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| <b>Jaybar Realty Corp. v Armato</b>                                                                                                                                                                                            |
| 2015 NY Slip Op 32929(U)                                                                                                                                                                                                       |
| May 6, 2015                                                                                                                                                                                                                    |
| Supreme Court, Westchester County                                                                                                                                                                                              |
| Docket Number: 57692/13                                                                                                                                                                                                        |
| Judge: Mary H. Smith                                                                                                                                                                                                           |
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| This opinion is uncorrected and not selected for official publication.                                                                                                                                                         |

# DECISION AND ORDER

To commence the statutory period of appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this Order, with notice of entry, upon all parties.

**SUPREME COURT OF THE STATE OF NEW YORK  
IAS PART, WESTCHESTER COUNTY**

**Present: HON. MARY H. SMITH  
Supreme Court Justice**

-----X  
**JAYBAR REALTY CORP. and JB PARKS PLACE  
REALTY, LLC,**

Plaintiffs,

**MOTION DATE: 5/1/15  
INDEX NO.: 57692/13**

-against-

**JOSEPH ARMATO, ADJUSTRITE, INC., MICHAEL  
CASTELLANO a/k/a MIKE CASTELLANO, VENETIAN  
CONTRACTING, INC., NATIONWIDE CONTRACTING  
CONSULTING, INC., CAPITAL ONE, N.A. a/k/a CAPITAL  
ONE BANK (USA), N.A. a/k/a CAPITAL ONE FINANCIAL  
CORP., SANTANDER BANK, N.A. f/k/a SOVEREIGN  
BANK, N.A.,**

Defendants.

-----X  
The following papers numbered 1 to 5 were read on this motion by plaintiff for an Order pursuant to CPLR 2221 granting limited reargument of this Court's Decision and Order, dated November 19, 2014, etc.

**Papers Numbered**

|                                                             |     |
|-------------------------------------------------------------|-----|
| Notice of Motion - Affirmation (Addona) - Exhs. (A-D) ..... | 1-3 |
| Answering Memorandum of Law .....                           | 4   |
| Replying Affirmation (Addona) .....                         | 5   |

Upon the foregoing papers, it is Ordered that this motion by plaintiff for an Order

pursuant to CPLR 2221 granting limited reargument of this Court's Decision and Order, dated November 19, 2014, to the extent only that the Court had dismissed as against defendant Santander Bank, N.A. the fourteenth and fifteenth causes of action pleading, respectively, negligent failure to investigate and negligent failure to inspect, is denied. Plaintiff has failed to demonstrate that this Court, in reaching its prior Decision and Order, had misapprehended any of the relevant facts or had misapplied any controlling principle of law. See CPLR 2221, subd. (d), par. 2; Matter of Anthony J. Carter, DDS, P.C. v. Carter, 81 A.D.3d 819, (2<sup>nd</sup> Dept. 2011); Pro Brokerage Inc. v. Home Insurance Co., Inc., 99 A.D.2d 971 (1<sup>st</sup> Dept. 1984); Foley v. Roche, 68 A.D.2d 558, 567 (1<sup>st</sup> Dept. 1979); see, also Amato v. Lord & Taylor, Inc., 10 A.D.3d 374 (2<sup>nd</sup> Dept. 2004). Reargument does not afford a party successive opportunities to reargue that which has been decided. See Matter of Anthony J. Carter, DDS, P.C. v. Carter, supra; Mazinov v. Rella, 79 A.D.3d 979 (2<sup>nd</sup> Dept. 2011); Pro Brokerage Inc. v. Home Insurance Co., Inc., supra.

Contrary to plaintiff's argument, this Court finds that it had understood all of the presenting facts and that it properly had applied the law and dismissed the challenged negligence causes of action upon its finding that any alleged negligence by Santander in failing either to have investigated the legitimacy of the payment authorization and/or to have inspected the construction work, as a matter of law, had not been the proximate cause of plaintiff's damages and had been superseded by the intentional and unforeseeable wrongful conduct of defendant Venetian Contracting, Inc. in endorsing subject checks that Santander had made payable to Jaybar and Park Place and depositing same into its account as payment for work that it in fact had not performed. The cases relied upon by plaintiffs are inapposite as they involve claims of negligence where the bank

actually had effected a withdrawal or fund transfer from one of its accounts into three new accounts it had set up (Holland v. Greater N.Y. Sav. Bank, 222 A.D.2d 654 [2<sup>nd</sup> Dept. 1995]), or an issuer of an annuity had processed fraudulent withdrawal requests from the annuity account, [Banco Multiple Santa Cruz, S.A. v. Moreno, 888 F. Supp.2d 356 [E.D.N.Y. 2012]], or the bank had deviated from the parties' agreement wherein the bank was to issue checks to plaintiff's suppliers and instead had disbursed cash from plaintiff's account to plaintiff's embezzling comptroller (Key Appliance v. National Bank of N. Am., 75 A.D.2d 92 [1<sup>st</sup> Dept. 1980]), or a bank had advanced proceeds from a customer's loan to a person not authorized to receive the funds (Silverman v. Wachovia Bank, 2010 WL 5090990 [E.D.N.Y. 2010]) - none of which are the circumstances presenting at bar with respect to Santander's actions and Venetian's superseding acts.

Here, Santander had mailed checks payable to Jaybar and Park Place to Venetian over an approximate five month period of time, in accordance with an "Authorization of Payment," dated October 6, 2011, bearing the notarized signature of Joseph Barone, Sr., directing Santander to "deal directly with [defendant] Venetian Contracting Consulting Inc. regarding all matters pertaining to my insurance loss," directing "that Venetian Contracting Consulting Inc. be named as payee on any and all checks and drafts," and directing "that all payments be mailed directly to: Venetian Contracting Inc., 145 Huguenot Street, Suite 505, New Rochelle, New York 10801."

Finally, the Court observes that the mere fact that plaintiff had raised arguments and facts not expressly cited by this Court in its original Decision and Order does not justify or support plaintiff's argument herein that same had been overlooked or not considered by the Court.

This action is hereby severed and Ordered continued. The parties shall appear in the Compliance Conference Part, Room 800, at 9:30 a.m., on May 20, 2015.

Dated: May 6, 2015  
White Plains, New York

  
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