

214 Lafayette House LLC v Akasa Holdings, LLC

2022 NY Slip Op 30055(U)

January 11, 2022

Supreme Court, New York County

Docket Number: 153415/2018

Judge: Erika M. Edwards

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ERIKA EDWARDS

PART 11

Justice

-----X

INDEX NO. 153415/2018

214 LAFAYETTE HOUSE LLC

MOTION DATE 12/08/2021

Plaintiff,

MOTION SEQ. NO. 005

- v -

AKASA HOLDINGS, LLC,

**DECISION + ORDER ON
MOTION**

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 005) 182, 183, 186, 187, 188, 189, 190, 191

were read on this motion to/for REARGUMENT & CROSS-MOTION FEES.

Upon the foregoing documents, the court denies Defendant Akasa Holdings, LLC’s (“Akasa”) motion to reargue its cross-motion for summary judgment and to stay the court’s previous Decision and Order, dated October 18, 2021 (NYSCEF Doc. No. 158) and Plaintiff 214 Lafayette House LLC’s (“214 Lafayette”) cross-motion for attorney’s fees.

In its Decision and Order, dated October 18, 2021, the court granted 214 Lafayette’s motion for partial summary judgment in its favor on its first cause of action prohibiting and restraining Akasa from obstructing or impeding the path of 214 Lafayette’s 1981 easement, which required removal of a staircase, landing, an elevator, a pit, a portion of a fence/fixed gate and any other obstructions. The court also dismissed Akasa’s counterclaim for declaratory relief, severed 214 Lafayette’s second cause of action and denied Akasa’s cross-motion for summary judgment on its counterclaim and certain affirmative defenses.

In its Decision and Order, dated November 3, 2021 (NYSCEF Doc. No. 180), the court granted 214 Lafayette’s motion by order to show cause and directed Akasa to allow emergency access from 57 Crosby Street to Crosby Street. However, the court determined that the push bar

access installed by Akasa was sufficient to provide such access and the court granted Akasa's request for a 90-day stay of any further enforcement of the court's October 18, 2021 Decision and Order.

Akasa now moves to reargue its previous cross-motion for summary judgment and to stay the court's October 18, 2021 Decision and Order pending its appeal. 214 Lafayette cross-moves for \$9,000.00 in attorney's fees for the cost of opposing Akasa's motion to reargue as sanctions for Akasa's filing of a frivolous motion. Both parties oppose each other's motions.

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]).

Here, the court denies Akasa's motion to reargue its previous cross-motion for summary judgment and to stay the court's October 18, 2021 Decision and Order, and finds that Akasa failed to satisfy its burden that the court overlooked or misapprehended an issue of law or fact. The court finds that this is yet another attempt by Akasa to delay removal of the obstructions which impede the path of 214 Lafayette's 1981 easement required by this court's previous rulings and prevents the enforcement of the easement which was found to be valid by this court and the First Department. A further stay is not required, nor warranted.

Akasa argues in substance that the court overlooked its relocation arguments and whether the 1981 easement requires removal of the obstructions. However, the court considered these

arguments, but found them to be without merit. The court chose not to address every argument made by Akasa in detail because such claims were clearly contradicted by the applicable law and facts and they did not warrant such attention. Instead, the court chose to address what it believed to be Akasa's most persuasive arguments after considering the facts and controlling legal authority. The court even advised the parties in its decision that it "considered all remaining arguments of the parties not specifically discussed herein and the court denies any additional requests for relief not expressly granted herein".

Similarly, although the court declines to characterize Akasa's motion as frivolous to the extent that the imposition of sanctions is necessary, the court declines to address each of Akasa's claims in this decision. However, the court has considered all of Akasa's claims and finds each of them to be unpersuasive and some to be surprising mischaracterizations of the court's order. Furthermore, many of the claims raised in Akasa's reply regarding alleged concessions made by 214 Lafayette are directly contradicted by 214 Lafayette's arguments raised in opposition to Akasa's motion.

Additionally, Akasa argues in substance that the court erred in relying on the standard of res judicata applied in *Paramount Pictures Corp. v Allianz Risk Transfer AG* because the facts of *Paramount* involve a prior Federal court proceeding and are not applicable to the facts in this case (*Paramount Pictures Corp. v Allianz Risk Transfer AG*, 31 NY3d 64, 72-73 [2018]). However, this argument falls short since the court never relied on *Paramount* for the factual or legal premise set forth in Akasa's arguments. The court could have cited to any number of Court of Appeals or Appellate Division cases for the simple premise that Akasa is barred by res judicata from raising its adverse possession claim because Akasa could have raised the claim in the 2016 action, but failed to do so. This is a longstanding legal doctrine that does not only apply

to cases involving a prior Federal proceeding, but applies generally to numerous other types of cases, including the instant matter. Additionally, as the court noted, even if it permitted Akasa to raise its adverse possession claim in this action, then the court would still deny it on its merits based upon the circumstances in this case. The court issued its determination based upon res judicata, even though the court could have been persuaded by 214 Lafayette's additional arguments, so there was simply no need for the court to explain in detail numerous alternative reasons for rejecting Akasa's claim.

Furthermore, this court denies Akasa's request to stay the court's order pending Akasa's appeal of the court's ruling. The court previously granted a 90-day stay and it will not extend it any further. Akasa is not entitled to an automatic stay pending its appeal because this easement does not involve the conveyance or delivery of real property. It essentially involves this court's enforcement of a forty-year old easement, the validity of which has already been upheld by the First Department.

Additionally, the court declines to grant any further stay based upon its discretion. Since the First Department has already determined that Akasa had constructive notice of 214 Lafayette's 1981 easement appurtenant and that such easement was valid, this court finds that Akasa's appeal of this court's enforcement of the unobstructed use of such easement lacks merit. Therefore, the court denies this portion of Akasa's motion and no undertaking is required.

The court also denies 214 Lafayette's cross-motion for sanctions in the form of \$9,000.00 in attorney's fees for the cost of opposing Akasa's motion to reargue as the court finds that such sanctions are not warranted at this time.

Pursuant to 22 NYCRR § 130-1.1(a) and (c), in pertinent part;

(a) The court, in its discretion, may award to any party or attorney in any civil action or proceeding before the court, except where prohibited by

law, costs in the form of reimbursement for actual expenses reasonably incurred and reasonable attorney's fees, resulting from frivolous conduct as defined in this Part. . .

- (c) For purposes of this Part, conduct is frivolous if:
- (1) it is completely without merit in law and cannot be supported by a reasonable argument for an extension, modification or reversal of existing law;
 - (2) it is undertaken primarily to delay or prolong the resolution of the litigation, or to harass or maliciously injure another; or
 - (3) it asserts material factual statements that are false (22 NYCRR § 130-1.1[a] and [c]).

Although the court determines that Akasa's actions of filing this motion to reargue and to stay the court's previous order pending its appeal are clearly an attempt to continue to avoid complying with the court's order requiring removal of the obstructions, such conduct is not malicious or harassing in nature. Akasa has a right to exhaust its efforts to continue to challenge the court's order which was unfavorable to Akasa, as long as such efforts are consistent with the law, facts and ethical considerations. Although the court determines that some of Akasa's arguments contained mischaracterizations, were contrary to the facts of the case or controlling legal authority, the court finds that such statements do not warrant sanctions at this time.

Therefore, the court denies both the motion and cross-motion.

As such, it is hereby

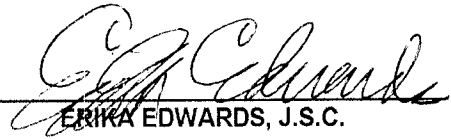
ORDERED that the court denies Defendant Akasa Holdings, LLC's motion to reargue its cross-motion for summary judgment and to stay the court's previous Decision and Order, dated October 18, 2021, and it is hereby

ORDERED that the court denies Plaintiff 214 Lafayette House LLC's cross-motion for attorney's fees incurred to oppose Akasa's motion as sanctions for Akasa filing a frivolous motion.

This constitutes the decision and order of the court.

1/11/2022

DATE


ERIKA EDWARDS, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE