

Rodriguez v CB Devs.

2025 NY Slip Op 30519(U)

February 13, 2025

Supreme Court, New York County

Docket Number: Index No. 155327/2021

Judge: Mary V. Rosado

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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. MARY V. ROSADO PART 33M

Justice

-----X

INDEX NO. 155327/2021

RAYMOND ALBERT RODRIGUEZ,

MOTION DATE 8/19/2024

Plaintiff,

MOTION SEQ. NO. 002

- v -

CB DEVELOPERS D/B/A CB DEVELOPERS, LLC, C & B
DEVELOPER LLC, CBJ MANAGEMENT LLC, FOOT
LOCKER RETAIL, INC., 1314 DEVELOPMENT, LLC, ALBA
SERVICES, INC., ALBA ENVIRONMENTAL, INC., ARC
CONTRACTING, INC.

DECISION + ORDER ON
MOTION

Defendants.

-----X

1314 DEVELOPMENT, LLC,

Third-Party Plaintiff,

- v -

ALBA SERVICES, INC.

Third-Party Defendant.

-----X

1314 DEVELOPMENT, LLC,

Second Third-Party Plaintiff,

- v -

ALBA ENVIRONMENTAL, INC..

Second Third-Party Defendant.

-----X

1314 DEVELOPMENT, LLC

Third Third-Party Plaintiff,

- v -

ARC CONTRACTING, INC.,

Third Third-Party Defendant

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 002) 239, 240, 241, 242, 244, 250, 251, 252, 253, 254, 255, 259, 260 were read on this motion to/for RENEW/REARGUE/RESETTLE/RECONSIDER.

Upon the foregoing documents, and after a final submission date of November 19, 2024, Defendants C&B Developers d/b/a CB Developers, LLC, (“CB Developers”) and 1314 Development, LLC’s (“1314 Development”) motion seeking leave to reargue this Court’s Decision and Order on motion sequence 001 dated June 17, 2024 is denied. Second Third-Party Defendant Alba Environmental Inc.’s cross-motion seeking leave to reargue this Court’s Decision and Order on motion sequence 001 dated June 17, 2024 is denied.¹ Defendant/Third-Party Defendant Alba Services, Inc.’s purported “cross-motion” seeking leave to reargue this Court’s Decision and Order on motion sequence 001 dated June 17, 2024 is also denied.²

Pursuant to CPLR § 2221(d)(2), leave to reargue shall be based upon matters of fact or law allegedly overlooked by the court in determining the prior motion. Leave to renew or reargue is in the discretion of the Court and is not a chance for a Defendant to raise new arguments not previously raised (*Bank of America, N.A. v Filho*, 203 AD3d 594 [1st Dept 2022]; *Fulton Market Retail Fish Inc. v Todtman, Nachamie, Spizz & Johns, P.C.*, 158 AD3d 502 [1st Dept 2018]).

Leave to reargue is denied. CB Developers and 1314 Development are either rehashing old arguments or raising new arguments for the first time which are improper grounds for reargument. Here, there was a predecessor action which was litigated from 2018 to December 22, 2021 (*see Raymond Albert Rodriguez JR v 1314 Dev., LLC, et. al.*, Index No. 709132/2018). This action has been litigated since June 2, 2021 and the motion for summary judgment, which is the motion which

¹ Alba Environmental appears to have filed their cross-motion under the wrong motion sequence on NYSCEF, as their papers according to NYSCEF are filed under motion sequence 001 rather than motion sequence 002. In any event, the Court will consider the papers on motion sequence 002.

² This party did not even file a formal notice of cross motion but only filed an attorney affirmation (NYSCEF Doc. 244).

CB Developers and 1314 Development seek to reargue, was not filed until January 23, 2023. Counsel for CB Developers and 1314 Development appeared in the prior 2018 action on behalf of 1314 Development and has provided no reasonable excuse as to why it did not obtain the necessary discovery despite nearly five years of litigation, two cases, and multiple discovery conferences having taken place. Nor did CB Developers and 1314 Development show what facts were in Plaintiff's sole possession that would warrant denying the prior motion for summary judgment pursuant to CPLR 3212(f). Therefore, leave to reargue is denied as to CB Developers and 1314 Development.

Defendant/Third-Party Defendant Alba Services, Inc. failed to file a notice of cross motion in contravention of CPLR 2214 and therefore the Court denies Alba Services, Inc.'s request for leave to reargue (*see Fifth Partners LLC v Foley*, 227 AD3d 543 [1st Dept 2024] [court providently declined entertainment of motion to renew where movant failed to file notice of motion]).

Second Third-Party Defendant Alba Environmental, Inc.'s cross-motion seeking leave to reargue was filed on September 13, 2024. However, notice of entry of the decision which Alba Environmental, Inc. seeks leave to reargue was field on July 19, 2024. Pursuant to CPLR 2221(d)(3), a motion seeking leave to reargue be filed within thirty days after service of a copy of the order determining the prior motion and written notice of its entry. Because Alba Environmental, Inc.'s cross-motion is untimely, the Court declines to entertain Alba Environmental, Inc.'s cross-motion seeking leave to reargue. In any event, even if the Court were to entertain Alba Environmental, Inc.'s cross-motion, leave to reargue would still be denied as Alba Environmental, Inc. is merely rehashing old arguments previously raised in opposition to the prior motion for summary judgment.

Accordingly, it is hereby,

ORDERED that Defendants C&B Developers d/b/a CB Developers, LLC, (“CB Developers”) and 1314 Development, LLC’s (“1314 Development”) motion seeking leave to reargue this Court's Decision and Order on motion sequence 001 dated June 17, 2024 is denied;and it is further

ORDERED that Second Third-Party Defendant Alba Environmental Inc.’s cross-motion seeking leave to reargue this Court’s Decision and Order on motion sequence 001 dated June 17, 2024 is denied; and it is further

ORDERED Defendant/Third-Party Defendant Alba Services, Inc.’s purported “cross-motion” seeking leave to reargue this Court’s Decision and Order on motion sequence 001 dated June 17, 2024 is denied; and it is further

ORDERED that on or before May 5, 2025, the parties are directed to meet and confer and submit a proposed case management order to the Court via e-mail to SFC-Part33-Clerk@nycourts.gov reflecting an updated discovery schedule. In the event the parties arc unable to agree to a proposed case management order, the parties shall appear for an in-person discovery conference with the Court on May 7, 2025 in Room 442, 60 Centre Street, New York, New York; and it is further

ORDERED that within ten days of entry, counsel for Plaintiff shall serve a copy of this Decision and Order, with notice of entry, on all parties via NYSCEF.

<u>2/13/2025</u> DATE					<u>Mary V Rosado JSC</u> HON. MARY V. ROSADO, J.S.C.
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	<input type="checkbox"/> OTHER	
	<input type="checkbox"/> GRANTED		<input type="checkbox"/> GRANTED IN PART		
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	