

Leonard v Carousel Carriers, LLS
2021 NY Slip Op 33276(U)
November 3, 2021
Supreme Court, Ulster County
Docket Number: Index No. EF2018-3350
Judge: James P. Gilpatric
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**STATE OF NEW YORK
SUPREME COURT**

ULSTER COUNTY

LISA LEONARD,

Plaintiff,

DECISION and ORDER

-against-

Index No.: EF2018-3350

**CAROUSEL CARRIERS, LLS, RESERVOIR
UNITED METHODIST CHURCH and HOWARD COOK,**

Defendants.

**Supreme Court, Ulster County
R.J.I. No.: 55-17-01260**

Present: James P. Gilpatric, J.S.C.

Appearances:

**RUSK WADLIN HEPPNER & MARTUSCELLO, LLP
Attorneys for the Plaintiff
255 Fair Street
P.O. Box 3356
Kingston, New York 12402
By: Nikolas S. Tamburello, Esq.**

**MAYNARD, O'CONNOR, SMITY & CATALINOTTO, LLP
Attorneys for Defendant Reservoir United Methodist Church
6 Tower Place
Albany, New York 12203
By: Emily A. Phillips, Esq.**

**SMITH, MAZURE, DIRECTOR, WILKINS, YOUNG, &
YAGERMAN, PC
Attorneys for Defendants Carousel Carriers, LLC and Howard Cook
111 John Street
New York, New York 10038
By: Howard K. Fishman, Esq.**

Gilpatric, J.:

The co-defendant Reservoir United Methodist Church moves (hereinafter "Reservoir"), pursuant to CPLR § 2221(a), for leave to reargue this Court's Amended Decision and Order,

dated June 17, 2021, to the extent that the underlying determination be amended to dismiss all cross-claims. Here, said co-defendant asserts that this Court failed to consider the affirmation in opposition submitted by co-defendants Carousel and Cook by Stacy J. Ury, dated April 30, 2020, with exhibits and, attached said document to its motion. Co-defendants Carousel Carriers, LLC (hereinafter "Carousel") and Howard T. Cook (hereinafter "Cook") oppose co-defendant Reservoir's motion to dismiss all cross-claims but also move to reargue the this Court's Amended Decision and Order, dated June 17, 2021 for failure to consider the aforementioned affirmation of Stacy J. Ury. Additionally, the plaintiff cross-moves to reargue this Court's Amended Decision and Order, dated June 17, 2021.

This Court, by Amended Decision and Order, dated June 17, 2021, granted co-defendant Reservoir's summary judgment motion for dismissal of plaintiff's complaint as against it and denied the co-defendant Reservoir's motion to dismiss of cross-claims asserted against them.

A motion to reargue is addressed to the sound discretion of the Court. It does not rely on new proof; rather its purpose is to provide the movant with an opportunity to convince the Court that it overlooked or misunderstood a factual or legal issue (In re Oswald, 138 AD3d 1343 [3rdDept]; Pro Brokerage Inc. v. Home Ins. Co., 99 AD2d 971 [1st Dept 1984], *appeal dismissed* 64 NY2d 646 [1984]). However, it is not designed to allow a party the opportunity to argue a new theory of law not previously advanced by it (Frisenda v X Large Enterprise Inc., 280 AD2d 514, 515 [2nd Dept 2001]).

Here, it is argued by all parties that the Court both overlooked and/or misapprehended the facts and law for the issues presented on the underlying motion. It is alleged that the affirmation of Stacy J. Ury was not considered as it does not appear in papers considered. As such, upon review of the submissions the Court grants reargument as to this Court's review of the affirmation in opposition of Stacy J. Ury only. Reargument is not designed to afford the unsuccessful party successive opportunities to reargue issues previously decided or to present arguments different from those originally asserted. (*see Pahl Equipment Corp. V. Kassis*, 182 AD2d 22 [1st Dept. 1992]).

Therefore, after reviewing Ms. Ury's affirmation in opposition, the Court is not persuaded that it overlooked or misunderstood any factual or legal issue before it. As such, after granting

the motions for reargument, the Court stands by the findings of its June 17, 2021 Decision and Order. The Court's thorough review of the aforesaid affirmation does not change this Court's prior decision in that it has not demonstrated its entitlement to summary judgment for the dismissal of cross-claims as against them. Any remaining arguments have either been considered and/or determined to be without merit.

Accordingly, it is

ORDERED that the motions to reargue this Court's Decision and Order, dated June 17, 2021, are granted, and it is further

ORDERED that the part of co-defendant Reservoir's summary judgment motion for dismissal of plaintiff's complaint as against it is granted, and it is further

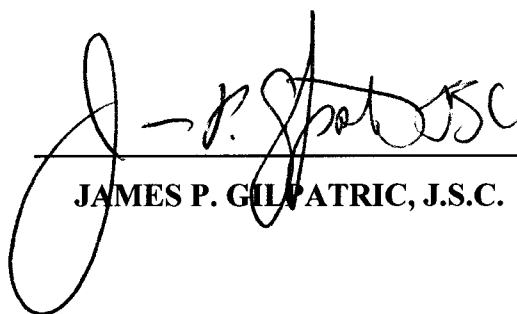
ORDERED that the part of co-defendant Reservoir's motion seeking dismissal of cross-claims is denied.

This shall constitute the decision and order of the Court. The signing of this decision and order shall not constitute entry or filing under CPLR 2220. Counsel is not relieved from the applicable provisions of that rule regarding notice of entry and service.

SO ORDERED!

Dated: November 3, 2021
Kingston, New York

ENTER,



JAMES P. GILPATRIC, J.S.C.

Papers Considered:

1. Notice of Motion, dated June 24, 2021;
2. Attorney Affirmation by Emily A. Phillips, Esq., dated June 24, 2021, with exhibits;
3. Notice of Motion, dated July 7, 2021;
4. Affirmation in Support by Howard K. Fishman, Esq., dated July 7, 2021;
5. Affirmation in Support by Ann P. Eccher, dated July 7, 2021, with exhibits;
6. Affirmation in Opposition by Howard K. Fishman, Esq., dated July 13, 2021, with exhibit;
7. Notice of Cross-Motion, dated July 22, 2021;
8. Affirmation in Support and in Opposition by Nikolas S. Tamburello, Esq., dated July 22, 2021, with exhibits;
9. Attorney Affirmation in Partial Opposition by Emily A. Phillips, Esq., dated July 29, 2021;
10. Attorney Affirmation in Partial Opposition by Emily A. Phillips, Esq., dated July 29, 2021;
11. Reply Affirmation by Howard K. Fishman, Esq., dated August 6, 2021.