

Simry Realty Corp. v Bishop
2021 NY Slip Op 32226(U)
November 10, 2021
Supreme Court, New York County
Docket Number: Index No. 100871/2016
Judge: Erika M. Edwards
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ERIKA EDWARDS

PART 11

Justice

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SIMRY REALTY CORP.

Plaintiff,

- v -

DOROTHY BISHOP,

Defendant.

INDEX NO. 100871/2016

**MOTION DATE 06/18/2018,
07/09/2018**

MOTION SEQ. NO. 004, 005

**DECISION + ORDER ON
MOTION**

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The following e-filed documents, listed by NYSCEF document number (Motion 004) 15, 16, 17, 18, 19, 20, 21, 22, 27, 28, 29, 30, 64, 66

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

The following e-filed documents, listed by NYSCEF document number (Motion 005) 31, 32, 33, 34, 36, 37, 65, 67

were read on this motion to/for RENEWAL.

Upon the foregoing documents, under Motion Sequence No. 004, the court grants Defendant Dorothy Bishop’s (“Defendant”) motion to reargue Defendant’s prior motion for partial summary judgment (Motion Sequence No. 002) and Plaintiff Simry Realty Corp.’s (“Plaintiff”) motion directing Defendant to deposit a sum of money for use and occupancy (Motion Sequence No. 003), and upon reargument, the court grants Defendant’s motion and denies this portion of Plaintiff’s motion.

The court denies Plaintiff’s cross-motion for an order assessing punitive and compensatory sanctions against Defendant and Stuart Lawrence, Esq. for unlawfully filing a motion to reargue without leave of court. The court also denies Plaintiff’s motion by order to show cause filed under Motion Sequence No. 005 to renew and reargue the court’s decision and order, dated May 7, 2018, and to reinstate Plaintiff’s cause of action for ejectment and grant Plaintiff leave to amend Plaintiff’s complaint.

The court scheduled oral argument on these motions on May 13, 2021, June 29, 2021 and September 9, 2021, but neither Plaintiff's counsel, nor its principal, appeared. The court was advised that Plaintiff's counsel of record, Michael Stepper, no longer represented Plaintiff and no other attorney has appeared in the action on Plaintiff's behalf.

The court's order, dated May 13, 2021, directed Mr. Stepper to move to withdraw as counsel if he no longer represented Plaintiff and for new counsel to appear in this action and update the attorney's contact information on NYCEF and with the part clerk as soon as possible.

Via written correspondence, dated May 19, 2021, Mr. Stepper advised the court in substance that a temporary restraining order (which was converted into a preliminary injunction) on another matter involving Plaintiff required him to cease representing Plaintiff on all matters. He stated that he forwarded the file to another attorney whom he believed was representing Plaintiff. The court was subsequently advised that the attorney who purportedly had the file did not represent Plaintiff in this action. Additionally, the court was advised that the information regarding the conference had been provided to Plaintiff's principal.

After no one appeared on Plaintiff's behalf at the oral argument on June 29, 2021, the court issued an order on that same date directing Plaintiff to appoint a substitute attorney within twenty (20) days of the date of the decision and order, directing the new attorney to file a notice of appearance within thirty (30) days of the decision and order, or the court required Plaintiff's principal to provide his or her contact information to the part clerk and appear at the next conference for oral argument on September 9, 2021.

On September 9, 2021, Plaintiff failed to comply with the court's order and no one appeared for Plaintiff at the oral argument for the third consecutive time. No attorney filed a

notice of appearance or provided contact information to the court and the principal of Plaintiff failed to contact the court.

To date, no new attorney has filed a notice of appearance on Plaintiff's behalf. As such, the court denies Plaintiff's cross-motion and motion by order to show cause under motion sequence 005 on default for its failure to appear for three consecutive oral arguments, its failure to retain an attorney to represent it in this action and its apparent abandonment of these issues. Additionally, the court denies Plaintiff's cross-motion and motion on their merits as Plaintiff failed to demonstrate its entitlement to the relief requested and as moot in light of the court's decision to grant Defendant's motion to reargue and the court's dismissal of the remaining causes of action in Plaintiff's complaint.

Pursuant to CPLR 2221(d)(2), a motion for leave to reargue is left to the sound discretion of the court and may be granted only where the moving party contends that an issue of law or fact had been overlooked or misapprehended by the court when deciding the original motion (CPLR 2221[d][2]). It is not designed to provide the unsuccessful party successive opportunities to reargue issues previously decided by the court or to present new evidence or different arguments than previously raised (*William P. Pahl Equip. Corp. v Kassis*, 182 AD2d 22, 27 [1st Dept 1992] [internal citations and quotation marks omitted]).

The court grants Defendant's motion to reargue filed under motion sequence number 004 and finds that Defendant established that the court misapprehended or overlooked Defendant's argument regarding the significance of and nature of the building's certificate of occupancy and the entire apartment's lack of a residential certificate of occupancy. Upon reargument, the court reverses its previous decision and order denying dismissal of Plaintiff's use and occupancy claim under its second cause of action and the court dismisses it.

Additionally, the court agrees with Defendant that based upon the court's language in its decision and order, the court intended to grant Defendant's motion to dismiss Plaintiff's third cause of action for damages for wrongful withholding of possession since it dismissed Plaintiff's first cause of action for ejectment, and its failure to do so was clearly in error.

Thus, it appears that Plaintiff's entire complaint is now dismissed as against Defendant and the only remaining claim is Defendant's counterclaim for attorney's fees.

Finally, the court reverses the portion of its decision on motion sequence 003, which directs Defendant to provide Plaintiff with a sum of money for use and occupancy since the court now dismisses Plaintiff's use and occupancy claim.

The court considered all additional arguments raised by the parties and denies all additional requests for relief not specifically granted herein.

As such, it is hereby

ORDERED that, under Motion Sequence No. 004, the court grants in part Defendant Dorothy Bishop's motion to reargue Defendant's prior motion for partial summary judgment (Motion Sequence No. 002) and Plaintiff Simry Realty Corp.'s motion directing Defendant to deposit a sum of money for use and occupancy (Motion Sequence No. 003), and upon reargument, the court grants Defendant's motion and denies the portion of Plaintiff's motion directing Defendant to pay use and occupancy; and it is further

ORDERED that the court dismisses Plaintiff's second cause of action for use and occupancy and Plaintiff's third cause of action for damages for wrongful withholding of possession and directs the Clerk of the Court to enter judgment in favor of Defendant as against Plaintiff as to these claims, which dismisses Plaintiff's entire complaint as against Defendant; and it is further

ORDERED that the court denies Plaintiff's cross-motion for an order assessing punitive and compensatory sanctions against Defendant and Stuart Lawrence, Esq. for unlawfully filing a motion to reargue without leave of court; and it is further

ORDERED that the court denies Plaintiff's motion by order to show cause filed under Motion Sequence No. 005 to renew and reargue the court's decision and order, dated May 7, 2018; and it is further

ORDERED that the court directs the parties to appear for a status conference on Defendant's counterclaim on December 7, 2021, at 10:30 a.m., via Microsoft Teams, and Plaintiff is directed to retain counsel immediately or its principal must provide the clerk of Part 11, Ms. Bing Zhao, with his or her contact information and email by emailing her at SFC-Part11-Clerk@nycourts.gov by November 22, 2021.

This constitutes the decision and order of the court.



ERIKA EDWARDS, J.S.C.

11/10/2021

DATE

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: