

**Connecticut N.Y. Light. Co. v Manos Bus. Mgt. Co.
Inc.**

2017 NY Slip Op 33145(U)

January 27, 2017

Supreme Court, Westchester County

Docket Number: 59101/2014

Judge: Charles D. Wood

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER**

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CONNECTICUT NEW YORK LIGHTING COMPANY,

Plaintiff,

DECISION & ORDER
Index No.: 59101/2014
Sequence No. 3

-against-

**MANOS BUSINESS MANAGEMENT COMPANY INC.,
A/k/a MANOS BUSINESS MANAGEMENT CO., a/k/a
MANOS BUSINESS MANAGEMENT, INC., STEFAN
MALGARINOS and THEODORE S. MALGARINOS,**

Defendants.

-----X

WOOD, J.

The following documents were read and considered on defendants' motion to reargue:

Defendants' Notice of Motion, Counsel's Affirmation, Exhibits, Memorandum of Law.
Plaintiff's Counsel's Affirmation in Opposition, Exhibits, Memorandum of Law.
Defendant's Counsel's Reply Affirmation, Memorandum of Law in Reply.

This action was commenced with the filing of the summons and complaint on or about June 6, 2014. According to the complaint, in or about 2007, defendant Manos Business Management Company Inc., a/k/a Manos Business Management Co, a/k/a Manos Business Management, Inc., ("Manos"), began providing employee payroll services to plaintiff. Manos agreed to perform all of plaintiff's payroll and related tax duties associated with plaintiff's compensation of its employees, including federal and state income tax withholding and reporting and paying social security, medicare, unemployment and income taxes to the appropriate

governmental authorities on plaintiff's behalf, for a fee. Manos acted as plaintiff's payroll services provider during a portion of 2007, throughout the years 2008, 2009, 2010, 2011 and a portion of 2012. During this time, Manos provided written accountings to plaintiff. In or about 2011, plaintiff began receiving notices from federal and state tax authorities that certain of its required payroll reports were filed late or not at all, and that certain funds that were due for social security, medicare, unemployment, and income taxes for plaintiff's employees were remitted late, only partially, or not at all. These notices were inconsistent with the accountings plaintiff received from Manos, and when plaintiff brought these notices to the attention of defendant Stefan Malgarinos, he claimed that the error was by the federal and state authorities that sent the notices, and he assured plaintiff that Manos was performing all of its payroll services obligations.

By Decision and Order dated November 16, 2016, this court granted defendants' motion for partial summary judgment to the extent that the second (Fraud), third (Fiduciary Duty), fourth (Constructive Trust), and fifth (Accounting) causes of action in the Complaint were dismissed. The sixth cause of action for conversion, the seventh cause of action seeking individual liability and the request for punitive damages were not dismissed.

Defendants now bring this motion for leave to reargue the decision of this court, inasmuch as conversion is duplicative of the cause of action for breach of contract; defendant Theodore Malgarinos, has nothing to do with this case; and that defendants' conduct did not rise to imposing punitive damages. Plaintiff opposes the 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 (Mazzei v Licardi, 47 AD3d 774 [2d Dept 2008], *citing* Carillo v PM Realty Group, 16 AD3d 611 [2d Dept 2005]; Singelton v Lenox Hill Hospital, 61 AD3d 956, 957 [2d Dept 2009]). A motion for reargument is not designed to provide an unsuccessful party with successive opportunities to present arguments different from those originally presented (Gellert & Rodner v Gem Community Management, Inc. 20 AD3d 388 [2d Dept 2005]; McGill v Goldman, 261 AD2d 593, 594 [2d Dept 1999]). Nor does it function as a forum to proffer arguments different from those originally tendered (Amato v Lord & Taylor, 10 AD3d 374, 375 [2d Dept 2004]) or on a new theory of law not previously advanced (Frisenda v X Large Enterprises, Inc., 280 AD2d 514, 515 [2d Dept 2001]). Rather, the movant must satisfactorily demonstrate matters of fact or law allegedly overlooked or misapprehended on the prior motion (Matter of Hoffman v Debello-Teheny, 27 AD3d 743 [2d Dept 2006]). New facts may not be submitted or considered by the court (Trahan v Gallea, 48 AD3d 791, 792 [2d Dept 2008]; Quinn v Menzel, 282 AD2d 513 [2d Dept 2001]).

After a thorough review of the papers presented in the prior determination, the court finds that there was a substantial basis for its decision. In reaching its decision to deny reargument, the merits of the parties' position have not been addressed herein, because to do so might trigger an appealable issue, where normally an appeal does not lie in a reargument motion (Price v Palagonia, 212 AD2d 765 [2d Dept 1995]; Navarette v Alexiades, 50 AD3d 873 [2d Dept 2008]). Since defendants failed to show that the court overlooked or misapprehended the facts or law or

for some other reason mistakenly arrived at its earlier decision, defendants' application for reargument is not supported by the record or the case law, and is denied.

All other relief requested and not decided herein is denied. This constitutes the Decision and Order of this Court.

Based on the above stated reasons, it is hereby

ORDERED, that defendants' motion for leave for reargument is denied; and it is further

Dated: White Plains, New York
January 27, 2017



CHARLES D. WOOD, J.S.C.

TO: All Parties by NYSCEF