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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: Part 50

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UNITRIN AUTO AND HOME INSURANCE COMPANY
As subrogee of JEFFERY KLEIN and CARA KLEIN

Plaintiffs,

Index No. 157680/2013

-against-

RUDIN MANAGEMENT COMPANY, INC., RUDIN MANAGEMENT COMPANY, INC., as agents for 215 EAST 68th STREET, L.P., 215 EAST 68th STREET, L.P., and 215 EAST 68th STREET, LLC,

Defendants.

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Peter H. Moulton, J.S.C.:

In this subrogation action arising out of an alleged burglary that occurred at 215 East 68th Street in Manhattan between August 22 and September 1, 2008, defendants moved by motion dated February 24, 2014, to dismiss plaintiff's claims on the grounds that defendants did not have notice of plaintiff's intention a pursue a subrogation claim on behalf of JEFFERY and CARA KLEIN prior to settling the KLEINS' uninsured claims. Defendants therefore claimed that a release signed with the KLEINS extinguishes plaintiff's claim.

By decision dated January 28, 2015, this court found that defendants had failed to meet their burden of showing that they were entitled to dismissal of the pleadings when construing all factual inferences in a light most favorable to plaintiff. In

holding as such, the court noted that an issue of material fact existed with respect to whether defendants received a lien notice letter allegedly sent by plaintiff, and whether defendants otherwise had notice of this lien from other sources, including plaintiff's attorney.

Defendants now move to reargue this court's January 28, 2015 decision. In their motion, defendants state that the court "overlooked or misapprehended controlling principles of law in determining the prior application." Specifically, defendants argue that this court overlooked the affidavit of Jerry Steinman, Senior Vice President of RUDIN MANAGEMENT, which avers that if RUDIN MANAGEMENT had received a letter informing it of plaintiff's subrogation claim, such a letter "would have been maintained by RUDIN in the course and scope of business" (see Steinman Aff., Ex. C, Defendant's Reply Affirmation, at ¶ 6). Without specifically stating whether or not RUDIN received the actual letter, the affidavit goes on to make the general claim that RUDIN was at no time informed of plaintiff's claim (id. at ¶ 7). Notably, in spite of defendants assertions, this affidavit raised for the first time in its Reply Affirmation, does not explicitly dispute plaintiff's claim that defendants were sent, and are presumed to have received, plaintiff's letter informing them of the subrogation claim. Instead, the affidavit focuses on RUDIN's procedures when a letter is received, without specifying that those procedures were followed

in this particular case.

In stating that the court overlooked the Steinman affidavit, defendants misstate this court's prior ruling. The court's prior ruling stated that defendants had submitted "no information stating that they did not receive the October 29, 2008..." letter. Notwithstanding the fact that the Steinman affidavit fails to categorically put that issue to rest, the court made no finding that the defendants did receive the letter, or any finding that they did not. Instead, the court's prior ruling addressed the crux of defendants' prior motion which focused on the weight to afford Ms. Grevelding's submissions in light of an apparent discrepancy in her signature. The court pointed out in its decision that an assessment of Ms. Grevelding's credibility at the expense of evidence adduced in plaintiff's favor as the non-movant on a motion to dismiss would be improper as a mater of law (see Gonzalez v. Gonzalez, 262, AD2d 281, 282 [2d Det. 1999]).

Additionally, as plaintiff points out, even if the court had mistakenly assumed acknowledgment of the letter on defendants' part when making its ruling, such a finding would have been immaterial to its ultimate decision. Drawing all inferences in a light most favorable to the non-moving party, as is required on a motion to dismiss, the court held that plaintiff had produced evidence that it mailed a letter to the defendants, and had established a viable cause of action with respect to its subrogation rights asserted on

behalf of the Kleins. The weight and relevance to afford any evidence that defendants may proffer to rebut that finding will be rightfully determined at trial.

Moreover, defendants attempts, for the first time, to raise the issue of a subrogation waiver clause in the applicable lease as a bar to plaintiff's claim is improper on a motion for leave to reargue. Reargument of a motion is not available where a party seeks to advance new arguments which it failed to previously raise (see DeSoignies v. Cornasesk House Tenants' Corp., 21 AD3d 715, 800 [1st Dept. 2005]). A motion for leave to reargue is not designed to provide an unsuccessful party with successive opportunities to present arguments different from those originally presented (see Amato v. Lord & Taylor, Inc., 10 AD3d 374 [2d Dept. 2004]).

In sum, defendants have failed to demonstrate that this court "overlooked or misapprehended the relevant facts, or misapplied any controlling principle of law" (Foley v. Roche, 68 AD2d 558, 567 [1979]). Accordingly, defendants have failed to state grounds for the instant motion, including any grounds based upon new facts unknown to them when the initial motion was made(see William P. Pahl Equip. Corp. v. Kassis, 182 AD2d 22, lv. denied 80 NY2d 1005 [1st Dept. 1992]; see also Forteau v. Westchester County, 227 AD2d 245 [1st Dept. 1996]). The court did not overlook any controlling law when rendering its decision. Defendants motion merely seeks to revisit arguments previously raised and rejected in the court's

prior Decision and Order dated January 28, 2015. Additionally, as noted, to the extent that defendants raise new arguments, such as an alleged subrogation waiver clause that it elected not to reveal in its initial papers motion papers, such arguments are improper on a motion for leave to reargue.

Accordingly, it is hereby

ORDERED that defendants' motion to reargue is denied.

This Constitutes the Decision and Order of the Court.

Dated: June 4, 2015

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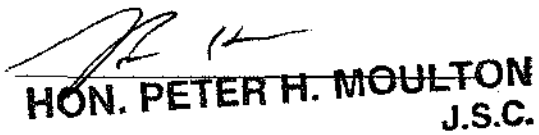

J.S.C.