

<b>410 Lefferts LLC v 408 Lefferts, LLC</b>
2022 NY Slip Op 34034(U)
November 18, 2022
Supreme Court, Kings County
Docket Number: Index No. 502322/2021
Judge: Leon Ruchelsman
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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS : CIVIL TERM: COMMERCIAL 8  
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410 LEFFERTS LLC,

Plaintiff, Decision and Order  
Index No. 502322/2021

-against-

November 18, 2022

408 LEFFERTS, LLC, VIT, LLC, LEFFERTS  
DEVELOPER INC., SPIV REALTY CORP., VLADIMIR  
ILYAYEV, STEPHEN I. FEDER, ESQ., P.C.,  
as escrowee,

Defendants,

-----x  
PRESENT: HON. LEON RUCHELSMAN

The plaintiff and the defendant have both moved pursuant to CPLR §2221 seeking to reargue a decision and order dated March 30, 2022 which denied summary judgement to both parties seeking escrow funds and which granted the motion seeking to dismiss the counterclaims and affirmative defenses. The motions have been opposed respectively. Papers were submitted by the parties and after reviewing all the arguments this court now makes the following determination.

As recorded in a prior order, in December 2018 the defendants and the plaintiff entered into a contract wherein the defendants agreed to sell seven properties located on Lefferts Boulevard and East New York Avenue in Kings County to the plaintiff for a contract price of eight million dollars. The closing occurred on April 19, 2018. A clause in the rider to the contract required the defendants to place \$100,000 in escrow to cover the costs of violations on the properties the defendants

promised to remove within one year. In the prior motion the plaintiff sought recovery of the escrow funds on the grounds the defendants failed to correct all the violations on the property within the year. The court denied that request on the grounds there were questions whether the plaintiff was first required to enable the defendants to remove the violations. Further, the court noted there was no opposition to the motion seeking to grant dismissal of the affirmative defenses and counterclaims and thus granted that request. Motions to reargue have now been filed.

#### Conclusions of Law

A motion to reargue must be based upon the fact the court overlooked or misapprehended fact or law or for some other reason mistakenly arrived at in its earlier decision. (Deutsche Bank National Trust Co., v. Russo, 170 AD3d 952, 96 NYS2d 617 [2d Dept., 2019]).

As noted in the prior decision Paragraph 32 of the rider to the lease states that the seller "will not be responsible for any work needed to clear the violations of record" (see, Paragraph 32 of the Rider to the Contract). That clause is clear. It states that there can be no requirement imposed on the defendants to perform any work to clear the violations. Thus, questions of fact have been raised whether the defendants' failure to clear

the violations was the result of the seller's failure to perform work necessary to enable the removal of such violations. The plaintiff has raised no arguments demanding a reconsideration of that conclusion. Therefore, the plaintiff's motion seeking reargument is denied.

Turning to the defendant's motion, they argue that in fact they did present opposition to the motion seeking to dismiss the affirmative defenses and counterclaims and it was error for the court to conclude otherwise. The basis for this argument is the fact the motion opposing the prior summary judgement motion included the phrase that "plaintiff's motion for summary judgement should be denied in its entirety" (see, Affirmation of Joshua Bronstein Esq., page 9 [NYSCEF Doc. No. 28]) and that meant to include all of plaintiff's arguments including the dismissal of counterclaims and affirmative defenses.

First, a motion for summary judgement is distinct from a motion to dismiss counterclaims. Thus, requesting a motion for summary judgement should be denied cannot possibly include a request for other reliefs as well. Even assuming that such reliefs were included within the words "in its entirety" that passing reference did not offer any meaningful opposition at all. Opposition to a motion requires actual opposition, based upon arguments, facts, the law and an application of all three. Merely informing the court that a motion is being opposed does

not comprise any meaningful opposition at all. As the court stated in Gruppo v. London, 25 AD3d 486, 808 NYS2d 709 [2d Dept., 2006] "defendant's opposition to summary judgment, consisting of no more than the unsubstantiated affirmation of counsel, who lacked personal knowledge of the facts, was insufficient to raise a triable issue" (id). This is all the more true where no arguments or facts are presented at all. Therefore, the defendant's motion seeking reargument is denied.


Further, any new evidence may not be considered on a motion to reargue.

Therefore, based on the foregoing, the motion of the plaintiff and the motion of the defendants seeking reargument are both denied.

So ordered.

ENTER:

DATED: November 18, 2022  
Brooklyn N.Y.

  
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Hon. Leon Ruchelsman  
JSC