

**Board of Mgrs. of the Soundings Condominium v  
Foerster**

2014 NY Slip Op 33703(U)

October 31, 2014

Supreme Court, New York County

Docket Number: 153150/2014

Judge: Nancy M. Bannon

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY

PRESENT: Hon. Nancy M. Bannon  
*Justice*

PART 42

BOARD OF MANAGERS OF THE  
SOUNDINGS CONDOMINIUM

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MOTION DATE 9/23/14

SONJA FOERSTER

MOTION SEQ. NO. 002

The following papers, numbered 1 to 3, were read on the defendant's motion to reargument and renewal.

Notice of Motion/Order to Show Cause – Affirmation – Affidavit(s) – Exhibits – Memorandum of Law-----	No.(s). <u>1</u>
Answering Affirmation(s) – Affidavit(s) – Exhibits -----	No.(s). <u>2</u>
Replying Affirmation – Affidavit(s) – Exhibits -----	No.(s). <u>3</u>

In this action to recover damages for, *inter alia*, fraud, the defendant moves pursuant to CPLR 2221 to reargue and renew her motion for summary judgment dismissing the complaint, which this court, by an order dated August 7, 2014, denied it its entirety. For the reasons set forth below, the defendant's motion is denied.

The defendant failed to demonstrate that the court overlooked or misapprehended any relevant matters of fact or law in determining the prior motion. See CPLR 2221(d)(2); Pro Brokerage, Inc. v Home Insurance Co., 99 AD2d 971 (1<sup>st</sup> Dept. 1984). The purpose of a motion to reargue is not "to serve as a vehicle to permit the unsuccessful party to argue once again the very questions previously decided." See Pro Brokerage, Inc. v Home Insurance Co., 99 AD2d 971, quoting Foley v Roche, 68 AD2d 558 (1<sup>st</sup> Dept. 1979). Accordingly, the defendant's motion for reargument is denied.

The defendant failed to present any "new facts not offered on the prior motion that would change the prior determination" and a "reasonable justification for the failure to present such facts on the prior motion." CPLR 2221(e)(2), (3); Luna v Port Authority of New York and New Jersey, 21 AD3d 324 (1<sup>st</sup> Dept 2005). "A motion for leave to renew is not a second chance freely given to parties who have not exercised due diligence in making their first factual presentation." Joseph v Simmons, 114 AD3d 644 (2d Dept. 2014), quoting Elder v Elder, 21 AD3d 1055 (2d Dept. 2005). As the defendant failed to submit any new material facts and a reasonable justification for not presenting them on the prior motion, the defendant's motion to renew is denied.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Accordingly, it is

ORDERED that the defendant's motion pursuant to CPLR 2221 is denied, and it is further,

ORDERED that the Clerk shall enter judgment accordingly.

This constitutes the Decision and Order of the court.

Dated: October 31, 2014

 JSC

**HON. NANCY M. BANNON**

- 1. Check one: .....  CASE DISPOSED  NON-FINAL DISPOSITION
- 2. Check as appropriate: MOTION IS:  GRANTED  DENIED  GRANTED IN PART  OTHER
- 3. Check as appropriate: .....  SETTLE ORDER  SUBMIT ORDER
- DO NOT POST  FIDUCIARY APPOINTMENT  REFERENCE