

<b>2952 Victory Blvd. Pump Corp. v Bhatt</b>
2019 NY Slip Op 31170(U)
March 6, 2019
Supreme Court, Richmond County
Docket Number: 151082/2018
Judge: Jr., Orlando Marrazzo
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**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF RICHMOND  
2952 VICTORY BLVD. PUMP CORP.**

**DECISION/ORDER**

IAS PART 21

HON. ORLANDO MARRAZZO, JR.

Index No.: 151082/2018

Motion No. 2

*Plaintiff,*

*-against-*

**ABRAR ALI BHATTY, FARIHA BHATTY,  
LARRY BLOOM, THOMAS BALZANO,  
LOUISE BALZANO, CARMINE MAZZA,  
MAUREEN MAZZA, ROBERT PACIFICI,  
And ANGLIKI GIORDANO**

*Defendants.*

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The following numbered 1 through 3 were marked submitted on January 15, 2019

	Papers Numbered
Notice of Motion for Leave to Reargue and Renew The Prior Motion to Dismiss, dated November 26, 2018.....	1
Affidavit in Support of Motion for Leave to Reargue and Renew the Prior Motion to Dismiss, with Exhibits, dated November 26, 2018.....	2
Affirmation in Opposition to Plaintiff's Motion to Reargue and/or Renew Defendants' Motion to Dismiss Complaint, with Exhibits, dated January 4, 2019.....	3

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On October 22, 2018, this Court granted Defendants' Motion to Dismiss the Complaint in the instant action. Plaintiff now moves this Court for an Order granting the parties leave to reargue and renew Defendants' Motion to Dismiss the Complaint. The Court hereby denies Plaintiff's current Motion for leave to reargue and renew.

This action concerns the payment of sewage pumping fees that Plaintiff claims are owed to it by Defendants for the period of October 16, 2013 to December 31, 2017. Based on the claims of unjust enrichment and/or implied agreement, Plaintiff asserted that it owns a sewage pumping station located at 2952 Victory Boulevard, Staten Island NY that services homes owned by each of the Defendants. This Court dismissed Plaintiff's claims based on a prior decision made by the Honorable Joseph J. Maltese dated December 1, 2004 captioned under *Conigliaro et al., v. 2952 Victory Blvd. Pump. Corp.*, Index No. 12268/2004. The Court provided a summary of this action in its previous decision and summarizes the same facts for this current Motion.

In the *Conigliaro* action, homeowners sought to determine that plaintiff's right to collect the same "sewage pumping fees" that the Plaintiff seeks to recover in the present action. It was Judge Maltese's ruling that the plaintiff could not collect pumping service fees until the 2952 Victory Blvd. Pump. Corp. adhered to the requirements listed in the court's order. The Court in *Conigliaro* determined that Trailway Associates, the previous pump station owners, abandoned the pumping station and voided its covenants with the property owners pursuant to the covenant language. According to Judge Maltese, the covenants between 2952 Victory Blvd. Pump. Corp. and the homeowners were unenforceable since 2952 Victory Blvd. Pump. Corp. is not a direct successor to Trailway Associates, who was the original party to the covenants. The Court held that the covenants with the property were terminated and that 2952 Victory Blvd. Pump. Corp. needed to obtain approval of its rates from the New York City Water Board. As this Court noted in its decision, a letter dated June 5, 2014 from the New York City Water Board states that the New York City Water Board did not have the authority to review or approve the rates of the 2952 Victory Blvd. Pump. Corp.

In this Court's Decision, the Court noted that the Certificate of Occupancy submitted by Plaintiff did not satisfy Judge Maltese's directives. The Court held that according to the Referee's Deed, A&F Realty Holding, LLC is the only owner of the premises for which the certificate was issued. This Court further held that the Certificate of Occupancy submitted by Plaintiff was unrelated to Plaintiff's alleged property since it was issued for 2940 Victory Boulevard and not 2952 Victory Boulevard, which is the address of the premises conveyed under the Referee's Deed and where the sewage pumping station is located. Based on these findings, the Court dismissed this action without prejudice and noted that the Plaintiff could seek its cause of action based on full compliance with all the requirements of Judge Maltese's prior ruling in the *Conigliaro* decision.

Plaintiff now seeks leave to reargue and renew the Defendants' Motion to dismiss the complaint pursuant to CPLR §3211(a)(5). Plaintiff claims that the Court's conclusions in its Decision were based on facts determined in error. According to the Plaintiff, the Certificate of Occupancy was not issued to the property's specific owner, but rather the premises itself. Plaintiff further argues that the property known as Block 2072 Tax Lot 55 is known as 2940 Victory Boulevard and that it is the Referee's Deed that incorrectly references the property as 2952 Victory Boulevard. The Plaintiff claims that the Court's determination was not supported by evidence, that a triable issue of fact exists and a letter from the office of the Borough President of Staten Island ("Borough President Letter") confirms that the right address for Tax Block 2072 Tax Lot 55 is 2940 Victory Boulevard.

Defendants argue that when it rendered its Decision granting dismissal, this Court did consider the legal ownership of the property where the pumping station is located and the arguments currently made by the Plaintiff. According to the Defendants, the Court should

disregard the Borough President Letter that Plaintiff submits in support of its current Motion because such was not submitted in opposition to the Defendants' prior Motion to Dismiss. Plaintiff allegedly still does not claim that it otherwise complied with all the other terms and conditions set forth in Judge Maltese's Decision in *Conigliaro*. Finally, Defendants argue that the Plaintiff has not offered any new facts in support of its motion and the only "new" fact proffered was raised by Plaintiff in opposition to Defendants' Motion to Dismiss and was rejected by the Court. Defendants emphasize that Plaintiff also has not offered a reasonable justification for its failure to submit the Borough President Letter or the Affidavit of Willy Yuin, except that Plaintiff states such documents were not in its possession at the time of Defendants' Motion.

It is without question that "... a motion for leave to reargue is not designed to provide an unsuccessful party with successive opportunities to reargue issues previously decided, or to present arguments different from those originally presented." *Matter of Anthony J. Carter, D.D.S., P.C. v. Carter*, 81 A.D.3d 819, 820, 916 N.Y.S. 821 (App. Div. 2d Dept., 2011). See *Rodriguez v Gutierrez*, 138 A.D.3d 964, 967, 31 N.Y.S.3d 97, 100 (App. Div. 2d Dept., 2016). The Second Department has consistently held that "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." *Singleton v. Lenox Hill Hosp.*, 61 A.D.3d 956, 957, 876 N.Y.S.2d 909, 910 (App. Div. 2d Dept., 2009) (quoting *Carrillo v. PM Realty Group*, 16 A.D.3d 611, 611, 793 N.Y.S.2d 69 (App. Div. 2d Dept., 2005)). See *CPLR 2221(d)*. The Second Department has held a motion for leave to reargue "shall not include any matters of fact not offered on the prior motion." *Ahmed v. Pannone*, 116 A.D.3d 802, 805, 984

N.Y.S.2d 104, 107 (N.Y. App. Div. 2d Dept., 2014) (quoting *Grimm v. Baiely*, 105 A.D.3d 793, 704, 963 N.Y.S.2d 277 (App. Div. 2d Dept., 2013)).

The Court finds that it did not overlook or misapprehend the facts or law and that Plaintiff has not submitted evidence sufficient to prove such. The Court properly considered and determined the legal ownership of the property where the pumping station is located. Further, the Court finds that Plaintiff is simply rearguing issues previously decided and presenting arguments that do not differ from those that it offered in its opposition to Defendants' Motion to Dismiss. Therefore, the Court denies Plaintiff's Motion to Reargue.

Under CPLR §2221(e), a motion for leave to renew must be based on facts not offered on the prior motion that would change the prior determination or demonstrate that there has been a change in the law that would change the prior determination and must have a reasonable justification for the failure to present the facts on the prior motion. *See Yadegar v Deutsche Bank Natl. Trust Co.*, 164 A.D.3d 945, 948, 83 N.Y.S.3d 173, 175 (App. Div. 2d Dept., 2018). As stated by the Second Department in *Hasmath v. Cameb*, "it is well settled that a motion for leave to renew must be supported by new or additional facts which, although in existence at the time of a prior motion, were not known to the party seeking renewal, and, consequently, not made known to the court." *Hasmath v. Cameb*, 5 A.D.3d 438, 439, 773 N.Y.S.2d 121, 122 (App. Div. 2d Dept., 2004) (quoting *Matter of Brooklyn Welding Corp. v. Chin*, 236 A.D.2d 392, 653 N.Y.S.2d 631 (App. Div. 2d Dept., 1997)).

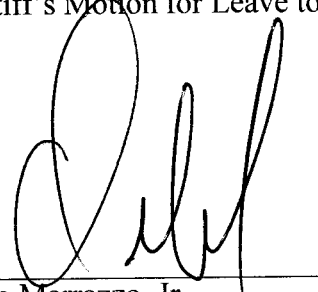
A motion to for leave to renew can be granted based on facts known to the movant at the time of the original motion where the movant offers a reasonable justification for the failure to submit such facts on the original motion. *See id.* As stated by the Second Department, "renewal 'is not a second chance freely given to parties who have not exercised due diligence in making

their first factual presentation.” *Verizon N.Y., Inc. v. Supervisors of Town of N. Hempstead*, 2019 N.Y. App. Div. LEXIS 904, \*5, 2019 NY Slip Op 00925, 2 (N.Y. App. Div. 2d Dep't February 6, 2019) (quoting *JP Morgan Chase Bank, N.A., v. Novis*, 157 A.D.3d 776, 777, 70 N.Y.S.3d 211 (App. Div. 2d Dept., 2018)). If the new evidence submitted by the moving party would not have changed the prior determination by the court, then denial of the party's motion to renew is proper. See *Yadegar v Deutsche Bank Natl. Trust Co.*, 164 A.D.3d 945, 948, 83 N.Y.S.3d 173, 175 (App. Div. 2d Dept., 2018)

As stated in the Borough President Letter, the request made by Mr. Arlia for a House Number Verification for Tax Block 2072, Tax Lot 55 was not made until November 8, 2018, which was several days after the Court rendered its Decision on October 22, 2018. This Letter was not submitted in opposition to Defendants' Motion to Dismiss and Plaintiff has not provided a reasonable justification for failing to submit such in the original Motion. While Plaintiff states it did not originally submit the Letter in response to Defendants' Motion since it did not possess it at such time, the request for the letter from the office of the Borough President was not even made until after the Court rendered its Decision to dismiss. Therefore, the Court finds that even if this Borough President Letter was a “new” fact upon which the Motion to Reargue and Renew could be based, Plaintiff has not provided a reasonable justification for failing to submit it under the previous Motion. The Court finds that the same determination applies to the affidavit of Willy Yuin, a registered architect who states that the address matching the Block of 02072 & Lot 55 is 2940 Victory Blvd., Staten Island, NY (“Yuin Affidavit”). The Yuin Affidavit is dated November 9, 2018, which is also several days after the Court rendered its Decision to Dismiss. The Court finds that the Yuin Affidavit is not a “new” fact and Plaintiff has failed to provide a reasonable justification for failure to provide it at the time of the original Motion.

Therefore, the Court finds that Plaintiff has failed to submit “new” facts in support of its current Motion or a reasonable justification for not offering such evidence in its previous Motion papers. The Court also finds that even if the evidence submitted by Plaintiff were proper grounds for a Motion for leave to renew and reargue, the evidence would not change the prior determination of this Court. The Court hereby denies Plaintiff’s Motion for Leave to Renew and Reargue.

Dated: March 6, 2019  
Staten Island, New York



Orlando Marrazzo, Jr.,  
Justice, Supreme Court

Hon. Orlando Marrazzo, Jr.  
Acting Supreme Court Justice