

<b>Diaz v City of New York</b>
2017 NY Slip Op 30529(U)
February 10, 2017
Supreme Court, Richmond County
Docket Number: 151075/14
Judge: Thomas P. Aliotta
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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF RICHMOND: Part C-2

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RAYMOND DIAZ,

Plaintiff,

HON. THOMAS P. ALIOTTA

-against-

THE CITY OF NEW YORK, CCA CIVIL, INC.,  
DEREK L. DIESSO, STEVEN KATENDE,  
AMY CORNIELLE and BUDGET RENT A CAR  
SYSTEM, INC.,

**DECISION AND ORDER**

Index No. 151075/14

Motion Nos: 4378-006  
4386-007  
4678-008

Defendants.

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The following papers numbered 1 to 12 were fully submitted on the 14<sup>th</sup> day of December  
2016:

**Papers Numbered**

Notice of Motion by Defendant City of New York  
for Leave to Reargue (**Mot. Seq. 006**)  
(Affirmation in Support of Motion) ..... 1  
(Dated: October 27, 2016)

Notice of Motion by defendant CCA Civil Inc. for Leave  
to Reargue (**Mot. Seq. 007**)  
(Affirmation in Support)  
(Dated: October 28, 2016) ..... 2

Notice of Cross Motion by Plaintiff  
to Strike Defendants' Answers (**Mot. Seq. 008**)  
(Affirmation in Support)  
(Dated: November 17, 2016) ..... 3

Affirmation in Opposition by Plaintiff to City of New York's  
Motion to Reargue  
(Dated: December 1, 2016) ..... 4

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Affirmation in Opposition by Plaintiff to CCA Civil Inc.’s  
 Motion to Reargue  
 (Dated: December 1, 2016) ..... 5

Affirmation in Opposition by City of New York to Plaintiff’s  
 Motion to Strike Answers  
 (Dated: December 6, 2016) ..... 6

Reply Affirmation by Plaintiff  
 (Dated: December 7, 2016) ..... 7

Affirmation in Opposition by CCA Civil Inc. to Plaintiff’s  
 Motion to Strike Answers  
 (Dated: December 7, 2016) ..... 8

Reply Affirmation by Plaintiff to City of New York’s  
 Opposition  
 (Dated: December 7, 2016) ..... 9

Reply Affirmation by Plaintiff to CCA Civil Inc.’s  
 Opposition  
 (Dated: December 8, 2016) ..... 10

Affirmation in Reply of CCA Civil Inc. to Plaintiff’s  
 Opposition to Motion to Reargue  
 (Dated: December 13, 2016) ..... 11

Reply Affirmation of City of New York to Plaintiff’s  
 Opposition to Motion to Reargue  
 (Dated: December 13, 2016) ..... 12

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Upon the foregoing papers, the motions by defendants the City of New York (hereinafter the “City”)(Mot. Seq. **006**) and CCA Civil, Inc., (hereinafter “CCA”) (Mot. Seq. **007**) for leave to reargue this Court’s September 26, 2016 Decision and Order which denied their motions to compel plaintiff to furnish, *inter alia*, a supplemental bill of particulars and to compel further

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compliance with this Court's December 22, 2015 Preliminary Conference Order, is denied; that branch of plaintiff's cross motion (Mot. Seq. **008**) which seeks to compel disclosure pursuant to CPLR 3124 is granted, and the balance of the plaintiff's motion is denied.

A motion to reargue, addressed to the sound discretion of the court, affords a party the opportunity to show that the court overlooked or misapprehended the relevant facts or law, or for some other reason mistakenly arrived at its earlier decision (*see Schneider v. Solowey*, 141 AD2d 813). It is not to be used as a means by which an unsuccessful party may (1) reargue questions that have already been decided (*see Pro Brokerage v. Home Ins. Co.*, 99 AD2d 971), or (2) present arguments different from those originally asserted (*see Foley v. Roche*, 68 AD2d 558). On these papers, the City and CCA have failed to demonstrate that this Court overlooked any relevant fact, misapprehended the law, or for some other reason, mistakenly arrived at its determination.

Plaintiff's motion to compel disclosure from the City and CCA pursuant to CPLR 3124 is granted. In this regard, defendants are directed to paragraphs "1" and "2" of the stipulation regarding discovery entered into before this Court at a conference on October 25, 2016 (*see* Plaintiff's Exhibit 39) and are ordered to comply therewith within 30 days of the date of service upon them of a copy of this Order with Notice of Entry. Upon defendants' failure to comply as directed, the noncompliant party or parties will be precluded from introducing any evidence regarding same as may "tend [ ] to defeat the plaintiff's cause of action" at the time of trial (*Wilson v. Galicia Contr & Restoration Corp.*, 10 NY3d 827, 830 [*internal quotation marks omitted*]). Defendants are cautioned that this conditional order of preclusion is self executing

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and that their failure to comply herewith will render it absolute (*id.*; see Archer Capital Fund L.P. v. GEL, LLC, 95 AD3d 800; Lopez v. City of New York, 2 AD3d 693, 693).

Accordingly, it is

ORDERED, that the motions of defendants the City of New York and CCA Civil, Inc. for leave to reargue this Court's September 26, 2016 Decision and Order is denied; and it is further

ORDERED, that plaintiff's cross motion to strike the answers of defendants the City of New York and CCA Civil, Inc. is denied; and it is further

ORDERED, that defendant the City of New York is directed to provide responses to (1) Plaintiff's demand, dated April 30, 2015, for a Bill of Particulars of Affirmative Defenses; (2) the "Combined Demands," dated October 14, 2015; (3) Plaintiff's Notice for Discovery and Inspection, dated October 22, 2015; and (4) such additional information as may be necessary to correct the deficiencies in discovery set forth in the letter from Plaintiff's counsel, dated November 10, 2015; and it is further

ORDERED, that the defendant CCA Civil, Inc. is directed to provide responses to (1) Plaintiff's demand, dated April 22, 2015, for a Bill of Particulars of Affirmative Defenses; (2) the "Combined Demands," dated October 14, 2015; (3) Plaintiff's Notice for Discovery and Inspection, dated October 22, 2015; and (4) such additional information as may be necessary to correct the deficiencies in discovery set forth in the letters from Plaintiff's counsel, dated December 7, 2015 and February 4, 2016; and it is further

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ORDERED, that upon the failure of either or both defendants to comply with the ordering paragraph applicable to it, as set forth above, within 30 days of the date of service upon each of a copy of this Order with Notice of Entry, either or both noncompliant defendants will be precluded from introducing any evidence of same as may tend to defeat plaintiff's cause of action at the time of trial; and it is further

ORDERED, that all parties shall appear for a further compliance conference on March 28, 2017 at 9:30 A.M. in Courtroom 230.

This constitutes the decision and order of the Court.

Dated: February 10, 2017

E N T E R,



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HON. THOMAS P. ALIOTTA, J.S.C.