

**Aviation Distribs., Inc. Formed May 1945 v  
Aviation Distribs., Inc. Formed February 2014**

2020 NY Slip Op 31467(U)

May 19, 2020

Supreme Court, New York County

Docket Number: 155301/2015

Judge: Carol R. Edmead

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. CAROL R. EDMOND PART IAS MOTION 35EFM

Justice

-----X

AVIATION DISTRIBUTORS, INC. FORMED MAY 1945,
DIANE HASLETT,

Plaintiff,

INDEX NO. 155301/2015

MOTION DATE 03/17/2020

MOTION SEQ. NO. 007

- v -

AVIATION DISTRIBUTORS, INC. FORMED FEBRUARY
2014;, COMMUNITY PRESERVATION NEIGHBORHOOD,
INC.,FUTURE HOLDING TRUST, KOJO GLOBAL
PROPERTY DEVELOPMENT INC.,JOHN DOE, JANE DOE

Defendant.

DECISION + ORDER ON
MOTION

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The following e-filed documents, listed by NYSCEF document number (Motion 007) 267, 268, 269, 270,
271, 272, 273, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288

were read on this motion to/for REARGUMENT/RECONSIDERATION.

Upon the foregoing documents, it is

ORDERED that the branch of Plaintiffs' motion that seeks to reargue the Court's
decision dated June 10, 2019 and amended October 23, 2019 is denied; and it is further

ORDERED that the branch of Plaintiffs' motion that seeks to renew the Court's decision
dated June 10, 2019 and amended October 23, 2019 is granted, and, upon renewal, the Court
adheres to its prior decision; and it is further

ORDERED that the Clerk of the Court shall enter judgment accordingly; and it is further

ORDERED that counsel for Plaintiff Community Preservation Neighborhood, Inc. shall
serve a copy of this, along with notice of entry, on all parties within 20 days of entry.

FINAL DISPOSITION

## MEMORANDUM DECISION

In this property dispute matter, defendants John Zi, Aviation Distributors Inc., and Kojo Global Property (collectively, “Movants”) in Action No. 3 (Index No. 155301/2015) seek an order granting renewal and/or reargument (Motion Seq. 007) of motion sequences 005 and 006 and reversing the Court’s prior decisions in this matter, dated June 10, 2019 and October 23, 2019. The motion is opposed by Plaintiff Community Preservation, Neighborhood Inc. (“Community Preservation”).

## BACKGROUND FACTS

This action involves real property on the Upper West Side of Manhattan. For a fuller description of the facts, which are laced with intrigue and forgery, see the June 2019 decision (NYSCEF doc No. 269). In short, the parties to these consolidated actions all claimed ownership rights to the property, which is located at 44 West 73rd Street. The June 2019 order, among other things, declared that Aviation 1945 owned the subject land, while Community Preservation owned the subject appurtenance on the land, a building.

Community Preservation challenged the portion of the June 2019 decision which declared that while it is the owner of the building appurtenant to 44 West 73rd, “this ownership right is subject to the 99-year lease held by nonparty El Pridian Corporation” and that, accordingly, Community Preservation “has no present possessory right in the premises until December 31, 2075” (NYSCEF doc No. 233 under index No. 155301).

The Court amended its original decision by order October 23, 2019, where the Court adjudged Community Preservation to be the owner of the building in fee simple and not pursuant to a 99-year lease of El Pridian Corp. (NYSCEF doc No. 270).

In its original decision, the Court determined that Movants had no ownership rights to the subject property in part due to a separate criminal proceeding that had commenced against John Zi. Among the many charges commenced against John Zi, the criminal court found that Zi attempted to falsify documents establishing ownership of the property.

On December 26, 2019, the Appellate Division, First Department overturned Zi's conviction on the ground that the trial court failed to conduct an adequate mental health exam of Zi pursuant to Criminal Procedure Law § 730 (NYSCEF doc No. 272).

Movants now argue that the Court's original determinations should be revisited without reliance on the criminal court conviction of Zi. Community Preservation contends that the first Department's decision should have no bearing on the Court's prior determinations as the decision is unrelated to the fact Zi's ownership interest is fraudulent and Community Preservation has demonstrated a *prima facie* case of ownership.

## DISCUSSION

### I. Reargument

A motion for leave to reargue under CPLR 2221, "is addressed to the sound discretion of the court and may be granted only upon a showing 'that the court overlooked or misapprehended the facts or the law or for some reason mistakenly arrived at its earlier decision' " (*William P. Pahl Equipment Corp. v Kassis*, 182 AD2d 22 [1st Dept 1992] *lv denied and dismissed* 80 NY2d 1005, [1992], *rearg. denied* 81 NY2d 782 [1993]). Reargument is not designed to afford the unsuccessful party successive opportunities to reargue issues previously decided (*Pro Brokerage v Home Ins. Co.*, 99 AD2d 971) or to present arguments different from those originally asserted (*Foley v Roche*, 68 AD2d 558; *Pahl Equip. Corp. v Kassis*, 182 AD2d at 27). On reargument, the court's attention must be drawn to any controlling fact or applicable principle of law which was misconstrued or

overlooked (*see Macklowe v Browning School*, 80 AD2d 790 1st Dept 1981).

The Court finds that Movants' application for reargument is improper. Movants do not allege a change in the law or any new facts that have a bearing on the dispute that was before this Court and would justify reargument. Movants do not put forth one legal argument or factual statement to adequately explain how the Court overlooked or misapplied the law in rendering the October 2019 decision as is required by CPLR 2221(d). As Community Preservation points out, Movants appear to have added an application for reargument as a "tag-along" when the relief they are really seeking from this Court is a renewal of the Court's prior determinations based on the reversal of Zi's criminal conviction. Accordingly, the branch of the motion seeking reargument must be denied.

## II. Renew

A motion for leave to renew pursuant to CPLR 2221 "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." (*American Audio Serv. Bur. Inc. v AT & T Corp.*, 33 AD3d 473, 476 [1st Dept 2006]). The motion to renew, when properly made, posits newly discovered facts that were not previously available *or* a sufficient explanation is made why they could not have been offered to the Court originally (*see discussion in Alpert v. Wolf*, 194 Misc.2d at 133; D. Siegel New York Practice § 254 [3rd ed.1999]). 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 and therefore not brought to the court's attention." (*Beiny v Wynyard*, 132 AD2d 190, *lv. dismissed* 71 NY2d 994).

Here, Movants argue their motion to renew should be granted due to the new set of facts regarding Zi's criminal conviction being overturned. However, the Court finds that these "new facts" have no bearing on the Court's prior determination in its October 2019 order. The First Department's decision to overturn Zi's conviction was solely due to the trial court's failure to conduct an adequate mental health exam after Zi decided to represent himself *pro se*. This procedural error on the part of the criminal court is wholly unrelated to this Court's adjudication of the ownership of the subject building. The decision contains nothing that challenges the sufficiency or the weight of the evidence that was offered at trial to sustain Zi's convictions, which included multiple felonies in conjunction with his scheme to fraudulently claim ownership of the subject building (NYSCEF doc No. 276 at 10).

Specifically, at criminal trial, the Office of the New York County District Attorney (the DA) provided uncontradicted evidence that Zi engaged in schemes to defraud property owners by falsifying deeds and contracts. The DA introduced testimony from detectives who testified that ZI provided them with false contracts of sale. The contracts were proven to be false as they were dated in 1976 but contained references to laws enacted subsequent to that date (NYSCEF doc No. 276 at 11-12). One false contract was even written in a font that was not available until 2004 (*id.*). Representatives for Plaintiff also testified that at no point did Zi or his representatives purchase an interest in the property. The Appellate Court's determination contains no discussion or challenge to this evidence presented at trial that led to Zi's conviction. Therefore, regardless of whether Zi is entitled to another criminal trial for procedural reasons, the evidence presented provides a sufficient basis for Community Preservation's entitlement to ownership of the subject building.

As the Court finds that Community Preservation has definitively established its entitlement to summary judgment dismissing the claims of the John Zi Group, and the

unchallenged testimonial and documentary evidence introduced in the criminal trial support Zi's conviction associated with his attempted theft of the subject building, it is indisputable that dismissal of the John Zi's groups claims is warranted. Accordingly, the Court denies the branch of this present motion seeking reargument. The Court grants renewal but adheres to the prior determination in its October 2019 order adjudging Community Preservation to be the owner of the subject building in fee simple.

CONCLUSION

Based on the foregoing, it is hereby

ORDERED that the branch of Plaintiffs' motion that seeks to reargue the Court's decision dated June 10, 2019 and amended October 23, 2019 is denied; and it is further

ORDERED that the branch of Plaintiffs' motion that seeks to renew the Court's decision dated June 10, 2019 and amended October 23, 2019 is granted, and, upon renewal, the Court adheres to its prior decision; and it is further

ORDERED that the Clerk of the Court shall enter judgment accordingly; and it is further

ORDERED that counsel for Plaintiff Community Preservation Neighborhood, Inc. shall serve a copy of this, along with notice of entry, on all parties within 20 days of entry.

*Carol R. Edmead*  
HON. CAROL R. EDMOND, J.S.C.  
J.S.C.

5/19/20  
DATE

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