

14th at Irving Fee LLC v Almar Plumbing & Heating Corp.

2025 NY Slip Op 34644(U)

December 1, 2025

Supreme Court, New York County

Docket Number: Index No. 651295/2022

Judge: Leslie A. Stroth

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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. LESLIE A. STROTH PART 12M

Justice

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14TH AT IRVING FEE LLC, SUFFOLK CONSTRUCTION
CORP.,

Plaintiff,

- v -

ALMAR PLUMBING & HEATING CORPORATION,
TRAVELERS INDEMNITY COMPANY OF CONNECTICUT,
TRAVELERS INDEMNITY COMPANY, NAVIGATORS
INSURANCE COMPANY

Defendant.

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INDEX NO. 651295/2022

**MOTION DATE 01/22/2025,
01/23/2025**

MOTION SEQ. NO. 003 004

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 003) 92, 98, 100
were read on this motion to/for REARGUMENT/RECONSIDERATION.

The following e-filed documents, listed by NYSCEF document number (Motion 004) 93, 94, 95, 96, 97,
99, 101
were read on this motion to/for REARGUMENT/RECONSIDERATION.

FACTUAL AND PROCEDURAL BACKGROUND

This action arises from Plaintiffs' request for additional insured coverage from Travelers in connection with the underlying personal injury matter *Papandrew v. 14th at Irving Fee LLC* (Index No. 152236/2021). On December 11, 2024, this Court issued a Decision and Order granting Plaintiffs' motion for partial summary judgment and declaring that Travelers is obligated to provide additional insured coverage, a defense, and reimbursement of defense costs in the underlying action.

Travelers subsequently served the Decision and Order with notice of entry on December 18, 2024.

On January 10, 2025, Travelers filed a timely notice of appeal.

On January 16, 2025, Travelers filed a memorandum of law purporting to be in support of a motion to reargue, but no notice of motion accompanied the filing.

On January 22, 2025, Travelers filed a stand-alone notice of motion (Mot. Seq. 003) seeking leave to reargue—five days after its time to do so had expired, and without any supporting papers as required by CPLR 2214(b).

On January 23, 2025, Travelers filed Motion Sequence 004 seeking to have its late filing “accepted” due to “law office failure.”

Plaintiffs opposed both motions as untimely, procedurally defective, and substantively meritless.

LEGAL STANDARD

CPLR 2221(d) provides that a motion for leave to reargue; (1) must be specifically identified as such; (2) must be based upon matters of law or fact overlooked or misapprehended in the prior decision; and (3) must be made within thirty (30) days after service of the order with notice of entry. See CPLR 2221(d); see also *Gregory v Natl. Amusements, Inc. doing business as Whitestone Multiplex Cinemas*, 179 AD3d 468, 469 [1st Dept 2020].

“A motion for leave to renew or reargue is addressed to the sound discretion of the Supreme Court... A motion for reargument must be 'based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion, but shall not include any matters of fact not offered on the prior motion.' (CPLR 2221 [d] [2]).” (*HSBC Bank USA, N.A. v. Halls*, 98 A.D.3d 718 [2nd Dept 2012]).

Travelers served notice of entry on December 18, 2024, making January 17, 2025 the statutory deadline to move for reargument. Travelers filed its notice of motion on January 22, 2025, five days late.

Plaintiffs argue that Travelers' motion is untimely and should therefore be denied for failing to comply with the statutory deadline set forth in CPLR 2221(d). Travelers also filed no supporting affirmation, memorandum of law, or exhibits with the January 22 filing, in violation of CPLR 2214(b) and Uniform Rule 202.8(c). Travelers seeks to have the Court "accept" its late filing under CPLR 2001 and 2004, citing "law office mistake."

However, Plaintiffs contend that Travelers' litigation history, including the timely notice of entry and notice of appeal, shows they were fully aware of the deadline and should therefore not be able to claim law office mistake to excuse the delay.

The Court is unpersuaded by Travelers' notion that law office mistake justifies the delay in timely filing the instant motions. On this basis alone, the Court may deny the instant motions as being untimely made.

Even assuming, *arguendo*, that the motions were timely, Travelers has not demonstrated that the Court overlooked or misapprehended any facts or controlling legal principles when issuing its December 11, 2024 Decision and Order. Travelers, instead, seeks to reargue matters previously raised, argued, and rejected by this Court, which is improper under CPLR 2221(d).

First, Travelers fails to show that the court misapprehended the law. Travelers asserts that the Court failed to apply the correct standard for additional insured coverage, arguing that the policy language requires proximate causation by Almar (the named insured) and that the underlying *Papandrew* complaint alleges negligence only as to Plaintiffs.

However, this Court already addressed Travelers' causation argument in the original decision on motion sequence 001, finding a reasonable basis to trigger defense obligations under settled New York law. In the December 11, 2024 Order, the Court explicitly cited the allegations

of dangerous conditions arising from construction activity at the project site and determined that the pleadings created a sufficient possibility of coverage to invoke Travelers' duty to defend.

Travelers instead attempts to reargue the same argument made in the prior motion, which is improper, as motions for reargument are not opportunities for parties to argue the same issue already decided absent a showing of misapprehension of law or fact. (*see Foley v Roche*, 68 AD2d 558, 567-68 [1st Dept 1979]). This Court's ruling was fully reasoned and based on the language of the policies and allegations in the *Papandrew* action.

Additionally, Travelers offers no new facts or law in support of the instant motions. Travelers identifies no new authority or factual matter that was unavailable on the original motion. It relies on the same contractual language and deposition of policy endorsements offered in its original summary judgment submissions.

The burden under CPLR 2221(d) requires Travelers to show that the Court overlooked a controlling principle of law or a dispositive fact in the original record. Here, Travelers' memorandum does not identify any such principle. It simply takes issue with the Court's reasoning and seeks to re-litigate the very issues resolved in motion sequence 001. That is insufficient to warrant reargument.

Finally, this Court correctly applied the duty-to-defend standard. The Court's prior decision was in full accord with New York law that a duty to defend arises whenever the allegations of the underlying complaint "suggest ... a reasonable possibility of coverage." (*Fitzpatrick v Am. Honda Motor Co., Inc.*, 78 NY2d 61, 66 [1991]).

Plaintiffs properly highlight that the underlying *Papandrew* action alleges injuries arising from conditions at a jobsite where Almar performed subcontracted work pursuant to agreements requiring Travelers to provide additional insured coverage.

The original Decision and Order found those allegations sufficient to trigger defense obligations under the policies and endorsements submitted were consistent with settled New York law. Nothing in Travelers' present motion alters that analysis.

As such, even if the court were to find that the motions were timely filed, Motion Sequences 003 and 004 are denied on the merits. The court has considered the remaining arguments of the parties and finds such unavailing.

Accordingly, it is hereby

ORDERED, that Motion Sequence 003 to reargue is denied; and it is further,

ORDERED, that Motion Sequence 004 to reargue is denied in its entirety.

The foregoing constitutes the decision and order of the Court.

12/1/2025

DATE


LESLIE A. STRÖTH, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE