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| Matter of HVT, Inc. v All County Towing and Recovery |
| 2017 NY Slip Op 33088(U) |
| October 26, 2017 |
| Supreme Court, Albany County |
| Docket Number: 2464-16 |
| Judge: Jr., Richard J. McNally |
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At a Special Term of the Albany County Supreme Court, held in and for the County of Albany, in the City of Albany, New York on the 26th day of October, 2017.

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PRESENT: HON. RICHARD J. MCNALLY, JR.
JUSTICE

STATE OF NEW YORK
SUPREME COURT COUNTY OF ALBANY

In the Matter of the:
Special Proceeding Application of

HVT, INC.,

Petitioner,

-against-

DECISION AND ORDER
Index No.: 2464-16

ALL COUNTY TOWING AND RECOVERY and
THE NEW YORK STATE DEPARTMENT OF
MOTOR VEHICLES,

Respondent.

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ALBANY COUNTY CLERK

APPEARANCES: Rudolph J. Meola, Esq.
Attorney for Petitioner
1822 Western Avenue
Albany, New York 12203

Peter B. O'Connell, Esq.
Attorney for Respondent All County Towing
130 Washington Avenue
Albany, New York 12210

Office of the New York State Attorney General
Attorney for Respondent Department of Motor Vehicles
(Adele Scott, Esq., of Counsel)
The Capitol
Albany, New York 12224-0341

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MCNALLY, J.

Pending before the Court is a motion to reargue/renew certain issues related to the Court Decision and Order dated January 24, 2017 (“Decision and Order”).¹ Petitioner opposes the relief sought by respondent.

A motion to reargue, directed to the sound discretion of the court, must demonstrate that the court overlooked, misapplied or misapprehended the relevant facts or law (CPLR § 2221[d][2]; *Loris v S & W Realty Corp.*, 16 AD3d 729 [3d Dept 2005]; *Grassel v Albany Medical Center Hosp*, 223 AD2d 803 [3d Dept 1996], *lv denied* 88 NY2d 842 [1996]). Its purpose is not to serve as a vehicle to permit the unsuccessful party to argue once again the very questions previously decided (*Foley v Roche*, 68 AD2d 558 [1st Dept 1979], *appeal denied* 56 NY2d 507 [1982]).

Likewise, a motion to renew must be based upon newly discovered evidence which existed at the time the prior motion was made, but unknown to the party seeking renewal. (CPLR § 2221[e][2]; *M & R Ginsburg, LLC v Orange Canyon Development Company, LLC*, 84 AD3d 1470, 923 NYS2d 226 [3d Dept 2011]. In order to prevail on a motion to renew, the moving party must demonstrate a reasonable justification for not placing such new facts before the Court on the original application. (CPLR § 2221[e][3]; *Matter of Mouawad*, 61 AD3d 1169, 876 NYS2d 743 [3d Dept 2009]).

Respondent argues in its motion, that although the Court found “petitioner *paid* the respondent \$282.44 in towing and storage fees” in fact respondent rejected the tender when it

¹ The Court consolidated this case with Albany County index numbers 3921-16, 4637-16, and 5895-16 for a possible settlement of all matters (CPLR § 602). Settlement did not occur and a separate Decision and Order is being issued for each case.

respondent \$282.44 in towing and storage fees” in fact respondent rejected the tender when it demanded a release from the Nassau County Police Department before turning over the vehicle to petitioner. The Court does not find this fact material.

Here, the issue of consequence is whether respondent improperly refused to release the vehicle whereby it imposed additional conditions not authorized by law. There is nothing in the applicable Lien Law that permits garagekeepers to require a release from the police department before the vehicle can be turned over to the priority lien holder. Under the facts of this case, petitioner sought return of the subject vehicle when it contacted the Nassau County Police Department on May 2, 2016. Accordingly, the Court determined that respondent was entitled to a towing fee as well as storage fees but only up to the date of its unlawful demand for the release.

The Court has considered all other arguments and contentions and finds them to be without merit.

Accordingly, it is

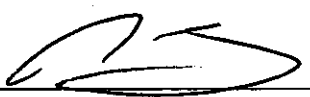
ORDERED, that respondents motion to reargue/renew is hereby denied.

This shall constitute the Decision and Order of the Court. The signing of this Decision

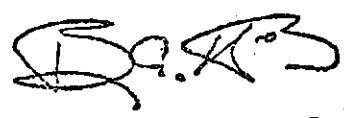
and Order shall not constitute entry or filing under CPLR § 2220. Counsel are not relieved from the applicable provision of that rule relating to filing, entry and notice of entry.

SO ORDERED!
ENTER

Dated: October 26, 2017
Albany, New York



RICHARD J. MCNALLY, JR.
Supreme Court Justice


11-3-17 vob

Papers Considered:

1. Notice of Motion for Leave to Reargue dated March 10, 2107, Affirmation of Peter B. O'Connell, Esq., Affidavit of Marisol Salgado with annexed exhibits, Appendix.
2. Opposition to Motion for Leave to Reargue and Renew with annexed exhibits A.
3. Letter of Rudolph J. Meola, Esq., dated April 17, 2017.
4. Letter of Peter B. O'Connell, Esq., dated May 1, 2017.