

Scognamiglio v City of New York

2025 NY Slip Op 31068(U)

March 28, 2025

Supreme Court, New York County

Docket Number: Index No. 159187/2023

Judge: Jeanine R. Johnson

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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. JEANINE R. JOHNSON PART 52M

Justice

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NIELLO SCOGNAMIGLIO, KATHLEEN SCOGNAMIGLIO,

Plaintiff,

INDEX NO. 159187/2023

MOTION DATE 08/07/2024

MOTION SEQ. NO. 002

- v -

THE CITY OF NEW YORK, BREAKSTONE REALTY
CORP., CAFE CHINA GROUP PLLC D/B/A CAFE CHINA,
61 WEST 37TH STREET, LLC, RICK'S CABARET
INTERNATIONAL INC. D/B/A VIVID CABARET NEW
YORK, CONSOLIDATED EDISON COMPANY OF NEW
YORK, INC., CERCONE EXTERIOR RESTORATION
CORP. D/B/A CERCONE EXTERIOR RESTORATION,

Defendant.

**DECISION + ORDER ON
MOTION**

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CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.

Plaintiff,

Third-Party
Index No. 595946/2024

-against-

TRIUMPH CONSTRUCTION CORP

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63

were read on this motion to/for REARGUMENT/RECONSIDERATION.

Upon the foregoing documents and oral argument held on 11/20/2024, Defendant – Rick’s Cabaret International Inc. d/b/a Vivid Cabaret New York’s (hereinafter “Defendant – Rick’s Cabaret”) motion to reargue the Court’s prior decision dated 06/13/2024 (NYSCEF Doc. No. 45), denying Rick’s Cabaret’s motion seeking summary judgment and dismissal is granted.

“A motion for reargument, addressed to the discretion of the court, is designed to afford a party an opportunity to establish that the court overlooked or misapprehended the relevant facts

or misapplied any controlling principle of law.” *Mangine v Keller*, 182 A.D.2d 476, 477 (1st Dept 1992); *Foley v Roche*, 68 A.D.2d 558, 567 (1st Dept 1979). “Reargument is not designed to afford the unsuccessful party successive opportunities to reargue issues previously decided or to present arguments different from those originally asserted.” *William P. Pahl Equip. Corp. v Kassis*, 182 AD2d 22, 27 (1st Dept 1992).

This Court initially denied Defendant–Rick’s Cabaret’s motion seeking summary judgment and dismissal because Defendant–Rick’s Cabaret did not meet its prima facie burden and Plaintiff showed an evidentiary basis to justify that relevant evidence may emerge upon further discovery. Additionally, this Court found that Plaintiff sufficiently pled a cause of action against Defendant–Rick’s Cabaret and found its arguments asserting lack of personal jurisdiction to be unpersuasive. Defendant–Rick’s Cabaret argues that this Court mistakenly overlooked factual evidence presented by finding that further discovery may reveal that Defendant–Rick’s Cabaret is the owner of the accident location. Defendant–Rick’s Cabaret contends that it is not the owner of the premises and proved so by submitting admissible evidence by way of a deed which showed Benjamin Morden and 61 West 37th Street LLC as the owner of the premises. Def. Aff. in Support p. 8, 9 ¶ 28.

Upon this Court’s review of Defendant–Rick’s Cabaret’s initial motion, the Court did not mistakenly overlook factual evidence because the deed Defendant–Rick’s Cabaret refers to was submitted in inadmissible form. Defendant–Rick’s Cabaret submitted links to the Court that were blocked by the New York State Unified Court System’s browser and thus, unable to be used in deciding the initial motion. On review of the instant motion, Defendant–Rick’s Cabaret submitted the aforementioned deed in admissible form as evidence showing that it is not the owner of the premises at issue. NYSCEF Doc. No. 58. Thus, at this Court’s discretion and in the

interest of justice and judicial economy Defendant–Rick’s Cabaret’s motion to reargue to vacate this Court’s decision and order dated 6/13/2024 pursuant to CPLR § 2221(d) is granted. *See generally Binn v. Binn*, 216 A.D.3d 542 (1st Dept 2023).

Accordingly it is hereby,

ORDERED that the motion to reargue is granted and the matter is dismissed at to Defendant – Rick’s Cabaret; it is further

ORDERED that the action is severed and continued against the remaining Defendants – The City of New York, Breakstone Realty Corp., Café China Group PLLC d/b/a Café China, 61 West 37th Street, LLC, Consolidated Edison Company of New York, Inc., Cercone Exterior Restoration Corp. d/b/a Cercone Exterior Restoration, Triumph Construction Corp.; it is further

ORDERED that the caption be amended to reflect said dismissals and that all future papers filed with the court bear the amended caption;

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NIELLO SCOGNAMIGLIO, KATHLEEN SCOGNAMIGLIO,

Plaintiff,

- v -

THE CITY OF NEW YORK, BREAKSTONE REALTY CORP., CAFE CHINA GROUP PLLC D/B/A CAFE CHINA, 61 WEST 37TH STREET, LLC, CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., CERCONE EXTERIOR RESTORATION CORP. D/B/A CERCONE EXTERIOR RESTORATION,

Defendant.

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CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.

Plaintiff,

Third-Party
Index No. 595946/2024

-against-

TRIUMPH CONSTRUCTION CORP

Defendant.
-----X

ORDERED that the caption is amended to read as follows:

ORDERED that counsel for the moving party shall serve a copy of this order with notice of entry upon the Clerk of the Court, who are directed to mark the court's records to reflect the change in the caption herein; and it is further

ORDERED that such service upon the Clerk of the Court and the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website).

This constitutes the Decision and Order of the Court.

HON. JEANINE R. JOHNSON
J.S.C.



JEANINE R. JOHNSON, J.S.C.

03/28/2025
DATE

CHECK ONE:

CASE DISPOSED
GRANTED DENIED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION
GRANTED IN PART
SUBMIT ORDER
FIDUCIARY APPOINTMENT

OTHER
REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: