Board of Mgrs. of 252 Condominium v World-Wide Holdings Corp.
2025 NY Slip Op 34254(U)
November 8, 2025
Supreme Court, New York County
Docket Number: Index No. 652387/2022
Judge: Anar R. Patel
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 45

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THE BOARD OF MANAGERS OF 252 CONDOMINIUM, ON BEHALF OF THE UNIT OWNERS,

Plaintiff,

- v -

WORLD-WIDE HOLDINGS CORP., SNOWPLOW LH 2 LLC, JAMES STANTON, DAVID LOWENFELD, ADAM R. ROSE, SNOWPLOW LH LLC, ROSE ASSOCIATES, INC., BENSON INDUSTRIES, INC., TECNOGLASS INC.,

Defendants.

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INDEX NO. 652387/2022

MOTION DATE 08/29/2025

MOTION SEQ. NO. 022

DECISION + ORDER ON MOTION

SNOWPLOW LH 2 LLC, SNOWPLOW LH LLC

Plaintiffs,

-against-

LENDLEASE (US) CONSTRUCTION LMB INC., SLCE ARCHITECTS, LLP, SKIDMORE, OWINGS & MERRILL LLP, DESIMONE CONSULTING ENGINEERS PLLC, WSP USA BUILDINGS INC. F/K/A WSP FLACK & KURTZ, INC. STRUCTURAL ENGINEERS, GMS, LLP F/K/A GILSANZ MURRAY STEFICEK LLP

Defendants.

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Third-Party
Index No. 595920/2022

LENDLEASE (US) CONSTRUCTION LMB INC.

Plaintiff,

-against-

ASM MECHANICAL SYSTEMS, BENSON

Second Third-Party
Index No. 595359/2024

INDUSTRIES, LLC, EPIC MECHANICAL CONTRACTORS, LLC, FD SPRINKLERS, INC., ISLAND ACOUSTICS, LLC, JANTILE INC., L&L PAINTING CO., INC., L.I.F. INDUSTRIES, INC., LYNBROOK GLASS & ARCHITECTURAL METALS CORP., MARTIN ASSOCIATES, INC., MENT BROS IRON WORKS CO., INC., NAVILLUS TILE, INC., PARKVIEW PLUMBING AND HEATING CORP., SJ ELECTRIC, INC., WOLKOW BRAKER ROOFING CORP., WOODWORKS CONSTRUCTION COMPANY INC., JOHN DOES

Defendants.
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HON. ANAR RATHOD PATEL:

The following e-filed documents, listed by NYSCEF document number (Motion 022) 1157–1166, 1183–1186, 1189–1191 were read on this motion to/for RENEW / REARGUE / RESETTLE / RECONSIDER.

Plaintiff The Board Of Managers of 252 Condominium ("Plaintiff") moves to renew and reargue arguments pursuant to CPLR § 2221(d) and (e) as to the Court's July 25, 2025 Decision and Order granting Defendant Rose Associates, Inc. ("RAI") motion to dismiss Counts I and IV of the Third Amended Complaint ("TAC"). *See* NYSCEF Doc. No. 1078 (7/25/25 Decision and Order). Plaintiff argues that the Court overlooked or misapprehended facts regarding RAI's agreement to share in the Condominium's obligations, debts, and losses; that it was deprived of oral argument to address RAI's assertions raised for the first time in reply papers; and that it should be allowed to renew its opposition to dismissal with additional evidence and testimony.

Under CPLR § 2221(d), leave to reargue "shall be based upon matters of fact or law allegedly overlooked by the court in determining the prior motion, but shall not include any matters of fact not offered on the prior motion." The decision to grant a motion to reargue is left to the discretion of the Court. *Rostant v. Swersky*, 79 A.d.3d 456, 456 (1st Dept 2010).

Under CPLR § 2221(e), leave to renew "shall be based upon new facts not offered on the prior motion that would change the prior determination or shall demonstrate that there has been a change in the law that would change the prior determination" and "shall contain reasonable justification for the failure to present such facts on the prior motion." "Although renewal motions generally should be based on newly discovered facts that could not be offered on the prior motion, courts have discretion to relax this requirement and to grant such a motion in the interest of justice." *Mejia v. Nanni*, 763 N.Y.S.2d 611, 612 (1st Dept. 2003) (citing CPLR § 2221(e)). However, "'[a] motion to renew is not a second chance freely given to parties who have not exercised due diligence in making their first factual presentation.'" *Queens Unit Venture, LLC v. Tyson Ct. Owners Corp.*, 975 N.Y.S.2d 57, 58 (1st Dept. 2013) (quoting *Sobin v. Tylutki*, 873 N.Y.S.2d 743 (2d Dept. 2009)).

The Court expressly considered whether the allegations in the TAC, which cite to extrinsic evidence, were sufficient to plead that RAI agreed to share in the joint venture's losses. NYSCEF Doc. No. 178 at 5. The Court determined "Plaintiff fails to plead that RAI was also subject to losses arising from the Building," and therefore "Plaintiff has not established a necessary element to allege a joint venture." *Id.* Notably, the Court cites to the precise paragraphs in the TAC, among others, that Plaintiff identifies in the instant motion as the basis for its position. "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 A.D.2d 22, 27, 588 N.Y.S.2d 8 (1st Dept 1992). The Court finds that Plaintiff has not established a basis for reargument.

To the extent Plaintiff now protests that it was not afforded the opportunity to address RAI's arguments raised in its reply brief in oral argument, the Court is under no obligation to schedule oral argument, and even so, at the parties' request. *See* Part 45 Practice at Section VIII.D ("All motions are by submission only unless otherwise advised by the Court. Parties may request oral argument by stating "Oral Argument Requested" on the first page of the papers submitted"); Commercial Division Rule 22 ("Except in cases before justices who require oral argument on all motions, the court will determine, on a case-by-case basis, whether oral argument will be heard and, if so, when counsel shall appear."). Following submission of RAI's Reply, Plaintiff remained silent and did not request the opportunity to file a sur-reply to address purported new arguments or submit any letter to the Court thereto. Rather, Plaintiff now shifts blame to the Court for not holding oral argument and resorts to sheer speculation as an excuse for not seeking leave to file a sur-reply. *See* NYSCEF Doc. No. 1191 ("Pl. Reply") at n. 3 ("Sur-replies are generally disfavored and, had one been requested, RAI would have undoubted opposed the sur-reply and argued that all relevant arguments had already been made."). For the avoidance of doubt, the Court does not concede that the additional evidence would have yielded a different outcome.

As to the motion to renew, Plaintiff does not offer any new, material facts that it was not aware of at the time it opposed RAI's motion to dismiss, nor does it offer any "reasonable excuse" for its failure to provide the additional evidence in its opposition to the motion. Again, Plaintiff chose not to request leave to file a sur-reply and proffer the additional evidence. Plaintiff again shifts the blame by citing to word limits in motion papers imposed by the Commercial Division Rules and its characterization that "litigants do not have the luxury of inundating the Court with unlimited arguments and exhibits." Pl. Reply at 9. The Court finds that Plaintiff has not established any reasonable justification for its failure to present additional evidence and testimony on the prior motion.

The Court has considered the parties' remaining contentions and finds them to be unavailing.

Accordingly, it is hereby

ORDERED that Plaintiff's Motion for Leave to Reargue and Renew (Motion 022) is DENIED.

The foregoing constitutes the Decision and Order of the Court.

11/8/2025
DATE

ANAR R. PATEL, A.J.S.C.

CHECK ONE:		CASE DISPOSED		X	NON-FINAL DISPOSITION		
		GRANTED	X DENIED		GRANTED IN PART		OTHER
APPLICATION:		SETTLE ORDER			SUBMIT ORDER		
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN			FIDUCIARY APPOINTMENT		REFERENCE