

**RSB Bedford Assoc. LLC v Ricky's Williamsburg,
Inc.**

2010 NY Slip Op 33749(U)

June 9, 2010

Sup Ct, NY County

Docket Number: 602303/2009

Judge: Bernard J. Fried

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

PRESENT: **HON. BERNARD J. FRIED**

PART 60

Index Number : 602303/2009

RSB BEDFORD ASSOCIATES LLC

vs.

RICKYS WILLIAMSBURG INC

SEQUENCE NUMBER : 003

REARGUE/RECONSIDER

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

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

This motion and cross-motion are decided in accordance with the attached memorandum decision.

SO ORDERED

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MOTION SUPPORT OFFICE

NYS SUPREME COURT - CIVIL

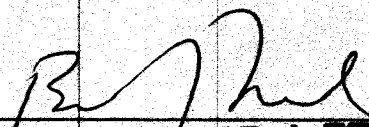
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NYS SUPREME COURT - CIVIL

Dated: 6/9/2010



HON. BERNARD J. FRIED.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: I.A.S. PART 60

-----X

RSB BEDFORD ASSOCIATES, LLC,

Plaintiff

-against-

Index No. 602303/2009

RICKY'S WILLIAMSBURG, INC.
D/B/A RICKY'S NYC and RICKY'S
HOLDINGS, INC.,

Defendants.

-----X

APPEARANCES:

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Attorneys for the Defendants

FRIED, J:

Defendants move, pursuant to CPLR 2221(d), for leave to reargue my decision and order dated, April 14, 2010. Plaintiffs cross-move for leave to reargue the same decision on the sole ground of the liability of defendant Ricky's Williamsburgh, Inc., d/b/a Ricky's NYC for attorneys' fees and costs.

A motion for leave to reargue may be made "based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion, but shall not include any matters of fact not offered on the prior motion." C.P.L.R. § 2221(d). Such a motion "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

003

decision.” William P. Pahl Equipment Corp. v. Kassis, 182 A.D.2d 22, 27 (1st Dept. 1992) (internal citations omitted).

With regard to Defendants’ motion, no such showing has been made. Therefore, the motion for leave to reargue is DENIED.

However, with regard to Plaintiff’s cross-motion, it has demonstrated that I overlooked the express provisions in the Lease, which had been submitted in connection with Plaintiff’s original motion for partial summary judgment. These are: (1) Rider 16.01, which requires the tenant - defined in the Lease as “Ricky’s Williamsburgh, Inc., d/b/a Ricky’s NYC “ - to reimburse the Landlord for expenses, including reasonable attorneys fees; and (2) Rider 19.01 which similarly requires such reimbursement. These documents were submitted in connection with the original motion. Also, Rider 16.01 was explicitly referred to in Plaintiff’s Rule 19-a Statement of Material Facts (¶ 5[vi)]¹. Since the Plaintiff has clearly demonstrated that I overlooked these facts in arriving at my decision, the cross-motion for reargument is GRANTED, and it is concluded that the defendant Ricky’s Williamsburgh, Inc., d/b/a Ricky’s NYC is also liable for costs and reasonable fees. Therefore, my decision and order is amended to also refer to a Special Referee, the issue of attorneys’ fees and cost relating to Ricky’s Williamsburgh, Inc., d/b/a Ricky’s NYC.

This statement was not denied in Defendants’ “Statement Pursuant to Rule 19-A”, submitted in response.

Accordingly, it is

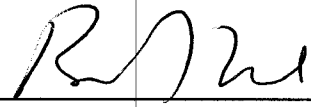
ORDERED that the motion for leave to reargue is DENIED; and it is further

ORDERED that the cross-motion for leave to reargue is GRANTED and reargument is GRANTED as set forth above; and it is further

ORDERED that original decision and order, dated April 12, 2010, is amended to include in the reference to a Special Referee, the issue of cost and expenses with respect to Ricky's Williamsburgh, Inc., d/b/a Ricky's NYC.

SO ORDERED

DATE 6/9/2010



J.S.C.

HON. BERNARD J. FRIED