

**137 Duane Condo, LLC v Wallin**

2012 NY Slip Op 33298(U)

January 6, 2012

Sup Ct, NY County

Docket Number: 113029/02

Judge: Saliann Scarpulla

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

**SALIANN SCARPULLA**

PART 19

Index Number : 113029/2002  
137 DUANE CONDO, LLC  
vs  
WALLIN, AMY  
Sequence Number : 024  
REARGUMENT/RECONSIDERATION

INDEX NO \_\_\_\_\_  
MOTION DATE \_\_\_\_\_  
MOTION SEQ NO \_\_\_\_\_  
MOTION CAL NO \_\_\_\_\_

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

	PAPEERS 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

~~motion and cross motion are decided in accordance with accompanying memorandum decision.~~

**FILED**

JAN 11 2012

NEW YORK  
COUNTY CLERK'S OFFICE

Dated: 1/6/12

*Saliann Scarpulla*  
J.S.C.

**SALIANN SCARPULLA**

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

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASONS:

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: CIVIL TERM: PART 19

-----X  
137 DUANE CONDO, LLC and  
DUANE THOMAS, LLC,

Plaintiffs,  
-against-

Index No.: 113029/02  
Submission Date: 10/26/11

AMY WALLIN,

**DECISION AND ORDER**

Defendant.

-----X  
For Plaintiff: Defendant, *pro se*:  
Borah Goldstein Altschuler Amy Wallin  
Nahins & Goidel, PC 137 Duane Street, #2B  
377 Broadway, 6<sup>th</sup> Floor New York, NY 10013  
New York, NY 10013

Eileen Steginsky, *pro se*:  
405 East 56<sup>th</sup> Street, Suite 7F  
New York, NY 10022

Papers considered in review of this motion for leave to reargue:

- Notice of Motion . . . . . 1
- Aff in Support . . . . . 2
- Reply Aff . . . . . 3

**FILED**

**JAN 11 2012**

NEW YORK  
COUNTY CLERK'S OFFICE

HON. SALIANN SCARPULLA, J.:

Defendant Amy Wallin ("Wallin") moves for leave to reargue that portion of the court's April 1, 2011 decision and order, which ordered the immediate release of \$23,060.50 held by the New York City Department of Finance ("DOF") in connection with a charging/retaining lien asserted by Wallin's former attorney Eileen Steginsky ("Steginsky"), and upon reargument granting the immediate release of all fund held by the

DOF in connection with the charging lien, plus accrued interest, if any, less lawful fees, to Wallin, pursuant to the February 8, 2010 settlement of the underlying action.

Wallin previously moved, by order to show cause, to vacate the retaining and charging lien asserted by Steginsky, her former counsel. The motion, and underlying action, were before justice Carol R. Edmead. Justice Edmead refused herself, and the motion was reassigned to me. The underlying action settled, leaving only the motion to vacate the lien.

Wallin and Steginsky appeared before me on the motion to vacate the lien on October 10, 2010, at which time I issued an order allowing Steginsky an additional twenty-five (25) days to submit opposition and/or a cross-motion to the order to show cause, and Wallin twenty-five(25) days to serve rely and/or opposition to the contemplated cross-motion, at which point the motion was to be marked submitted.

On April 1, 2011, having received neither opposition to Wallin's order to show cause, nor a cross-motion, I granted Wallin's order to show cause on default, and directed the immediate release of \$23,060.50, held by the DOF to Wallin.

Wallin now moves for leave to reargue the portion of the April 1, 2011 decision and order which ordered the immediate release of \$23,060.50 held by the DOF, and upon reargument grant the immediate release of all funds held by the DOF in connection with the charging lien. Wallin asserts that the court overlooked or misapprehended the amount of the funds being withheld from Wallin as a result of Steginsky's lien, and that

Wallin is entitled to all of the funds pursuant to the February 8, 2010 settlement of the underlying action.

Wallin filed this motion to reargue on or about April 11, 2011. On June 1, 2011, I adjourned the motion to July 27, 2011. I also ordered that Steginsky had until June 17, 2011 to serve a opposition and/or a cross-motion, and that Wallin shall serve her answer/reply by July 8, 2011, and a reply to the cross-motion, if any, by July 22, 2011. I further ordered there would be no further adjournments.

Wallin asserts that she has received no opposition or cross-motion from Steginsky, but out of an abundance of cause, has submitted "reply" papers.

Pursuant to CPLR 2221(d)(2), a motion to reargue must "be based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion." *Mangine v. Keller*, 182 A.D.2d 476, 477 (1st Dep't 1992). Here, Wallin properly argues that the settlement in the underlying action provides that

Plaintiff will pay \$53,000 and waive a year's worth of rent (\$14,400) totaling \$67,400 as follows:

- (a) \$27,600 being held in Court shall be released to the Defendant (of which \$2400 is excess monies belonging to the Defendant)
- (b) The remainder \$41,200, shall be paid to Defendant or such person as Defendant designates in writing pursuant to the CPLR.<sup>1</sup>

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<sup>1</sup> The Court notes that the \$27,600 in subsection (a) and \$41,200 in subsection (b) total \$68,880, and not \$67,400, as stated in the settlement.

Wallin further states that due to Steginsky's lien, plaintiff 137 Duane Condo LLC paid all the funds to the Court and not to Wallin. Wallin explains that in the April 11, 2011 decision and order, the Court misapprehended the total amount of the funds held by the DOF. The \$24,060.50 ordered released in the April 11, 2011 decision and order erroneously refers to only the amount that had been previously requested and denied in a hearing on a TRO before Justice Edmead on March 29, 2010.

Accordingly, Wallin's motion for leave to reargue is granted, on default, and on reargument, the full amount of monies held by the DOF will be released to her.

In accordance with the foregoing, it is

ORDERED that the motion of defendant Amy Wallin for leave to reargue that portion of this Court decision and order of April 1, 2011, which ordered the immediate release of \$23,060.50 held by the New York City Department of Finance in connection with the charging/retaining lien asserted by Eileen Steginsky is granted on default; and it is further

ORDERED that, upon reargument, defendant Amy Wallin's motion for an order vacating the charging/retaining lien asserted by attorney Eileen Steginsky in connection with furnishing legal services to defendant Amy Wallin in this action is granted on default; and it is further

ORDERED that, upon presentment of a copy of this order with notice of entry to non-party New York City Department of Finance, that entity is directed to turn over to

defendant Amy Wallin all of the funds being held in connection with this action, less any appropriate fees.

This constitutes the decision and order of the Court.

Dated: New York, New York  
January 6, 2012

ENTER:

  
Saliann Scarpulla, J.S.C.

**FILED**

JAN 11 2012

NEW YORK  
COUNTY CLERK'S OFFICE