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| <b>Prudenti v County of Suffolk</b>                                                                                                                                                                                                                              |
| 2014 NY Slip Op 33168(U)                                                                                                                                                                                                                                         |
| November 25, 2014                                                                                                                                                                                                                                                |
| Supreme Court, Suffolk County                                                                                                                                                                                                                                    |
| Docket Number: 32551-2012                                                                                                                                                                                                                                        |
| Judge: Peter H. Mayer                                                                                                                                                                                                                                            |
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SUPREME COURT - STATE OF NEW YORK  
I.A.S. PART 17 - SUFFOLK COUNTY

*P R E S E N T :*

Hon. PETER H. MAYER  
Justice of the Supreme Court

MOTION DATE 5-20-14  
ADJ. DATE 6-3-14  
Mot. Seq. # 009 - MD; 010 - MD; 011 - MD

|                                                 |   |                                               |
|-------------------------------------------------|---|-----------------------------------------------|
| -----X                                          |   | <b>Greenberg Burzichelli Greenberg</b>        |
| ANTHONY PRUDENTI, individually and as           | : | Attorneys for Plaintiffs                      |
| President of the Suffolk County Deputy Sheriffs | : | 3000 Marcus Avenue, Suite 1W7                 |
| Police Benevolent Association, and the SUFFOLK  | : | Lake Success, New York 11042                  |
| COUNTY DEPUTY SHERIFFS POLICE                   | : |                                               |
| BENEVOLENT ASSOCIATION,                         | : | <b>Davis &amp; Ferber, LLP</b>                |
|                                                 | : | Attorneys for Deft Suffolk County PBA         |
| Plaintiff(s),                                   | : | 1344 Motor Parkway                            |
|                                                 | : | Islandia, New York 11749                      |
| - against -                                     | : |                                               |
|                                                 | : | <b>Certilman Balin Adler &amp; Hyman, LLP</b> |
| COUNTY OF SUFFOLK, STEVEN BELLONE,              | : | Attorneys for Deft Suffolk County Superior    |
| in his official capacity as County Executive of | : | Officers                                      |
| Suffolk County, the SUFFOLK COUNTY              | : | 90 Merrick Avenue, 9th Floor                  |
| LEGISLATURE, the SUFFOLK COUNTY                 | : | East Meadow, New York 11554                   |
| POLICE BENEVOLENT ASSOCIATION, INC.,            | : |                                               |
| and SUFFOLK COUNTY SHERIFF'S OFFICE,            | : | <b>Lamb &amp; Barnosky, LLP</b>               |
| VINCENT DEMARCO, in his official capacity as    | : | Attorneys for Deft County of Suffolk          |
| Sheriff of Suffolk County, and the SUFFOLK      | : | 534 Broadhollow Road, Suite 210               |
| COUNTY SUPERIOR OFFICERS ASSOCIATION:           | : | Post Office Box 9034                          |
| INC.,                                           | : | Melville, New York 11747-9034                 |
|                                                 | : |                                               |
| Defendant(s).                                   | : | <b>Bond, Schoeneck &amp; King, PLLC</b>       |
| -----X                                          |   | Attorneys for Deft Suffolk County Sheriff     |
|                                                 |   | 1010 Franklin Avenue, Suite 200               |
|                                                 |   | Garden City, New York 11530-1679              |

Upon the reading and filing of the following papers in this matter: (1) Notice of Motion by the County defendant s, dated April 9, 2014, and supporting papers; (2) Notice of Cross-Motion by the Suffolk County Superior Officers Association defendants, dated May 16, 2014, and supporting papers; (3) Notice of Motion by the Suffolk County PBA defendants, dated May 21, 2014, and supporting papers; (4) Affirmation in Opposition by the Suffolk County Sheriff's Office and Vincent DeMarco, dated May 12, 2014, and supporting papers; (5) Affirmation in Opposition by the plaintiff, dated May

13, 2014, and supporting papers; (6) Affirmation in Opposition by the plaintiff, dated May 27, 2014, and supporting papers; (7) Affirmation in Opposition by the plaintiff, dated June 2, 2014, and supporting papers; (8) Reply Affirmation by the Suffolk County PBA defendants, dated June 2, 2014, and supporting papers; (9) Reply Affirmation by the County defendants, dated May 19, 2014, and supporting papers; and now

UPON DUE DELIBERATION AND CONSIDERATION BY THE COURT of the foregoing papers, the motion is decided as follows: it is

**ORDERED** that the motion (seq. #009) by defendants, County of Suffolk, Steven Bellone and Suffolk County Legislature, and the cross-motion (seq. #010) by defendant Suffolk County Superior Officers Association, and the cross-motion (seq. #011) by defendant Suffolk County Police Benevolent Association, Inc., which seek an order, *inter alia*, vacating this Court's February 27, 2014 Order pursuant to CPLR 2221, are consolidated for purposes of this Order and are hereby denied in their entirety; and it is further

**ORDERED** that counsel for the plaintiffs shall promptly serve a copy of this Order upon counsel for all parties via First Class mail, and shall promptly thereafter file the affidavit(s) of such service with the County Clerk.

The defendants, County of Suffolk, County Executive Steve Bellone, and the Suffolk County Legislature ("County defendants") have moved the Court for an "order pursuant to CPLR 2221, vacating the prior Order of the Court dated February 27, 2014," which declared the validity of the 2011 Memorandum of Agreement ("2011 MOA") between the Suffolk County Deputy Sheriff's Police Benevolent Association ("DSPBA") and the County of Suffolk. The Order also directed the parties to proceed to arbitration as to the interpretation and implementation of the 2011 MOA. The co-defendants, Suffolk County Police Benevolent Association and Suffolk County Police Superior Officers Association have cross-moved for essentially the same relief.

More specifically, the County defendants seek relief from the February 27, 2014 Order on the grounds that the Court, in essence, granted summary judgement to the plaintiffs notwithstanding the fact that no one moved for such relief.

The Suffolk County PBA as well as the Suffolk County SOA, in their respective motions, adopt the arguments of the County defendants.

In essence, the complaint in this action sought a declaratory judgment asking the Court to declare the validity of the 2011 MOA between the plaintiff DSPBA and the County of Suffolk. The County defendants alleged that the 2011 MOA was invalid as it never received legally required legislative approval. Throughout the motion practice, all parties agreed that the pivotal issue was whether the 2011 MOA with the DSPBA was or was not valid and that this question was a matter of law for the Court. The parties argued the motions with a view towards obtaining a judicial determination of this question.

Although the motions are styled as those seeking relief pursuant to CPLR 2221, they articulate the



arguments as one seeking a vacatur of this Court's prior Order. Vacatur of a Court's Order is covered by CPLR 5015, which must be premised on evidence of (1) excusable default and the assertion of a meritorious defense, (2) newly discovered evidence (3) fraud, misrepresentation (4) lack of jurisdiction (5) reversal, modification or vacatur of a prior order or judgment on which it is based. None of these grounds have been presented here. In as much as the County has argued that the law was misapplied, the Court will treat this as a motion to reargue pursuant to CPLR 2221.

In relevant part, CPLR 2221 (d)(2) requires that a motion for leave to reargue "shall be 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." A motion for leave to reargue is not designed to provide an unsuccessful party with new opportunities to present arguments different from those originally presented (*see Hague v Daddazio*, 84 AD3d 940, 922 NYS2d 548 [2<sup>nd</sup> Dept 2011]; *Mazinov v Rella*, 79 AD3d 979, 912 NYS2d 896 [2d Dept 2010]; *Pryor v Commonwealth Land Title Ins Comp.* 17 AD3d 434, 793 NYS2d 452 [2d Dept 2005]; *Amato v Lord & Taylor, Inc.* 10 AD3d 374, 781 NYS2d 125 [2d Dept 2004]).

Upon review of all submissions of the parties, both in support of and in opposition to the instant motions, as well as that which was tendered by the parties in support and in opposition to the judgment for which reargument is sought, the Court concludes that the movants have failed to satisfy the requisite showing of entitlement under CPLR 2221 for either reargument or renewal. In fact, many of the factual assertions in support of the relief sought by the County defendants are completely contradicted by the record. For example, on July 23, 2013 during oral argument, the record reveals the following:

THE COURT: ... what are the arguments you are making essentially as to why this stay should issue and arbitration shouldn't go forward?

MR. MARKOWITZ: Well, one of the central issues in the dispute between the parties...the memorandum of agreement from 2011 which is the subject of the controversy--is whether or not that Memorandum of Agreement was validly entered into....

THE COURT: That is the question. Your position is that you seek judicial determination of that question? (The validity of the 2011 Memorandum of Agreement)

MR. MARKOWITZ: Well, not only do we seek a judicial determination of that question, but the Union also seeks a judicial determination of that question....We've requested that the Court determine that the Agreement is invalid. But the issue of whether the Agreement is *valid or invalid* is one that both parties presented for

a determination in a judicial forum, as opposed to arbitration.

It seems to us that that is a threshold question that ought to be determined before an arbitration proceeds, and only in the event that the Court determines that the agreement is valid should there be an arbitration.

Upon completion of the oral arguments on July 23, the Court outlined its plan concerning the motions:

THE COURT: ...this is what I'm going to propose. The Court is going to Reserve decision on the question of the *validity of the 2011 Contract*, as well as the other motions in the case, and I'm Going to direct that you be back here on October 9<sup>th</sup>, and I will give you a decision on *all of it*, on the motions...I will make determinations when you return here on October 9<sup>th</sup> dispositive of all the material issues raised in the motions. If there is a determination in favor of the plaintiffs, then, One, you'll be able to follow one course of action: and, If not, well, we'll see what transpires after that...My Intention...you will have the Court's decision on that relief which has been sought ...

On October 9, 2013 the parties were again on the record with the Court, which ruled on a number of motions and continued to reserve on the last, but most important remaining issue in the case, the validity of the 2011 MOA with the DSPBA. Page 22 and 23 of that transcript contain the following:

THE COURT: Essentially ,the Court needs to deal with the complaint, and upon its conclusion, will make a determination—upon its conclusion, the parties will be directed as to how to proceed.

There was no objection raised to this procedure. There was no request to submit additional evidence by any party, no request for discovery or trial. Indeed, throughout the proceedings the County defendants urged the Court to resolve the issue of the validity of the 2011 Memo of Agreement with the DSPBA as a matter of law, as such a determination in their favor would moot any arbitration.

Accordingly, the instant motions are denied. All other issues raised in the motions before the Court are similarly without support in the record and are, therefore, without merit (*See Collins v Stone*, 8 AD3d 321, 778 NYS2d 79[2d Dept 2004]; *Hart v City of New York*, 5 AD3d 438, 772 NYS2d 574 [2d Dept 2004]). Any other requested relief not specifically addressed herein is deemed denied.

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This constitutes the Order of the Court.

Dated: November 25, 2014

  
PETER H. MAYER, J.S.C.

☐ FINAL DISPOSITION

☒ NON FINAL DISPOSITION