must be construed most strongly against the party who prepared it, and favorably to a party who had no voice in the selection of its language . . ." *Jacobson v Sassower*, 66 N.Y.2d 991, 993 (1985). Further, defendants' latest interpretation of the EFL does not negate this court's prior finding that "neither the pagination, nor the words, 'paragraph 11,' are adequate to call Plaintiffs' attention to an obligation to be bound by any other term or condition contained in the remaining three pages of their form leases, especially the insurance provision."

Finally, for the reasons stated in plaintiffs' opposing memorandum of law, the court rejects defendants' second argument that plaintiffs judicially admitted that the EFL includes pages subsequent to page 1.[3] While plaintiffs cite the existence of such additional lease pages, they simultaneously argue these provisions are unenforceable, thereby admitting nothing. For the above reasons, it is hereby

ORDERED that defendants' motion to reargue is denied.

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[3] For example, defendants cite paragraph 16 of the first amended complaint where plaintiffs allege that the lease and personal guaranty designate New York as the litigation forum for disputes arising from the EFL. This lease provision is contained on page 4 of the EFL.

The foregoing constitutes this court's Decision and Order. Courtesy copies of this Decision and Order have been provided to counsel for the parties.

Dated: New York, New York
August 30, 2010

HON. MARTIN SHULMAN, J.S.C.