

**Dormitory Auth. of the State of N.Y. v Samson
Constr. Co.**

2013 NY Slip Op 32649(U)

October 17, 2013

Sup Ct, NY County

Docket Number: 403436/06

Judge: Eileen Bransten

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

HON. EILEEN BRANSTEN
J.S.C.

PRESENT: _____
Justice

PART 3

Index Number : 403436/2006
DORMITORY AUTHORITY
vs.
SAMSON CONSTRUCTION
SEQUENCE NUMBER : 014
REARGUMENT/RECONSIDERATION

INDEX NO. 403436/2006
MOTION DATE 6/10/13
MOTION SEQ. NO. 014

The following papers, numbered 1 to 3, were read on this motion to/for reargument

Notice of Motion/Order to Show Cause — Affidavits — Exhibits No(s) 1
Answering Affidavits — Exhibits No(s) 2
Replying Affidavits No(s) 3

Upon the foregoing papers, it is ordered that this motion is

IS DECIDED

IN ACCORDANCE WITH ACCOMPANYING MEMORANDUM DECISION

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

Dated: 10-17-13

[Signature]
HON. EILEEN BRANSTEN J.S.C.

- 1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER
DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART THREE

-----X

DORMITORY AUTHORITY OF THE STATE OF
NEW YORK, NEW YORK CITY HEALTH AND
HOSPITALS CORPORATION and THE CITY OF
NEW YORK,

Plaintiffs,

-against-

SAMSON CONSTRUCTION CO. (a/k/a SAMSON

CONSTRUCTION COMPANY, SAMSON
CONSTRUCTION CO., INC. and SAMSON
CONSTRUCTION, INC.) and PERKINS EASTMAN
ARCHITECTS, P.C.,

Defendants.

-----X

SAMSON CONSTRUCTION CO., INC.,
Third-Party Plaintiff,

-against-

HAYWARD BAKER, INC.,
VACHRIS ENGINEERING, P.C. and
AKRF ENGINEERING, P.C.,

Third-Party Defendants.

-----X

VACHRIS ENGINEERING, P.C.,
Fourth-Party Plaintiff,

-against-

MUESER RUTLEDGE CONSULTING
ENGINEERS,

Fourth-Party Defendant.

-----X

Index No. 403436/06
Motion Seq. Nos.: 014

Motion Date: 6/10/13

Third-Party
Index No. 590732/08

Fourth-Party
Index No. 591020/09

-----X
 PERKINS EASTMAN ARCHITECTS, P.C.,
 Second Third-Party Plaintiff,

-against-

SEVERUD ASSOCIATES CONSULTING
 ENGINEERS, P.C., GILBANE BUILDING
 COMPANY, TDX CONSTRUCTION
 CORPORATION, GILBANE BUILDING
 COMPANY/TDX CONSTRUCTION
 CORPORATION, A JOINT VENTURE, and
 PILE FOUNDATION CONSTRUCTION
 COMPANY, INC.,

Second Third-Party
 Index No. 591133/10

Second Third-Party Defendants.

-----X
 SAMSON CONSTRUCTION CO., INC. And
 PILE FOUNDATION CONSTRUCTION
 COMPANY, INC.,

Third Third-Party Plaintiffs,

-against-

ROADWAY CONTRACTING, INC.,
 SOIL SOLUTIONS, INC.,
 CONSOLIDATED EDISON COMPANY
 OF NEW YORK, INC.,
 KLINE IRON & STEEL CO., INC.,
 A.J. MCNULTY & COMPANY, INC. and
 SPX CORPORATION,

Third Third-Party
 Index No. 590318/12

Third Third-Party Defendants.

-----X
EILEEN BRANSTEN, J.:

In motion sequence 014, Plaintiffs Dormitory Authority of the State of
 New York (“DASNY”), New York City Health and Hospitals Corporation (“HHC”) and
 the City of New York (the “City”) (collectively “Plaintiffs”) seek leave to reargue
 Defendant Perkins Eastman Architects P.C.’s (“Perkins”) cross-motion for summary

judgment dismissing Plaintiff's breach of contract and professional malpractice claims (motion sequence 011). Specifically, Plaintiffs seek to reargue the issue of whether the City is a third-party beneficiary of the contract between Perkins and DASNY, and therefore, whether the City can assert breach of contract and malpractice claims against Perkins. For the reasons that follow, Plaintiffs' motion is denied.

I. Background

This action arises out of the construction of a forensic biology laboratory (the "DNA Lab"), for the New York City Office of the Chief Medical Examiner, on New York City-owned land adjacent to Bellevue Hospital, in the vicinity of First Avenue and East 26th Street in Manhattan. Plaintiffs Dormitory Authority of the State of New York ("DASNY"), New York City Health and Hospitals Corporation ("HHC"), and the City of New York (the "City") allege, *inter alia*, that defendant Perkins Eastman Architects, P.C., the project's architect, failed to perform its contractual obligations and failed to exercise reasonable care in performing its contracts, causing damage to adjacent structures and facilities, including the C&D Building of Bellevue Hospital.

Bellevue Hospital is operated by HHC. The portion of Bellevue Hospital known as the C&D Building is located directly north of the site. The planning, design, and construction of the DNA Lab was financed initially and managed by DASNY, pursuant to

a project management agreement between DASNY and the City dated August 2, 2001 (the "Project Management Agreement").

Under the Project Management Agreement, DASNY was authorized to enter into contracts with consultants, construction contractors, and a construction manager. In an agreement dated July 25, 2001 (the "Perkins Eastman Contract"), DASNY retained Perkins Eastman as the architect for the project. Perkins Eastman was required to prepare construction documents and cost estimates and to provide construction administration.

Plaintiffs allege that the adjacent C&D building began to settle when defendant Samson Construction Co., the excavation and foundation contractor, began driving piles as part of its foundation work. This settlement continued until March 2004, delaying the construction project and damaging structures adjacent to the project site. Plaintiffs attribute the settlement, delays, and resulting costs, in part, to Perkins' purported failure to complete an accurate analysis of the existing foundation of the C&D Building and related subsurface conditions.

On February 2, 2007, Plaintiffs filed a complaint asserting, *inter alia*, breach of contract and professional negligence claims against Perkins. Perkins then moved for summary judgment, seeking dismissal of those claims, which was granted on February 27, 2013. The Court's dismissal was premised on the conclusion that HHC and the City were

not intended third-party beneficiaries of the Perkins-DASNY contract. Plaintiffs thereafter moved for reargument under CPLR 2221.

II. Discussion

Plaintiffs now seek reargument regarding the Court's third-party beneficiary determination. Specifically, Plaintiffs assert that the City is a third-party beneficiary of the Perkins and DASNY contract and that the City's breach of contract and malpractice claims are therefore viable against Perkins.

"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." *Foley v. Roche*, 68 A.D.2d 558, 567 (1st Dep't 1979); *see also* CPLR 2221(d)(2); *McGill v. Goldman*, 261 A.D.2d 593, 594 (2d Dep't 1999); *Opton Handler Gottlieb Feiler Landau & Hirsch v. Patel*, 203 A.D.2d 72, 74 (1st Dep't 1994). It is not designed to provide the unsuccessful party with successive opportunities to argue once again the very issues previously decided. *William P. Pahl Equip. Corp. v. Kassis*, 182 AD2d 22, 28 (1st Dep't 1992), *lv. dismissed in part, denied in part* 80 N.Y.2d 1005 (1992); *Bliss v. Jaffin*, 176 A.D.2d 106, 107-08 (1st Dep't 1991). Moreover, leave to reargue is also not an opportunity to present arguments different from those originally asserted. *See Foley*, 68 A.D.2d at 567-68.

Here, Plaintiffs merely restate arguments that were considered and rejected in the original decision. Plaintiffs argue once again that the City should be deemed a third-party beneficiary of the Perkins-DASNY contract. These arguments were presented in Plaintiffs' briefing on motion sequence 011, *see* Docket No. 426 (Plaintiffs' Memorandum of Law in Opposition to Perkins' Cross-Motion to Dismiss and for Summary Judgment) at 11-15, and were addressed in the Court's February 27, 2013 decision. Thus, Plaintiffs' arguments here are insufficient to grant a motion for reargument. *See Pro Brokerage, Inc. v. Home Ins. Co.*, 99 A.D.2d 971, 971 (1st Dep't 1984); *Foley v. Roche*, 68 A.D.2d at 567; *see, e.g., O'Kelly v. North Fork Bank*, 2008 WL 3243826, 2008 NY Slip Op 32153[U], at *7 (Sup. Ct. Nassau Cnty. July 21, 2008) (denying motion for reargument of opposition to motion to dismiss the plaintiffs' claims where "the same arguments advanced in support of reargument were made by the plaintiffs in support of their original cross motion, considered by the Court and rejected in a detailed decision").

(Order follows on the next page.)

III. Conclusion

Accordingly, it is

ORDERED that Plaintiffs' motion for reargument is denied.

Dated: New York, New York

October 17, 2013

ENTER:

A handwritten signature in black ink, appearing to read "Eileen Bransten", written over a horizontal line.

Hon. Eileen Bransten, J.S.C.