

**Kaplan v 55th St. Apts. Inc.**

2024 NY Slip Op 32078(U)

June 17, 2024

Supreme Court, New York County

Docket Number: Index No. 655243/2019

Judge: Arlene P. Bluth

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This opinion is uncorrected and not selected for official publication.

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

**PRESENT: HON. ARLENE P. BLUTH PART 14**

*Justice*

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HARVEY KAPLAN,

Plaintiff,

- v -

55TH STREET APARTMENTS INC., J&C LAMB  
MANAGEMENT CORP., JEFFREY LAMB,

Defendant.

-----X

55TH STREET APARTMENTS INC., J&C LAMB  
MANAGEMENT CORP., JEFFREY LAMB

Plaintiff,

-against-

GREATER NEW YORK MUTUAL INSURANCE COMPANY

Defendant.

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INDEX NO. 655243/2019

MOTION DATE 06/14/2024

MOTION SEQ. NO. 004

**DECISION + ORDER ON  
MOTION**

Third-Party  
Index No. 595263/2020

The following e-filed documents, listed by NYSCEF document number (Motion 004) 205, 206, 207, 208, 209, 210, 211

were read on this motion to/for MISCELLANEOUS.

Defendants' motion to "correct errors in their briefs" is denied.

**Background**

In this action, plaintiff (a dentist) claims that he runs his dental office in a building owned and managed by defendants. He owns shares in the cooperative. This action concerns his allegations that while seeking to renovate his office, defendants frustrated his ability to finish this work to the point where a six-to-eight-week project turned into a two-year ordeal. Plaintiff complains that asbestos was discovered and that defendants refused to meaningfully cooperate to remediate this issue.

Previously, defendants moved for summary judgment, The Court denied that motion on multiple grounds, including that defendants filed at least *five separate* memoranda of law and that each of these briefs violated the trial court rules about word count limits (NYSCEF Doc. No. 204 at 1-2). Moreover, the briefs did not include a certificate of conformity as required, a rule that requires parties to include a word count for their submissions.

Defendants now move to “correct” their briefs. Counsel for defendants admits that he was unaware of the rule changes regarding word count limits, which were enacted in December 2020 and became effective on February 1, 2021. Defendants observe that the “operative” brief, i.e., the one the Court should have considered amongst the many uploaded, contained 10,989 words and their reply brief was 5,831 words. Both of these exceeded the relevant limits by a wide margin (moving papers are allotted 7,000 words and reply papers can be up to 4,200 words).

Defendants attached a revised memorandum of law in support that has been reduced to 9,315 words and a reply brief that is 4,420 words. They acknowledge that both of these submissions still violate the trial court rules but complain that the case is exceeding complicated and demand that this Court grant permission to exceed the word limit. Defendants contend that the denial of the summary judgment motion would result in substantial prejudice for them as they invested substantial resources in preparing the motion.

### **Discussion**

The Court denies the motion. As an initial matter, the Court observes that the relief defendants seek is to correct their prior briefs. They cite to CPLR 104 and 2001 as well as 22 NYCRR 202.1(b) in their notice of motion. But those sections concern, in general, mistakes or omissions. That can include overlooking technical defects such as the failure to include a return

date in a petition (*Matter of Oneida Pub. Lib. Dist. v Town Bd. of Town of Verona*, 153 AD3d 127, 128 [3d Dept 2017]) or naming the wrong entity in a caption (*Greenwich Ins. Co. v New Amsterdam Assoc.*, 111 AD3d 543, 544 [1st Dept 2013]).

In this Court's view, defendants do not seek to correct an error or omission; instead, they seek to substantively change their prior submissions and to, essentially, vacate a prior order of this Court where they admit did not conform to clear and unambiguous trial court rules that were in effect for more than three years. Put another way, this Court considers the sections cited by defendants in the notice of motion to apply to situations where procedural errors should be overlooked so that a case can be considered on the merits. Defendants' improper submissions, which also included the filing of several over-length briefs (the Court did not know which brief was the 'operative' submission), were not a minor error that can be easily remedied or overlooked like the situations described above. It requires completely new briefing by the parties as evidenced by the fact that defendants have submitted entirely new briefs.

And, for reasons this Court fails to grasp, defendants' new submissions still do not conform to the word count limit. The fact is that the word count limit is 7,000 words and defendants have now submitted a revised brief that is 9,315 words—that is not remotely close to complying with the aforementioned trial court rules. Defendants claim they are unable to reduce the memorandum of law any further after taking off only less than 2,000 words. Simply put, there is no basis to grant defendants' untimely request to submit this oversized brief given the procedural history of this motion. That is, after this Court specifically identified the relevant rules (rules about which counsel for defendants admits he was unaware), defendants made the bizarre decision to ignore the rule once again and demand this Court permit them to do as they please.

Moreover, defendants make another bizarre request—that there is no need for plaintiff to file an amended opposition to the revised submissions from defendants. To be clear, defendants are asking that this Court accept their revised documents and suggest that plaintiff can just rely on a submission filed in response to a prior version. The Court denies this request.

The Court recognizes that defendants claim that plaintiff’s submission was also in violation of the word count limit. But plaintiff has not been granted any affirmative relief. Nor has any party suffered any prejudice. The fact is that this case will simply go to trial. This is not a situation in which a party has lost an entire matter based on an attorney’s refusal to follow the rules. There will simply be a trial.

And finally, another basis to deny the instant motion is that this new revised briefing is untimely as it was not filed within 120 days after the note of issue was filed (*Brill v City of New York*, 2 NY3d 648 [2004]). As noted above, the revised submissions are, in this Court’s view, not minor corrections. They are completely new briefs that were uploaded well after the 120-day deadline.<sup>1</sup>

Accordingly, it is hereby

ORDERED that defendants’ motion to correct its prior improper briefs is denied.

<u>6/17/2024</u> DATE					<u>ARLENE P. BLUTH, J.S.C.</u>
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/> DENIED	<input type="checkbox"/>	GRANTED IN PART <input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		<input type="checkbox"/>	SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/>	FIDUCIARY APPOINTMENT <input type="checkbox"/> REFERENCE

<sup>1</sup> The Court also observes that the instant motion did not request that the Court reconsider the prior decision (it did not request reargument, renewal or vacatur in the notice of motion) and so the Court questions what effect granting the instant motion would have on the Court’s prior order. Put another way, defendants seek to correct submissions filed in an already-decided motion. If the Court were to grant the relief sought by defendants, it would not put that motion back before this Court.