

Tesoriero v 9243 Realty, LLC
2020 NY Slip Op 32800(U)
August 24, 2020
Supreme Court, Kings County
Docket Number: 513700/2016
Judge: Richard Velasquez
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At an IAS Term, Part 66 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 24th day of AUGUST, 2020

P R E S E N T:
HON. RICHARD VELASQUEZ

Justice.

-----X
THOMAS TESORIERO,

Plaintiff,

Index No.: 513700/2016

-against-

Decision and Order

9243 REALTY, LLC, 9243 4TH AVE DOUNT INC.,
PARBODH BARIKH, UNIVERSAL DIAGNOSTIC
OF BAY RIDGE, INC., PARIL LILIKAKIS, DECK
4-9243, LLC, DUNKIN DONUTS OF NEW YORK,
And DUNKIN DONUTS INC.,

Defendants,

-----X
9243 REALTY, LLC,

Third-Party Plaintiff

-against-

DUNKIN DONUTS OF NEW YORK,
And DUNKIN DONUTS INC.,

Third-Party Defendants,

-----X
9243 REALTY, LLC, DECK4-9243, LLC,
DUNKIN DONUTS OF NEW YORK INC.,
And DUNKIN DONUTS INC.,

Second-Third-Party Plaintiff

-against-

TDJ SERVICES INC.,
-----X

The following papers numbered 223 to 236 read on this motion:

<u>Papers</u>	<u>Numbered</u>
Notice of Motion/Order to Show Cause Affidavits (Affirmations) Annexed_____	223-227
Opposing Affidavits (Affirmations)_____	232; 234
Reply Affidavits (Affirmations)_____	235; 236

After having heard Oral Argument on August 24, 2020 oral argument and a review of the foregoing submissions herein, the Court finds as follows:

Defendant, UNIVERSAL DIAGNOSTIC OF BAY RIDGE, INC., moves for an order (1) granting leave to reargue its summary judgment motion, which was denied pursuant to order of this Court dated January 15, 2019 and upon reargument, granting them summary judgment, or in the alternative granting leave to reargue denying branch of plaintiff's Summary Judgment Motion seeking to strike the moving defendant's affirmative defenses as to plaintiff's comparative negligence. (MS#10).

ANALYSIS

CPLR 2221 in pertinent part states: "(d) A motion for leave to reargue: 1. shall be identified specifically as such; 2. shall be based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion, but shall not include any matters of fact not offered on the prior motion; and 3. shall be made within thirty days after service of a copy of the order determining the prior motion and written notice of its entry. CPLR 2221(d)(2) articulates the standards previously outlined in the

caselaw. A motion to reargue, it says: "shall be based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion but shall not include any matters of fact not offered on the prior motion. CPLR 2221.


Under the caselaw existing prior to the 1999 amendments, a motion for re-argument was often used when there was a change in the law after the prior order. CPLR 2221(e)(2) now clarifies that the motion to renew, not the motion to reargue, is the proper expedient when the motion is based on a change in the law that occurs while the case is still subjudice, such as a new statute taking effect or a definitive ruling on a relevant point of law being handed down by an appellate court that is entitled to stare decisis. See *Siegel, New York Practice* 449 (4th ed. 2005). The distinction, made clear in the caselaw and now embodied in the statute, is that the motion to renew involves new proof while the motion to reargue does not; it merely seeks to convince the court that it overlooked or misapprehended something the first time around and ought to change its mind. NY CPLR 2221.

In the present case, Defendant contends that in deciding the previous motion in respondents' favor, the Court overlooked or misapprehended relevant facts or misapplied controlling principles of law. The Court can find nothing in defendant's renewal which indicates that the Court overlooked or misapprehended relevant facts. Defendant fails to set forth any facts that the Court overlooked, however, but contend apparently that the Court misapplied controlling principles of law in regard to denying the motion for summary judgement and striking comparative fault defenses. The Court disagrees.

Accordingly, defendant's request to reargue is denied and this Court adheres to its previous decision for the reasons stated above.

This constitutes the Decision/Order of the Court.

Date: August 24, 2020



RICHARD VELASQUEZ, J.S.C.

So Ordered
Hon. Richard Velasquez

AUG 24 2020



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KINGS COUNTY CLERK
FILED