To commence the statutory time period for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

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SAMMY PROPERTIES, INC.,

Plaintiff,

DECISION & ORDER
Index No. 70213/2017
Sequence No. 7

-against-

AL SALEH ASSOCIATES, LLC and SALEH SALEH,

Defendants.

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WOOD, J.

New York State Courts Electronic Filing ("NYSCEF") Documents Numbers 194-208, 212-215, 217-218, were read in connection with defendants' motion for leave to reargue/renew that portion of this court's (Loehr, J.),[1] Decision and Order entered December 13, 2019 ("the Decision and Order"), which denied defendants' motion for summary judgment, denying dismissal of plaintiff's action for an injunction, declaratory relief and for monetary damages; and/or (b) leave to reargue and/or renew that portion of the Decision and Order which granted Sammy's cross-motion for summary judgment, granted Sammy's request for a permanent injunction and ordered a trial on the issue of Sammy's alleged monetary damages; and/or (c) upon granting reargument and/or renewal, for an Order modifying the Decision and Order by denying Sammy's cross-motion in its entirety, vacating the permanent injunction, and granting Defendants' motion for summary judgment;

[1]Justice Loehr has since retired.

(d) staying any hearing or trial relating to damages.

Defendants claim that the court ignored the evidence presented by Al Saleh via trial admissible documentary evidence and the testimony of live witnesses that, for more than 20 years after signing the subject easement agreement, Al Saleh utilized the driveway, which was in part the subject of that agreement, as its ingress driveway instead of permitting Sammy and its predecessors to use it as an egress driveway. Defendants argue that notwithstanding that the material facts clearly showed that Al Saleh openly, notoriously, and exclusively used the subject "egress driveway" as its entranceway, the Court held that Al Saleh had failed to meet its burden of proof. Additionally, defendants claim that the court overlooked the undisputed evidence that Sammy and/or its predecessors in interest had, for more than 20 years prior to the commencement of this action, failed to annually provide Al Saleh with proof that it/they had ongoing liability insurance coverage for Al Saleh's benefit. Further, the court denied Al Saleh's motion for summary judgment with respect to the issue of monetary damages for, inter alia, trespass, despite Sammy's admission that it had none, and ignored other issues and arguments raised by defendants.

In opposition to the motion, plaintiff asserts that in his decision, Judge Loehr correctly and properly granted Sammy Properties' cross-motion for summary judgement, and further ruled that Sammy Properties had a proper, correct and longstanding easement over defendants' property. Judge Loehr further granted plaintiff a permanent injunction against future interference on plaintiff's easement rights by the defendants.

NOW, based upon the foregoing, the motion is decided as follows:

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 or for some [other] reason mistakenly arrived at its earlier decision (*Mazzei v Licardi*, 47 AD3d 774 [2d Dept 2008], *citing Carillo v PM Realty Group,* 16 AD3d 611 [2d Dept 2005]; *Singelton v Lenox Hill Hospital,* 61 AD3d 956, 957 [2d Dept 2009]). A motion for reargument is not designed to provide an unsuccessful party with successive opportunities to present arguments different from those originally presented (*Gellert & Rodner v Gem Community Management, Inc.* 20 AD3d 388 [2d Dept 2005]; *McGill v Goldman,* 261 AD2d 593, 594 [2d Dept 1999]). Nor does it function as a forum to proffer arguments different from those originally tendered (*Amato v Lord & Taylor,* 10 AD3d 374, 375 [2d Dept 2004]) or on a new theory of law not previously advanced (*Frisenda v X Large Enterprises, Inc.*, 280 AD2d 514, 515 [2d Dept 2001]). Rather, the movant must satisfactorily demonstrate matters of fact or law allegedly overlooked or misapprehended on the prior motion (*Matter of Hoffman v Debello-Teheny*, 27 AD3d 743 [2d Dept 2006]). New facts may not be submitted or considered by the court (*Trahan v Gallea*, 48 AD3d 791, 792 [2d Dept 2008]; *Quinn v Menzel,* 282 AD2d 513 [2d Dept 2001]).

After a thorough review of the papers presented in the prior determination, the court finds that there was a substantial basis for this court's (Loehr, J.) decision. Since defendants failed to show that the court overlooked or misapprehended the facts or law or for some other reason mistakenly arrived at its earlier decision, defendants' application for reargument is not supported by the record or the case law, and is denied.

To the extent that defendants are seeking leave for motion to renew, under CPLR 2221, "a motion for leave to renew must be based upon new or additional facts, which although in existence at the time of the original motion, were not made known to party seeking renewal, and were not known to the court" (Morrison v Rosenberg, 278 AD2d 392 [2d Dept 2000]). Leave to renew is "not

warranted where the factual material adduced in connection with the subsequent motion is merely cumulative with respect to the factual material submitted in connection with the original motion" (Orange and Rockland Utilities, Inc. v Assessor of the Town of Haverstraw, 304 AD2d 668, 669 [2d Dept 2003] quoting Stone v Bridgehampton Race Circuit, 244 AD2d 403 [2d Dept 1997]). Yet, the rule is flexible and additional facts known to the party seeking renewal may be offered if the movant first establishes a reasonable excuse as to why the additional facts were not submitted on the original application (Matter of Gold v Gold, 53 AD3d 485, 487 [2d Dept 2008]; Granato v Waldbaum's, Inc., 289 AD2d 289 [2d Dept 2001]). Taking into consideration defendants' submission, the court finds that defendants have not satisfied the requirements for a motion for leave to renew, and based upon the record and the arguments of the parties, the court denies the motion for leave to renew the prior decision.

All other relief requested and not decided herein is denied. This constitutes the Decision and Order of this Court.

NOW, based on the above stated reasons, it is hereby

ORDERED, that plaintiff's motion for leave for reargue/renew is granted, and upon reargument denied.

Dated: **July 6 , 2020**
White Plains, New York

HON. CHARLES D. WOOD
Justice of the Supreme Court

To: All Parties by NYSCEF