At an IAS Term, Part 81 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 25th day of November, 2013.

P R E S E N T:
HON. CARL J. LANDICINO,
Justice.

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JOHN BARRY, RAYMOND M. WEINSTEIN as the ADMINISTRATOR OF THE ESTATE OF JOHN J. HOLUB, RAYMOND M. WEINSTEIN and MARSHALL S. WEINSTEIN,

Plaintiffs,

Index No.:14092/2012

DECISION AND ORDER

- against -

CADMAN TOWERS, INC., THE CITY OF NEW YORK DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT, CORPORATION COUNSEL OF THE CITY OF NEW YORK, and in their official and individual capacities MIRIAM M. BREIER, FRANCIS LIPPA, AMY J. WEINBLATT, and NORMAN CORENTHAL,

Defendants.

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Recitation, as required by CPLR §2219(a), of the papers considered in the review of this motion:

	Papers Numbered
Notice of Motion/Cross Motion and Affidavits (Affirmations) Annexed.....	1/2,
Opposing Affidavits (Affirmations).....	3, 4
Reply Affidavits (Affirmations).....	

Upon review of the papers in this matter and after oral argument, the Court finds as follows:

The instant action results from allegations of discrimination prior to March 29, 2004. At the time, the tenant of record for the subject premises located at Cadman Towers was John Holub. At the time, Holub resided with Plaintiff John Barry, who was his partner and caretaker. The Plaintiffs John Barry, Raymond M. Weinstein as the Administrator of the Estate of John J. Holub and individually and Marshall S. Weinstein (hereinafter "the Plaintiffs") allege that Defendants Cadman Towers, Inc. discriminated against Plaintiffs Holub and Barry by not providing them an opportunity to avoid eviction by "curing" their status in 2004 as non-primary residents. Specifically, because tenant Holub had resided in California for a period of time during the prior year, he had violated the terms of his lease and was subject to eviction.

The Plaintiffs now move for an order pursuant to CPLR §2221 granting their motion to reargue the Decision and Order of this Court dated April 4, 2013. That Decision and Order dismissed the instant proceeding as time barred. The Court stated in the underlying Decision and Order that "even if the discrimination claim somehow were preserved by the counter-claims made as part of the Housing Court proceeding (L&T Index No. 66185/2009), these claims would have been made more than three years after the alleged acts that took place in 2004 and 2005 and would have been time barred by the time the Housing Court proceeding was brought in 2009 as well."

In the instant motion, the Plaintiffs argue that the discriminatory acts upon which the instant proceeding is based continued past 2005. The Plaintiffs refer in the instant motion made pursuant to CPLR §2221 to discriminatory acts that occurred in 2008, 2009, 2011, and 2012. Specifically, the Plaintiffs argue that those acts included predicate notices sent in 2008 and 2009 after Holub had passed away in 2005, as well as failure to provide Plaintiff John Barry an opportunity to cure his non-primary resident status. Moreover, the Plaintiffs argue that the claims of discrimination made by the Plaintiffs in the instant action were timely in April 19, 2009 when Cadman Towers filed a prior Housing Court petition. Finally, the Plaintiffs argue that the claims in the instant proceeding are timely since they were initially counterclaims in the underlying Housing Court proceeding that were severed by Court Order. The Plaintiffs argue that the claims in the instant proceeding were timely in the underlying Housing Court proceeding as per CPLR 203(d).

"A motion for reargument is addressed to the sound discretion of the court and may be granted upon a showing that the court overlooked or misapprehended the relevant facts or misapplied any controlling principle of law." *McGill v. Goldman*, 261 A.D.2d 593, 594, 691 N.Y.S.2d 75, 76 [2nd Dept,1999]. A motion for leave to reargue is not an opportunity for a litigant to reargue issues previously addressed and decided. *See Anthony J. Carter, DDS, P.C. v. Carter*, 81 A.D.3d 819, 820, 916 N.Y.S.2d 821 [2nd Dept, 2011].

"'As a general principle, the statute of limitations begins to run when a cause of action accrues' (*Hahn Automotive Warehouse, Inc. v. American Zurich Ins. Co.*, 18 N.Y.3d 765, 770, 944 N.Y.S.2d 742, 967 N.E.2d 1187), or, in other words, 'when all of the facts necessary to the cause of action have occurred so that the party would be entitled to obtain relief in court.'" *QK Healthcare, Inc. v. InSource, Inc.*, 108 A.D.3d 56, 66, 965 N.Y.S.2d 133, 142 (2013), quoting *Aetna Life & Cas. Co. v. Nelson*, 67 N.Y.2d 169, 175, 501 N.Y.S.2d 313, 492 N.E.2d 386 [1986].

In the instant proceeding, the cause of action accrued in 2004 when Cadman Towers and HPD allegedly denied Plaintiffs Barry and Holub the opportunity to cure and informed John Holub that it would seek to terminate his tenancy. As stated in the underlying decision all the claims precede March 23, 2005, with the one possible exception of the alleged failure to provide certified transcripts on or around July 2005. The Plaintiffs' contend that subsequent Notices of Termination also denied the alleged right to cure and thereby constituted further acts of discrimination. This Court disagrees.

Generally, a discrimination claim related to an alleged right to property or employment begins to accrue when an adverse determination is made in relation thereto and is communicated to the Plaintiffs, not when administrative remedies have been exhausted. *See Civil Serv. Employees Ass'n, Inc. v. Cnty. of Nassau*, 85 A.D.3d 1080, 1082, 927 N.Y.S.2d 104, 106 [2nd Dept, 2011]. In matters where there is an allegation that the Fair Housing Act has been violated, accrual of the statute of limitations can be postponed only if Plaintiff can only show that the Defendants practices constituted a "continuing violation" of their rights. *See Clement v. United Homes, LLC*, 914 F. Supp. 2d 362, 373 [E.D.N.Y. 2012]. However, in the instant proceeding, the continuing violations theory cannot be applied after the service of the Notice of Termination and the denial of any alleged right to cure. The acts described by the Plaintiffs after the initial service of the Notice of Termination in 2004 are not part of an ongoing policy of alleged discrimination but actions by the Defendants that were part of the administrative process.

Turning to the Plaintiff's motion pursuant to CPLR §2221, this Court finds that its Decision and Order in the instant proceeding dated April 4, 2013 did not misapprehend any relevant facts and did not misapply any controlling principle of law. This is because the underlying decision simply held that the claims of discrimination were time barred at the time that the petition for the prior Housing Court proceeding was served. Further, the claims in the instant proceeding are not timely pursuant to CPLR 203(d) because they do not constitute an "equitable recoupment" but are independent claims of discrimination. As a result, the discrimination claims in the instant proceeding do not benefit from CPLR §203(d) since they were not timely when the 2009 Housing Court Proceeding was initiated.

Based on the foregoing, it is hereby ORDERED as follows:

The Plaintiffs' motion pursuant to CPLR §2221 is denied.

This constitutes the Decision and Order of the Court.

Date: November 25, 2013

ENTER:

Carl J. Landicino
J.S.C.

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