

W 108 Dev. LLC v Nour Found.
2020 NY Slip Op 31987(U)
June 23, 2020
Supreme Court, New York County
Docket Number: 155443/2019
Judge: W. Franc Perry
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. W. FRANC PERRY PART IAS MOTION 23EFM

Justice

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W 108 DEVELOPMENT LLC
Plaintiff,

- v -

NOUR FOUNDATION,
Defendant.

INDEX NO. 155443/2019
MOTION DATE 05/19/2020
MOTION SEQ. NO. 004

DECISION + ORDER ON MOTION

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The following e-filed documents, listed by NYSCEF document number (Motion 004) 93, 94, 95, 96, 97, 98
were read on this motion to/for REARGUMENT/RECONSIDERATION.

Respondent moves for leave to reargue this Court's decision and order dated May 6, 2020 regarding Motion sequence numbers 001, 002, and 003.

A motion to reargue is addressed to the discretion of the court and is designed to afford a party an opportunity to establish that the court overlooked or misapprehended the relevant facts or misapplied a controlling principle of law (CPLR 2221[d][2]). It is not designed as a vehicle to afford the unsuccessful party an opportunity to argue, once again, the very questions previously decided. Gellert & Rodner v. Gem Community Mgt., Inc. 20 AD3d 388 (2nd Dept. 2005). Nor is it designed to provide an opportunity for a party to advance arguments different from originally tendered. Amato v. Lord & Taylor, Inc., 10 AD3d 374, (2nd Dept, 2004), or argue a new theory of law or raise new questions not previously advanced. Levi v. Utica First Ins. 12 AD3d 256 (1st Dept. 2014) . Instead, the movant must demonstrate the matters of fact or law that he or she believed the court has misapprehended or overlooked. Hoffman v. Debello-Teheny, 27 AD3d 743 (2nd Dept. 2005). Absent a showing of misapprehension or the overlooking of a fact, the court must deny the motion. Barrett v. Jeannot, 18 AD3d 679 (2nd Dept. 2005). Further, a motion to

reargue is based solely upon the papers submitted in connection with the prior motion. New facts may not be submitted or considered by the court. *James v. Nestor*, 120 AD2d 442 (1st Dept. 1986); *Philips v. Village of Oriskany*, 57 AD2d 110 (4th Dept., 1997)

In the case at bar, movant argues that the decision and orders addressing Motions sequence 001 and 003 are inconsistent in their result. Specifically, movant asserts that the decision in Motion sequence 003 denied petitioner's request to enforce an alleged agreement between the parties, ruling that the parties had not entered into a final for access to the premises at issue. However, movant states that in that same decision, the court granted Motion sequence 001, which gave petitioner a license to access respondent's property without setting forth the terms and condition of that license.

Upon review of the relevant case law and a review of the decision, the Court finds that the decision dated May 6, 2020 was in fact inconsistent in that it granted petitioner a license to access respondent's property, but was silent as to the terms and conditions of that license. This omission failed to provide the parties with a framework by which they could proceed with the construction project at issue. Therefore, the court grants the motion to reargue and confirms its decision to award petitioner a license to access respondents' property. The following outlines the terms and conditions governing that license pursuant to Real Property and Administrative Proceedings Law §881.

LICENSE TERMS


- 1- Respondent is entitled to the temporary roof protection plans, incorporated into the draft license agreement in "Exhibit A" (NYSCEF Doc. Co. 67 at pp.2-3, ¶1).
Petitioner is required, at its own cost, to waterproof those portions of respondent's building to the extent that the building is exposed to petitioner's construction work,

- see (NYSCEF Doc. No. 67 at p.13.¶8 (K)).The roof protections shall be in accordance with the applicable New York City Building Codes.
- 2- Petitioner shall repair all damage to the respondent's property caused in connection with the license, at petitioner's sole cost and expense, see (NYSCEF Doc. No. 67 at pp.4-5, ¶2(e).
 - 3- Petitioner is required to obtain specified insurance coverage naming respondent as an additional insured and shall indemnify respondent relating to the construction project at issue, see (NYSCEF Doc. No.67 at p. 7 ¶ ¶ 3(a), 4).
 - 4- Petitioner shall provide respondent the sum of \$104,000, representing 85% of respondent's engineering and legal fees invoiced to date. Respondent, at this time, is not entitled to recover future costs incurred regarding any possible future damages arising out of the construction project at issue.
 - 5- Petitioner is granted access to respondent's property for a period of nine (9) months from the date of commencement.
 - 6- Petitioner is to pay respondent a monthly license fee in the amount of \$2,500 in consideration of the license. This fee is subject to an increase to \$4,000 per month should petitioner's access continue beyond the term of the license.

CONCLUSION

The motion to reargue is granted and upon re-argument, petitioner is granted a license to access the respondent's property in accordance with Real Property and Administrative Proceedings Law § 881. The parties are directed to memorialize the above terms and conditions, in addition to any remaining terms necessary for the execution of the license, into a final license agreement.

This constitutes the Decision and Order of the Court.

6/23/20 DATE		 W. FRANC PERRY, J.S.C.
CHECK ONE:	<input checked="" type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/> GRANTED <input type="checkbox"/> DENIED	<input type="checkbox"/> GRANTED IN PART <input type="checkbox"/> OTHER
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