Scialdone v Stepping Stones Assoc.
2013 NY Slip Op 34139(U)
August 13, 2013
Supreme Court, Westchester County
Docket Number: 12514/2011
Judge: Linda S. Jamieson
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This opinion is uncorrected and not selected for official publication.

[* 1]

To commence the statutory time period for appeals as of right (CPLR § 5513 [a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

Disp ____ Dec __x__ Seq. # 11, 14 Type _misc.__

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

PRESENT: HON. LINDA S. JAMIESON

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GREGORY P. SCIALDONE,

Plaintiff,

-against-

Index No. 12514/2011

STEPPING STONES ASSOCIATES, L.P., and DEROSA BUILDERS, INC.,

DECISION AND ORDER

Defendants.

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The following papers numbered 1 to 4 were read on this motion and cross-motion:

Paper	Number
Notice of Motion, Affidavit and Exhibits	1
Notice of Cross-Motion, Affirmation and Exhibits	2
Reply Affidavit and Exhibits	3
Reply Affirmation and Exhibit	4

The first motion, filed by defendants, seeks to reargue the Court's Decision and Order of February 27, 2013 (the "prior Decision") as to the Tenth and Eleventh Causes of Action and upon reargument, to dismiss these causes of action. In return, plaintiff seeks fines, costs, and sanctions and to strike defendants' motion.

In the prior Decision, the only mention that the Court made of the Tenth and Eleventh Causes of Action was in the following sentence: "Having reviewed each cause of action of the Amended Complaint, the Court finds that the Seventh, Eighth, Ninth,

Tenth, Eleventh and Twentieth Causes of Action remain. Some of these may be appropriately decided by the HCR; the Court expresses no opinion on this." The Court was initially puzzled by this, until it realized - after seeing plaintiff's papers, since defendants failed to include the underlying papers in its motion - that in its first motion to dismiss the amended complaint, defendants only addressed one paragraph to each of these causes of action.[1] Now defendants set before the Court significant, and substantial, arguments as to the Tenth and Eleventh Causes of Action. Unfortunately, this is improper at this time. "A motion for leave to reargue 'shall 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.' A motion for leave to reargue is not designed to provide an unsuccessful party with successive opportunities to reargue issues previously decided, or to present arguments different from those originally presented." *Haque v. Daddazio*, 84 A.D.3d 940, 922 N.Y.S.2d 548 (2d Dept. 2011) (citations omitted). For this reason, the Court must deny defendants' motion.

As mentioned above, defendants failed to attach the underlying papers in their motion. The Second Department has held that a Court may deny a motion to renew or reargue simply

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[1]Defendants did spend more time on these causes of action in their reply papers.

because the underlying papers were not attached to the motion. *Biscone v. JetBlue Airways Corp.*, 103 A.D.3d 158, 957 N.Y.S.2d 361 (2d Dept. 2012). For this reason, too, the motion to reargue must be denied.

Defendants may make a motion for summary judgment addressed to the Tenth and Eleventh Causes of Action, in which they should submit appropriate authority to support their contention that only the City of White Plains (or some division thereof) has the authority to address the alleged violation of the 1969 ordinance that created the zoning change to allow the multi-family dwelling. The parties should also submit authority to explain what the result would be if a determination were made (by this Court or some other appropriate tribunal) that the 1969 ordinance allowing these apartment buildings were actually violated. Plaintiff cannot possibly desire to have the apartment building in which he resides declared a nullity and ordered to be vacated so that, as the ordinance provides, the "Multifamily District . . . become null and void . . . and revert to the R-2 Residence One-family District and R-3 Residence Two-family District. . . ."[2] This result - returning the area to one and two-family houses only - would surely please no one involved in this litigation.

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[2]Presumably, plaintiff hopes that if the Court were to find a violation, it would order defendants to create 10 visitor parking spots. However, the ordinance itself does not provide for remedial action.

There is no basis for plaintiff's motion for costs and sanctions. Each side is again reminded to consult the Standards of Civility before communicating with each other or the Court.

The foregoing constitutes the decision and order of the Court.

Dated: White Plains, New York
August 13, 2013

HON. LINDA S. JAMIESON
Justice of the Supreme Court

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