

Quadriad Realty Partners, LLC v Wilbee Corp.
2019 NY Slip Op 30986(U)
April 11, 2019
Supreme Court, New York County
Docket Number: 153621/2018
Judge: Joel M. Cohen
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. JOEL M. COHEN PART IAS MOTION 3EFM

Justice

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QUADRIAD REALTY PARTNERS, LLC, 45 WEST 36TH STREET, NEW YORK, NY 10018, DEVELOPMENT PLANNING & DESIGN INC., 45 WEST 36TH STREET, NEW YORK, NY 10018,

Plaintiffs,

- v -

WILBEE CORPORATION, 31-31 48TH AVENUE, LONG ISLAND CITY, NY 11101, KING KULLEN GROCERY CO., INC., 185 CENTRAL AVENUE, BETHPAGE, NY 11714, QUEENSBORO FARM PRODUCTS, INC., 156-02 LIBERTY AVENUE, JAMAICA, NY 11433, KAUFMAN BEDROCK ASTORIA I LLC, 34-12 36TH STREET, ASTORIA, NY 11106, SILVERSTEIN PROPERTIES, INC., 7 WORLD TRADE CENTER, 250 GREENWICH STREET, 38TH FLOOR, NEW YORK, NY 10007, BEDROCK REAL ESTATE PARTNERS, LLC, 215 PARK AVENUE SOUTH, SUITE 2016, NEW YORK, NY 10003,

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 007) 286, 287, 288, 289, 290, 291, 292, 293, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318

were read on this motion to

CLARIFY A PORTION OF DECISION AND ORDER IN MOT SEQS. 002, 003, AND 004

DECISION AND ORDER

In its order granting in part Motion Sequence Nos. 002, 003, and 004 (Motions to Dismiss Corrected Complaints), the Court (Bransten, J.) stated that “[Plaintiff-Intervenors] Gans and W&G voluntarily withdrew their seventh cause of action for a declaratory judgment. (Gans Memorandum of Law at 1 n.2).” Decision and Order (NYSCEF Doc. No. 246) at 6 n.1 (“Decision and Order”).

Plaintiff-Intervenors Robert Gans and W&G Venture Holdings LLC now move under CPLR §§ 2001 and 2002 to “clarify” that the Decision and Order dismissed their declaratory judgment claims only against Defendants KBA and Bedrock and not against Defendants

Silverstein/Queensboro, Wilbee, and King Kullen.¹ In support of that motion, Plaintiff-Intervenors note that the withdrawal of their declaratory judgment claims to which the Court made reference – specifically by page and footnote number – was expressly limited to the claims asserted against KBA and Bedrock. In view of that fact, and that the Court “otherwise denied” the motions to dismiss to the extent they were not granted, Plaintiff-Intervenors argue the Decision and Order effectively denied the motion to dismiss the declaratory judgment claims asserted against all Defendants other than KBA and Bedrock. They now seek to “clarify” that the Decision and Order did in fact leave intact their seventh cause of action against the remaining defendants.

The motion is denied. The footnote in the Decision and Order to which the Plaintiff-Intervenors refer is not unclear. It says that “their seventh cause of action for a declaratory judgment” was withdrawn. Full stop. That cause of action is not discussed elsewhere in the Decision and Order. Therefore, the Decision and Order cannot reasonably be read to deny the motion to dismiss the seventh cause of action against *any* Defendant.

Moreover, the CPLR provisions under which Plaintiff-Intervenors move are inapplicable here. CPLR § 2001 is generally invoked to cure a *party's* mistake, *see U.S. Bank Nat. Ass'n v. Eaddy*, 109 A.D.3d 908, 910 (2d Dep't 2013), and at any rate “may be used to cure only a technical infirmity.” *Ruffin v. Lion Corp.*, 15 N.Y.3d 578, 582 (2010). CPLR § 2002, meanwhile, provides that “[a]n error in a ruling of the court shall be disregarded if a substantial right of a party is not prejudiced.” Plaintiff-Intervenors are seeking a determination, in effect,

¹ The Defendant entities are defined in the Decision and Order, and those definitions are incorporated here.

about whether one of their causes of action remains viable. Since that necessarily implicates the “substantial right[s]” of both parties, CPLR § 2002 is inapt.

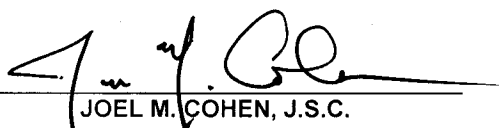
What Plaintiff-Intervenors are really arguing is that the Decision and Order was incorrect in failing to recognize they had limited their withdrawal of their seventh cause of action to the claims against certain Defendants. The proper procedure for calling that purported error to the Court’s attention is a motion for leave to reargue under CPLR § 2221(d). *See Lindgren v. New York City Hous. Auth.*, 269 A.D.2d 299, 302 (1st Dep’t 2000) (noting that reargument “was an appropriate way to dispel any confusion as to which issues had implicitly been resolved”). Such motions must be “identified specifically as such,” and must be brought “within 30 days after service of a copy of the order determining the prior motion and written notice of its entry.” CPLR § 2221(d).

Plaintiff-Intervenors did not make such a motion within the prescribed period. Nonetheless, in the interests of fairness and efficiency, the parties are granted leave to file a motion for leave to reargue that portion of the Decision and Order that relates to Plaintiff-Intervenors’ seventh cause of action asserted against Defendants other than KBA and Bedrock. *See Liss v. Trans Auto Sys., Inc.*, 68 N.Y.2d 15, 20 (1986) (“[I]t should be noted that, regardless of statutory time limits concerning motions to reargue, every court retains continuing jurisdiction to reconsider its prior interlocutory orders during the pendency of the action.”); *Garcia v. Jesuits of Fordham, Inc.*, 6 A.D.3d 163, 165 (1st Dep’t 2004) (“[W]e note that although plaintiff’s motion for reargument was technically untimely pursuant to CPLR § 2221(d), it was not an improvident exercise of the court’s discretion to have reconsidered its prior ruling.”).

This constitutes the decision and order of the Court. Therefore, it is:

ORDERED that Plaintiff-Intervenors' motion to clarify a portion of the Decision and Order is **Denied**, without prejudice to filing a motion for leave to reargue limited to the grounds set forth herein.

4/11/2019
DATE


JOEL M. COHEN, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	DENIED	<input type="checkbox"/>	
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	REFERENCE
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	