

Teague v Senno-James
2013 NY Slip Op 32422(U)
October 3, 2013
Supreme Court, Putnam County
Docket Number: 1319-2011
Judge: Lewis J. Lubell
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SC 11/18/13 @ 9:30 AM

To commence the 30 day statutory time period for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties

**SUPREME COURT OF THE STATE of NEW YORK
COUNTY OF PUTNAM**

-----X
NANCY TEAGUE,

Plaintiff,

-against -

NANCY J. SENNO-JAMES, INTEGRITY
HOME INSPECTION COMPANY,
JOHN PETRILLO and CENTURY 21 VJF
REALTY, INC.,

Defendants.

-----X
JOHN PETRILLO and CENTURY 21 VJF
REALTY INC.,

Third-Party Plaintiffs,

- against -

JOAN REINHARDT, individually, and
COLDWELL BANKER FOWKES REALTY, INC.,
FOWKES REALTY INC.,

Third-Party Defendants.

-----X
LUBELL, J.

DECISION & ORDER

Index No. 1319-2011

Sequence No. 4

The following papers were considered in connection with this motion by plaintiff for an Order pursuant to CPLR 2221(d) and (e) for leave to reargue and renew plaintiff's prior motion for an Order pursuant to CPLR 3025(b) for leave to amend the Verified Complaint to add as a party defendant Joseph Salvati and add an additional Cause of Action regarding violations of Article 12 of the New York State Navigation Law, and for such other and further relief as this Court deems just and proper.

PAPERS**NUMBERED**

NOTICE OF MOTION/AFFIRMATION/EXHIBITS A-N	1
AFFIRMATION IN OPPOSITION/EXHIBIT A-B	2
REPLY AFFIRMATION	3
AFFIRMATION IN OPPOSITION/EXHIBIT A	4

This is an action sounding in negligence, breach of contract and fraudulent representation against the various defendants herein named brought in connection with plaintiff's purchase of the single-family residence located at 23 Birch Drive, Brewster, New York, 10509 (the "Premises").

By way of its February 11, 2013, Decision & Order, the Court denied plaintiff's motion for leave to serve and file an amended verified complaint to add one Joseph Salvati as a defendant and to add an additional cause of action under the Navigation Law due to a lack of the requisite evidentiary showing.

Upon ruling as such, the Court noted that

. . . the sole basis for the addition of Joseph Salvati as a defendant is plaintiff's conclusory claim through her attorney's (twelve paragraph, two and a half page) affirmation that "[d]ocuments produced [during discovery] clarify and establish the status of Defendant Joseph Salvati and Integrity Home Inspection Company requiring the addition of Joseph Salvati as a party Defendant."

In addition,

[s]upport for the addition of a Navigation Law cause of action is just as curt and uninformative. More precisely, plaintiff merely indicates, through counsel: "In addition, documentation produced confirms that the contaminations on the premises fall within Article 12 of the New York State Navigation Law."

The Court further found that plaintiff had "failed to address in the first instance, let alone establish, a reasonable excuse for

any delay in making the motion and the lack of prejudice to defendants (Sidor v. Zuhoski, 257 A.D.2d 564 [2d Dept., 1999] citing Caruso v. Anpro, Ltd., 215 A.D.2d 713; Pellegrino v. New York City Tr. Auth., 177 A.D.2d 554, 557).

Now upon motion for leave to "reargue and renew", neither separately identified nor separately supported (see, CPLR 2221[f][a combined motion for leave to reargue and leave to renew *shall identify separately and support separately* each item of relief sought), plaintiff reapplies to amend her pleadings.

Upon examination of the moving papers, the Court finds that they are essentially in the nature of renewal and, accordingly, the Court will treat them as such.

The well-settled law applicable to motions for leave to renew is well summarized in Deutsche Bank Trust Co. v. Ghaness, (100 AD3d 585 [2d Dept 2012]) as follows:

A motion for leave to renew must be based upon new facts, not offered on the original motion "that would change the prior determination" (CPLR 2221 [e] [2]; see Rowe v. NYCPD, 85 AD3d 1001, 1003 [2011]; Development Strategies Co., LLC, Profit Sharing Plan v. Astoria Equities, Inc., 71 AD3d 628 [2010]). The new or additional facts either must have not been known to the party seeking renewal or may, in the Supreme Court's discretion, be based on facts known to the party seeking renewal at the time of the original motion (see Dervisevic v. Dervisevic, 89 AD3d 785, 786-787 [2011]; Rowe v. NYCPD, 85 AD3d at 1003). *However, in either instance, a "reasonable justification" for the failure to present such facts on the original motion must be presented* (CPLR 2221 [e] [3]) [EMPHASIS ADDED].

(Deutsche Bank Trust Co. v. Ghaness, 100 AD3d at 585-686).

Here, whether or not at the time of the original motion plaintiff knew or should have known of the existence of the facts now sought to be advanced, the Court finds that, in any event, she

has failed to set forth "reasonable justification as to why [s]he failed to submit this information in the first instance" (id at 686, citing Dervisevic v. Dervisevic, 89 AD3d at 786-787; Rowe v. NYCPD, 85 AD3d at 1003). More precisely, plaintiff's proffered reason, "It appears that plaintiff's prior motion omitted certain facts as counsels office staff was working at various computers off site due to technical problems after 'Hurricane Sandy'" (Affirmation in Support of Judith Reardon, Esq., dated March 12, 2013) does not even marginally meet the requirement for the presentation of a "reasonable justification" for the failure to have presented such facts upon the original application.

To the extent plaintiff seeks reargument, the motion is denied as the motion cannot properly be viewed as one for reargument and, in any even, for the failure of movant to have separately identified and separately supported any claim to reargument (see, CPLR 2221[f], supra).

Based upon the foregoing, it is hereby

ORDERED, that the motion be and is hereby denied.

The parties are directed to appear before the Court for a Status Conference at 9:30 A.M. on November 18, 2013.

The foregoing constitutes the Opinion, Decision and Order of the Court.

Dated: Carmel, New York
October 3, 2013

S/

HON. LEWIS J. LUBELL, J.S.C.

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