

**Collens v Sayegh**

2017 NY Slip Op 30416(U)

February 27, 2017

City Court of Peekskill, Westchester County

Docket Number: CV-520-16

Judge: Reginald J. Johnson

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This opinion is uncorrected and not selected for official publication.

PEEKSKILL CITY COURT  
COUNTY OF WESTCHESTER: STATE OF NEW YORK

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EBONEE COLLENS,

DECISION & ORDER

Plaintiff,

--against--

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DR. JOHN W. S. SAYEGH,

Defendant.

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REGINALD J. JOHNSON, J.

In this Civil Court action<sup>1</sup>, the Plaintiff, Ebonee Collens, sought money damages from Dr. John W. S. Sayegh (Defendant), for personal property damage arising out of an alleged mold condition in her leased apartment. After this case could not be resolved pre-trial, it proceeded to a bench trial. The Plaintiff proceeded pro se, and the Defendant appeared and was represented by The Law Firm of William G. Sayegh, P.C., by Zena M. Dubas, Esq. After a bench trial, the Court found in favor of the Plaintiff and rendered a judgment in her favor in the sum of \$14,099.23.

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<sup>1</sup> At the Plaintiff's request and upon payment of the appropriate fee, the Court transferred the Small Claims action with **Index No. SC-436-16** to the Civil Part of the Court on November 2, 2016 and issued that action **Index No. CV-520-16**.

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Thereafter, the Defendant moved for leave to renew and/or reargue [CPLR §2221(d)and(e)] the Court’s decision on the grounds that the Plaintiff sued the wrong party, that the case was improperly moved from the Small Claims Part to the Civil Part, that the statute of limitations expired on Plaintiff’s cause of action, and that the Plaintiff failed to prove the existence of the alleged mold condition and the Defendant’s knowledge of it.

For the reasons that follow, the motion for leave to reargue and/or renew is DENIED.

In deciding this motion, the Court considered the Notice of Motion dated November 30, 2016 and unsigned Affirmation in Support of Motion to Renew/Reargue of Zena M. Dubas, Esq., together with annexed exhibits “A” through “F”, and the oral arguments of the parties on January 11, 2017.

**Oral Argument**

At oral argument, Plaintiff argued that the Court issued the correct decision at trial—specifically, that she proved the existence of the mold condition in her apartment and that the Defendant had notice of the mold condition, that the statute of limitations did not expire on her cause of action, and that her personal property was damaged by the mold condition in the amount of judgment awarded to her based on her proof.

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At oral argument, the Defendant belatedly argued that the Plaintiff sued the wrong party in that she should have sued Brick Wall Enterprises, Inc., not Dr. John W.S. Sayegh.<sup>2</sup> Defendant then argued that the Court should substitute Brick Wall Enterprises, Inc. (Brick Wall) for Dr. John W.S. Sayegh as the judgment debtor and enter a judgment against Brick Wall accordingly. The Defendant also argued that this case was improperly transferred from the Small Claims Part to the Civil Part because both parties were not represented by counsel. Defendant argued that the statute of limitations expired on Plaintiff's cause of action. The Defendant further argued that the Plaintiff failed to prove the existence of the mold condition and the Defendant's knowledge of it. In sum, the Defendant argued that the Plaintiff failed to prove that he was grossly negligent, as required by the terms of the lease.

### Discussion

On a motion to reargue, the movant must show that the Court allegedly overlooked or misapprehended matters of fact or law in determining a prior motion. See, Blumenstock v. Weissman 47 Misc. 2d 266, 262 N.Y.S.2d 405, 1965 N.Y. Misc. LEXIS 1634 (County Ct., Westchester County, 1965); Civil Practice Law and Rules [CPLR]

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<sup>2</sup> The Court notes that the Defendant moved to dismiss both actions on October 26, 2016: SC-436-16 [re-indexed as CV-520-16 upon transfer from the Small Claims Part to the Civil Court Part] and SC-437-16. The Defendant did not raise the issue of him being an improper party to the suit

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§2221(d). Where the movant shows that the Court overlooked or misapprehended a matter of fact or law in deciding the prior motion, the Court has the discretion to grant the motion and to revisit its decision. See, Long v. Long, 251 A.D.2d 631, 675 N.Y.S.2d 557, 1998 N.Y. App. Div. LEXIS 7879 (2d Dept. 1998); Marine Nat'l Bank v. National City Bank, 59 N.Y. 67, 73 (1874) (“The guiding principles here are that reargument may be granted where the Court has overlooked or misapprehended some factual or legal authority, whereas renewal may lie if new material is asserted that is pertinent to the decision already rendered”).

However, “a motion for reargument is not designed to afford the unsuccessful party successive opportunities to reargue issues previously decided...or to present arguments differently from those previously asserted. A motion to renew...is intended to draw the court’s attention to new or additional facts which, although in existence at the time of the original motion were unknown to the party seeking renewal...”). William P. Phal Equipment Corp. v. Kassis, 182 A.D.2d 22, 22 (1<sup>st</sup> Dept. 1992) [citations omitted].

Based on a review of the motion to reargue/renew, it appears that most of the arguments raised therein were raised at the trial, and not on a

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either in his dismissal motion or at trial.

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prior motion. Therefore, Defendant's motion to reargue/renew is an improper motion through which to raise these arguments. The appropriate motion through which to raise these arguments is a motion pursuant to either CPLR 5015 ["Relief from judgment or order"] or CPLR 4404(b) [Post-trial motion for judgment and new trial]. Since the Defendant failed to raise his arguments under either section of the CPLR, the motion for leave to reargue is denied.

Regarding the Defendant's statute of limitations argument, the Court finds that he has not shown that the Court has overlooked or misapprehended a matter of fact or law in denying his application to dismiss this case on that ground. See, Long v. Long, *supra*.

A renewal motion "shall be based upon new facts not offered on the prior motion that would change the prior determination or shall demonstrate that there has been a change in the law that would change the prior determination" and "shall contain reasonable justification for the failure to present such facts on the prior motion." CPLR §2221(e). See, Cippitelli v. County of Schenectady, 307 A.D.2d 658 (3d Dept. 2003)[Court held that party seeking renewal must provide a reasonable justification for failure to present facts on the prior motion]; Greene v. New York City Housing Auth., 283 A.D.2d 458, 459 (2d Dept. 2001) [Court held that trial court lacked discretion to grant a motion to renew

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where movant failed to demonstrate a reasonable justification for failure to present facts on the prior motion].

Similarly, a motion to renew must be premised upon a prior motion. See, Blumenstock v. Weissman, *supra*; CPLR 2221(a) [“Motion affecting prior order”] states, in pertinent part, “[a] motion for leave to renew...a prior motion” [emphasis added]. Since the Defendant’s motion to renew is not premised on a decision of the Court based on a prior motion of the Defendant, the motion to renew is improper. As stated above, the appropriate motion through which to raise these issues is a motion pursuant to either CPLR 5015 [“Relief from judgment or order”] or CPLR 4404(b) [Post-trial motion for judgment and new trial]. Since the Defendant failed to raise his arguments under either section of the CPLR, the motion for leave to renew is denied.

Ordered, that the Defendant’s motion for leave to reargue is denied;

Ordered, that the Defendant’s motion for leave to renew is denied.

This constitutes the decision and order of the Court.

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Hon. Reginald J. Johnson  
City Court Judge

Dated: Peekskill, NY  
February 27, 2017

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Order entered in accordance with the foregoing on this \_\_\_\_ day of  
February, 2017.

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Concetta Cardinale  
Chief Clerk

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