

**Borough Constr. Group, LLC v Red Hook 160 LLC**

2024 NY Slip Op 32463(U)

July 16, 2024

Supreme Court, Kings County

Docket Number: Index No. 500308/19

Judge: Leon Ruchelsman

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS : CIVIL TERM: COMMERCIAL 8  
-----X

BOROUGH CONSTRUCTION GROUP, LLC.,  
Plaintiff, Decision and order

- against - Index No. 500308/19

RED HOOK 160 LLC, PHILADELPHIA INDEMNITY  
INSURANCE COMPANY, ACREFI MORTGAGE  
LENDING, LLC, TRI STATE LUMBER, AF SUPPLY  
CORP, UNITED RENTALS (NORTH AMERICA), INC.,  
WORLDWIDE PLUMBING SUPPLY, INC., CASTLE  
MASONRY, INC., WOODBURY CONSTRUCTION, INC.,  
GO GREENER PLUMBING, INC., PREMIUM BUILDING  
MATERIALS, INC., UNIVERSAL MARBLE AND GRANITE  
OF QUEENS AND TPG CONTRACTING, CORP.,  
Defendants, July 16, 2024

-----X  
RED HOOK 160 LLC,  
Third Party Plaintiff,

- against -

BOROUGH EQUITIES LLC, MICHAEL BAUER &  
EMANUEL KANARIS,  
Third-Party Defendants,

-----X  
UNITED RENTALS (NORTH AMERICA) INC.,  
Third Party Plaintiff,

- against -

ATLANTIC SPECIALTY INSURANCE COMPANY,  
a/k/a ATLANTIC SPECIALTY INSURANCE INC.,  
D/b/a ASIC INSURANCE,  
Third-Party Defendants,

-----X  
UNIVERSAL MARBLE & GRANITE OF QUEENS INC.,  
Third-Party Plaintiff,

-against-

BOROUGH EQUITIES LLC and ATLANTIC  
SPECIALTY INSURANCE COMPANY,  
Third-Party Defendants,

-----X  
PRESENT: HON. LEON RUCHELSMAN

Motion Seq. #21

Borough Construction Group LLC has moved pursuant to CPLR §2221 seeking to reargue a decision and order dated January 2, 2024 which granted defendant/third party plaintiff Red Hook 160 LLC [hereinafter 'Red Hook'] summary judgement dismissing all of the plaintiff's causes of action and which granted summary judgement regarding Red Hook's counterclaims for breach of contract and fraud. Red Hook opposes the motion. Papers were submitted by the parties and after reviewing all the arguments, this court now makes the following determination.

As recorded in prior decisions Borough Construction Group LLC entered into a contract with Red Hook concerning the construction and renovation of a project located at 160 Imlay Street in Kings County. Borough Construction sued alleging it is owed over two and a half million dollars. Red Hook asserted various counterclaims. The court granted Red Hook's motion seeking summary judgement holding there are no questions of fact that Red Hook cannot be liable for any of Borough's claims and that there are no questions of fact Red Hook is entitled to a summary determination concerning its counterclaims. Borough Construction has now moved seeking to reargue that determination. As noted, the motion is opposed.

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 NYS3d 617 [2d Dept., 2019]).

Concerning the cause of action seeking a foreclosure of the lien, the court concluded there are no questions of fact the plaintiff cannot prevail upon this claim since it exaggerated the lien amounts. Upon reargument the plaintiff does not present any evidence the court overlooked. Indeed, the plaintiff presents evidence the court considered and which the court expressly addressed in the prior decision. The court explained this case is not about itemization but rather it is about exaggeration. The court found substantial evidence of exaggerated lien amounts which were not disputed by the plaintiff. The plaintiff's evidence, did not raise any questions regarding the affidavit of Erolind Lino Dumani the principal of a subcontractor, Vitroni who provided direct evidence of such exaggerated amounts. The evidence presented seeking to reargue this issue provides the same materials that have already been rejected. The plaintiff has provided no basis upon which to reconsider any of the conclusions the plaintiff exaggerated lien amounts.

Borough argues that Red Hook asked Borough to submit

inflated bills so that Red Hook would have an opportunity to draw more funds from its bank. That unusual and implausible theory is unsupported by any evidence other than portions of Bauer's deposition testimony which has already been discredited.

Further, even if true, that does not raise any questions of fact whether the liens were exaggerated, in fact it explicitly admits the liens were exaggerated. If Borough was asked to engage in fraud upon a banking institution, Borough had an obligation to refrain from such conduct. It is no answer, essentially to engage in fraudulent conduct, admit as such and then try and absolve itself by claiming 'Red Hook made me do it'. Therefore, there really is no basis upon which to reconsider the prior determination that Borough exaggerated the lien.

Next, concerning the manpower logs, there has no evidence presented the court overlooked any evidence. The court rejected Borough's argument that Red Hook had an obligation to verify the accuracy of any manpower logs. Borough has not raised any argument questioning a re-examination of these issues. Indeed, all the arguments raised in this motion were considered and rejected in the prior decision. There is no basis for the court to reconsider any of its prior rulings.

Therefore, based on the foregoing, the motion seeking reargument is denied.

Turning to the motion seeking renewal, Borough argues that


Red Hook argued it has standing to pursue counterclaims in this action but in another action argued it did not maintain standing to be sued upon the same claims. However, the other action, *Manda International v. Red Hook 160 LLC*, Index Number 531163/2022, involved an assignment between Red Hook and another party that was an assignee from Red Hook. This action involves Red Hook and Borough and there has been no assignment to the party in the Manda action or any other party. The two cases concern completely different contracts. They have nothing whatsoever to do with each other except for that they both involve the same property. There is nothing inconsistent in Red Hook's posture in the Manda case that bars the counterclaims sought here.

Therefore, based on the foregoing, the motion seeking renewal or reargument is denied.

So ordered.

ENTER:

DATED: July 16, 2024  
Brooklyn, NY

  
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Hon. Leon Ruchelsman  
JSC