

Perez v Quay Bd. of Mgrs.
2024 NY Slip Op 35234(U)
March 22, 2024
Supreme Court, Westchester County
Docket Number: Index No. 57038/2020
Judge: Linda S. Jamieson
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RECEIVED NYSCEF: 03/25/2024
To commence the statutory time period for appeals
as of right (CPLR § 5513 (a)), you are advised to
serve a copy of this order, with notice of entry, upon
all parties.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

PRESENT: HON. LINDA S. JAMIESON

JULIO PEREZ,

X

Plaintiff,

Index No.57038/2020

-against-

DECISION AND ORDER

THE QUAY BOARD OF MANAGERS, Individually,
THE QUAY OF TARRYTOWN CONDOMINIUM,
YONA GONEN and RONALD WEINSTEIN,

Defendants.

X

The following papers numbered 1 to 6 were read on this
motion:

<u>Papers</u>	<u>Numbered</u>
Notice of Motion and Affidavit	1
Affirmation and Exhibits in Opposition	2
Memorandum of Law in Opposition	3
Affirmation and Exhibit in Opposition	4
Memorandum of Law in Opposition	5
Memorandum of Law and Exhibit in Reply	6

Plaintiff brings his motion seeking to reargue this Court's
November 13, 2023 Decision and Order which granted summary
judgment to defendants and dismissed the action (the
"Decision"). He also seeks discovery.

In the Decision, the Court held that because "plaintiff and the individual defendants own units in a condominium complex," "all of the exterior portions of the complex, from the outside walls through to decks and grassy areas, are **not** owned by the individual unit owners. Instead, these are considered 'limited common areas.'" As such, "there can be no cause of action for trespass; it is well-settled that trespass requires that the party alleging the trespass actually **own** the property at issue." The Court dismissed all of plaintiff's trespass claims, finding that "Although the Court may sympathize with plaintiff's frustrations, since plaintiff does not **exclusively** possess a single one of the areas of alleged encroachment, he cannot prevail on an action for trespass." (Emphasis added).

With respect to plaintiff's claims for discrimination, the Court held that "plaintiff has failed to make out a prima facie case of discrimination. While he does allege that he is Hispanic in a largely white community, he fails to **link** the alleged discrimination against him to the fact that he is Hispanic. He merely alleges that the Board repeatedly took the individual defendants' side over his, without demonstrating that it is **because** of his being Hispanic." The Court thus dismissed the discrimination claim because of this missing link.

The Court found that the breach of fiduciary duty claims had to be dismissed because "plaintiff has not alleged any facts sufficient to demonstrate 'fraud, self-dealing, or another breach of fiduciary duty.'" The Court also dismissed the claims for emotional distress, punitive damages and costs, disbursements and attorneys' fees because plaintiff failed to present the Court with any evidence of emotional distress or any basis for punitive damages, costs, disbursements and legal fees.

It is long established that a motion for reargument "shall be based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion." *Neo Universe Inc. v. Ito*, 190 A.D.3d 426, 135 N.Y.S.3d 637 (1st Dept. 2021). See also *Ahmed v. Pannone*, 116 A.D.3d 802, 805, 984 N.Y.S.2d 104, 107 (2d Dept. 2014) ("While the determination to grant leave to reargue a motion lies within the sound discretion of the court, a motion for leave to reargue is not designed to provide an unsuccessful party with successive opportunities to reargue issues previously decided, or to present arguments different from those originally presented.").

"Here, the court did not overlook or misapprehend the [movant's] arguments." *Vaughn v. Veolia Transp., Inc.*, 117 A.D.3d 939, 940, 986 N.Y.S.2d 504, 505 (2d Dept. 2014). Nothing that plaintiff presents on this motion convinces the Court

otherwise. With respect to his request for discovery, plaintiff does not explain how discovery would change the outcome of this motion. Significantly, the Court finds that at this juncture in this nearly four-year old case, the time for discovery has long passed.

The motion is thus denied in its entirety. Defendants shall send a copy of this Decision and Order to plaintiff by overnight mail within one business day of receipt.

The foregoing constitutes the decision and order of the Court.

Dated: White Plains, New York
March 22, 2024



HON. LINDA S. JAMIESON
Justice of the Supreme Court

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