

<b>Board of Mgrs. of Beacon Tower Condominium v 85 Adams St., LLC</b>
2014 NY Slip Op 33713(U)
September 10, 2014
Supreme Court, Kings County
Docket Number: 28165/09
Judge: Karen B. Rothenberg
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At an IAS Term, Part 35 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 10<sup>th</sup> day of September, 2014.

PRESENT:

HON. KAREN B. ROTHENBERG,  
Justice.

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BOARD OF MANAGERS OF BEACON TOWER  
CONDOMINIUM,

Plaintiff,

- against -

Index No. 28165/09

85 ADAMS STREET, LLC, 85 ADAMS STREET  
MANAGERS, LLC, BOYMEDGREEN FAMILY LLC,  
AI PROPERTIES AND DEVELOPMENTS (USA) CORP.,  
JESHAYAHU BOYMELGREEN, THE CORCORAN GROUP  
BROOKLYN LANDMARK LLC, CETRA/RUDDY  
INCORPORATED, JOHN A. CETRA ARCHITECTURE,  
P.C., JOHN A. CETRA, GOLDSTEIN ASSOCIATES  
CONSULTING ENGINEERS, PLLC, KEITH LOO,  
CARETSKY & ASSOCIATES, P.C. and JAN M. GASPAREC,

Defendants.

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The following papers numbered 1 to 6 read herein:

	<u>Papers Numbered</u>
Notice of Motion/Order to Show Cause/ Petition/Cross Motion and Affidavits (Affirmations) Annexed _____	_____ 1-2 _____
Opposing Affidavit (Affirmation) _____	_____ 3-5 _____
Reply Affidavit (Affirmation) _____	_____ 6 _____

Upon the foregoing papers, defendants, 85 Adams Street, LLC, 85 Adams Street Managers, LLC, Boymelgreen Family LLC, AI Properties and Developments (USA) Corp. and Jeshayahu Boymelgreen (Moving Defendants), move for an order, pursuant to CPLR

2221, granting them leave to reargue a prior motion that resulted in a June 13, 2013 Order (2013 Order), which denied their motion to dismiss the complaint, and, upon reargument, granting their motion, pursuant to CPLR 3012 (b) and CPLR 3211 (a) (1), (a) (3), (a) (7) and (a) (8).

### *Background*

This action involves alleged defects in the construction of the Beacon Tower Condominium, a 23-story building located at 85 Adams Street in Brooklyn (Condominium). The Condominium was developed by the sponsor, 85 Adams Street, LLC (Sponsor), pursuant to an offering plan that was filed with the New York Attorney General's office.

The Board of Managers of Beacon Tower Condominium (Board) commenced this action against the Moving Defendants (Sponsor and its alleged alter egos) and others (architects and engineers) on November 6, 2009 by filing a summons with notice.

The parties engaged in protracted settlement talks before pleadings were served. Thereafter, the court (Kramer, J.), by a July 2, 2012 order, granted the Board's oral application for an extension of time until July 31, 2012 within which to serve the complaint. The Board, in accordance with the court's order, served the complaint on July 31, 2012.

The complaint alleges causes of action for breach of contract, fraud in the inducement, negligent misrepresentation, violations of General Business Law (GBL) §§ 349 and 350, fraudulent conveyance in violation of New York Debtor and Creditor Law (DCL) §§ 273, 274 and 276 and violations of the Racketeer Influenced and Corrupt Organizations Act (RICO).

Moving Defendants answered the complaint on or about September 7, 2012, denying the material allegations asserted therein and asserting sixteen affirmative defenses.

***Pre-Discovery Motion To Dismiss***

Two months later, on November 6, 2012, Moving Defendants made a pre-discovery motion for an order dismissing the complaint for lack of personal jurisdiction and the Board's alleged failure to timely serve the complaint. Moving Defendants also moved to dismiss: (1) the first through fourth and thirteenth through sixteenth causes of action (by which the Board sought to pierce the Sponsor's corporate veil) for failure to state a cause of action against the non-Sponsor defendants; (2) the second, third, fourth and thirteenth causes of action as duplicative of the Board's breach of contract claim; (3) the third, fourth and thirteenth causes of action on the ground that the Board lacks standing to assert those claims; (4) the second cause of action on the ground that the Board is not entitled to the Common Law Implied Housing Merchant Warranty under the Offering Plan; (5) the third, fourth, thirteenth, fourteenth, fifteenth and sixteenth causes of action for failure to state a cause of action against all of the Moving Defendants; (6) the thirteenth cause of action on the ground that GBL §§ 349 and 350 are inapplicable; and (7) the seventeenth and eighteenth causes of action for failure to state a cause of action under RICO.

***The 2013 Order***

After oral argument, this court issued the 2013 Order on June 13, 2013, denying Moving Defendants' dismissal motion with leave to renew after the conclusion of discovery.

### ***Instant Motion To Reargue***

Moving Defendants now move, pursuant to CPLR 2221, for leave to reargue their dismissal motion on the ground that “the Court failed to consider Defendants’ reply papers,”<sup>1</sup> which they filed with the Court on the June 13, 2013 return date of the underlying motion. Moving Defendants further contend that the 2013 Order is “devoid of any legal conclusion supporting the Court’s decision” and that this is “indicative of the Court overlooking certain facts and misapprehending controlling case law . . . .”<sup>2</sup>

### ***Discussion***

CPLR 2221 (d) (2) provides that a motion to reargue “shall be based 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.” “Motions for reargument are addressed to the sound discretion of the court which decided the prior motion and may be granted upon a showing that the court overlooked or misapprehended the facts or law or for some other reason mistakenly arrived at its earlier decision” (*Matter of New York Cent. Mut. Ins. Co. v Davalos*, 39 AD3d 654, 655 [2007], quoting *Howell Co. v S.A.F. La Sala*, 36 AD3d 653 [2007]; accord *Marini v Lombardo*, 17 AD3d 545, 546 [2005]). “Reargument is not designed to afford the unsuccessful party successive opportunities to reargue issues previously decided” (*Pro Brokerage v Home Ins. Co.*, 99

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<sup>1</sup> See the September 4, 2013 moving affirmation of Jonathan A. Grippo, Esq. at ¶ 14.

<sup>2</sup> See the Moving Defendants’ September 4, 2013 Memorandum of Law in support of their motion to reargue (Moving Defendants Moving Memorandum) at 1.

AD2d 971); (*Pahl Equip. v Kassis*, 182 AD2d 22, 27 [1992]).

Here, Moving Defendants have failed to demonstrate that this court either overlooked or misapprehended material or relevant facts, or misapplied any controlling principle of law warranting leave to reargue their motion (*Foley v Roche*, 68 AD2d 558, 567 [1979]). Instead, Moving Defendants contend that leave to reargue should be granted simply because the 2013 Order was issued without considering their reply papers, yet they do not specify what, if anything, was overlooked. Moving Defendants further contend that leave to reargue is warranted because the 2013 Order is "devoid of any legal conclusion" and that "[t]he lack of legal analysis is indicative of the Court overlooking certain facts and misapprehending controlling case law set forth in Defendants' motion."<sup>3</sup> However, the Moving Defendants' instant motion to for leave to reargue merely reiterates the facts and arguments that they previously raised on their underlying dismissal motion and fails to identify any facts or law that were overlooked by the court. Accordingly, Moving Defendants' motion for leave to reargue is denied.

This constitutes the decision and order of the court.

E N T E R,

J. S. C.

<sup>3</sup> See Moving Defendants Moving Memorandum at 1.

**FILED**

SEP 25 2014

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