

Stardial Communications Corp. v City of New York

2011 NY Slip Op 32520(U)

September 23, 2011

Sup Ct, NY County

Docket Number: 115483/00

Judge: Shirley Werner Kornreich

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

PRESENT: KORNREICH
Justice

PART 54

SADADIA Communications
- v -
Core
CITY OF NY

INDEX NO. 115483/00
MOTION DATE _____
MOTION SEQ. NO. 9
MOTION CAL. NO. _____

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

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

PAPERS NUMBERED

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion is decided in accordance with the analyzed decision

FILED

SEP 26 2011

NEW YORK COUNTY CLERK'S OFFICE

Dated: 9/23/11 JUSTICE SHIRLEY WERNER KORNREICH
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION
Check if appropriate: DO NOT POST REFERENCE
 SUBMIT ORDER/ JUDG. SETTLE ORDER/ JUDG.

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 54

-----X
STARDIAL COMMUNICATIONS CORP., d/b/a,
IRREPLACEABLE ARTIFACTS AND STARDIAL
COMMUNICATIONS CORP., as agents for consignors,
secured parties and title holders of personalty,

Plaintiffs,

-against-

Index No. 115483/00
Decision & Order

THE CITY OF NEW YORK, NEW YORK CITY
DEPARTMENT OF BUILDINGS; RONNY LIVIAN,
Manhattan Borough Superintendant for Department
of Buildings; RICHARD VISCONTI, Commissioner
of Department of Buildings; MANHER SHAH, P.E.,
Deputy Borough Superintendant for the Borough of
Manhattan for the Department of Buildings; NEW YORK
CITY DEPARTMENT OF HOUSING PRESERVATION
AND DEVELOPMENT; NEW YORK CITY
DEPARTMENT OF SANITATION; NEW YORK CITY
POLICE DEPARTMENT; NEW YORK FIRE
DEPARTMENT; NEW YORK CITY OFFICE OF
EMERGENCY MANAGEMENT;
GATEWAY DEMOLITION,

Defendants.

FILED

SEP 26 2011

NEW YORK
COUNTY CLERK'S OFFICE

-----X
THE CITY OF NEW YORK,

Third-Party Plaintiff,

-against-

EVAN BLUM; EVAN BLUM, a/k/a, IRREPLACEABLE
ARTIFACTS, STARDIAL COMMUNICATIONS
CORP., d/b/a, IRREPLACEABLE ARTIFACTS and
STARDIAL COMMUNICATIONS CORP.; KSHEL
REALTY CORP.; KRC REALTY CORP.; WALTER
BLUM; CITIBANK, N.A.; the Land and Building known
as 14 SECOND AVENUE, Block 442, Lot 6, County
of New York City and State of New York; and "JOHN
DOE", and "JANE DOE", fictitious names, true names
unknown, the parties intended being all other persons

and/or entities claiming any right, title or interest in the real properties which are the subject of this action,

Third-Party Defendants.

-----X

KORNREICH, J:

This action arises out of a partial wall collapse at 14 Second Avenue in New York City (Building), on July 13, 2000. The Building, its commercial tenants, and the neighboring residential building and its residents sustained damages as a result of the collapse, and several lawsuits were commenced. In the 9 actions before the court, the litigants simultaneously submitted 26 motions, including the summary judgment motion of defendant Gateway Demolition Corp. (Gateway). In its decision and order in *Stardial Communications Corp. v City of New York, et al.* (Sup Ct, NY County, April 27, 2011, Kornreich, J., index No. 115483/00) (4/27/11 Decision), the court granted Gateway's motion, in part, dismissing all of the claims asserted against it, except plaintiff's third cause of action for conversion and its sixth cause of action for misappropriation. Gateway now moves, by order to show cause, to reargue its motion for summary judgment on the third and sixth causes of action, and, upon granting reargument, Gateway seeks dismissal of these claims.

The facts of this case were stated in detail in the 4/27/11 Decision, this court's decision and order in *Cube Bldg. Hous. Dev. Fund Co. v Stardial Communications Corp. et al.* (Sup Ct, NY County, Feb. 10, 2006, Kornreich, J., Index No. 101900/01), in several other decisions issued by this court, and in a decision in a federal action styled *Kshel Realty Corp. v City of New York* (2006 WL 2506389, 2006 US Dist LEXIS 62220 [SD NY 2006], *affd* 293 Fed Appx 13 [2d Cir 2008]). The court presumes familiarity with these decisions, and the facts will not be restated

here. Defined terms in the 4/27/11 Decision shall have the same meaning when used here.

Legal Analysis

CPLR 2214(c) provides, in pertinent part, that “[t]he moving party shall furnish ... all other papers not already in the possession of the court necessary to the consideration of the questions involved.” The court does not retain the papers following the disposition of an application “and should not be compelled to retrieve the clerk’s file in connection with its consideration of subsequent motions.” *Sheedy v Pataki*, 236 AD2d 92, 97 (3d Dept 1997). Rather, it is the responsibility of a moving party to assemble complete papers documenting the procedural history of the motion and provide a proper foundation for the relief requested. *Fernald v Vinci*, 13 AD3d 333 (2d Dept 2004).

Here, Gateway submits only an attorney’s affirmation and a memorandum of law in support of the motion, failing to include a copy of the initial moving and opposing papers, which renders the moving papers defective. Moreover, this action was not e-filed and, as noted in the 4/27/11 Decision, the voluminous record on which Gateway seeks reargument consists of 40 litigation boxes, and spans 9 actions (many with third- and fourth-party actions) and 26 motions. Undertaking to locate Gateway’s moving papers would place a tremendous burden on the court. Therefore, the court refuses to consider Gateway’s improperly submitted papers. *Loeb v Tanenbaum*, 124 AD2d 941, 942 (3d Dept 1986); *Wells Fargo Home Mtge., Inc. v Mercer*, 35 AD3d 728, 728 (2d Dept 2006).

In any event, even were the court to consider the motion, it would be denied. “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, but shall not include any matters of

fact not offered on the prior motion.” CPLR 2221(d)(2). “Reargument is not designed to afford the unsuccessful party successive opportunities to reargue issues previously decided or to present arguments different from those originally asserted.” *William P. Pahl Equip. Corp. v Kassis*, 182 AD2d 22, 27 (1st Dept 1992) (internal citations omitted). “A motion for leave to reargue pursuant to CPLR 2221 is addressed to the sound discretion of the court.” *Id.*

Gateway’s reargument motion fails to identify any “matters of fact or law ... overlooked or misapprehended by the court in determining the prior motion,” as is required under CPLR 2221(d)(2). Rather, Gateway merely rehashes legal arguments previously asserted and rejected on the underlying motion, which is not an appropriate basis for granting reargument under CPLR 2221(d). Accordingly, it is hereby

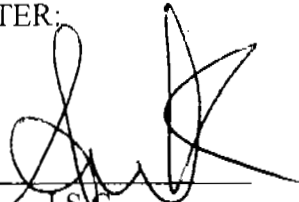
ORDERED that the motion of defendant Gateway Demolition Corp. for leave to reargue its motion for summary judgment is denied.

Dated: September 23, 2011

FILED

SEP 26 2011

**NEW YORK
COUNTY CLERK'S OFFICE**

ENTER:


J.S.C.