

CRP/Extell Parcel I, L.P. v Cuomo
2014 NY Slip Op 31275(U)
May 14, 2014
Sup Ct, New York County
Docket Number: 113914/10
Judge: Anil C. Singh
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

HON. ANIL C. SINGH
SUPREME COURT JUSTICE
PRESENT: _____

Justice

PART 61

Index Number : 113914/2010
CRP/EXTELL PARCEL 1
vs.
CUOMO, ANDREW M.
SEQUENCE NUMBER : 007
REARGUMENT/RECONSIDERATION

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

The following papers, numbered 1 to _____, were read on this motion to/for _____
Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ | No(s). _____
Answering Affidavits — Exhibits _____ | No(s). _____
Replying Affidavits _____ | No(s). _____

Upon the foregoing papers, it is ordered that this motion is *decided in accordance with the annexed memorandum opinion.*

**DECIDED IN ACCORDANCE WITH
ACCOMPANYING DECISION / ORDER**

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

FILED

MAY 19 2014

COUNTY CLERK'S OFFICE
NEW YORK

Dated: 5/14/14 AS, J.S.C.

HON. ANIL C. SINGH
SUPREME COURT JUSTICE

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: PART 61

-----X
CRP/EXTELL PARCEL I, L.P.,

Petitioner,

DECISION AND
ORDER

-against-

Index No.
113914/10

ANDREW M. CUOMO, in his capacity as
THE ATTORNEY GENERAL OF THE
STATE OF NEW YORK, et al.,

FILED

Respondents.

-----X
MAY 19 2014

HON. ANIL C. SINGH, J.:

COUNTY CLERK'S OFFICE
NEW YORK

Motion sequence 007 and 008 are consolidated for disposition.

In motion sequence 007, respondents Michael Salerno, Phillip and Glennis Politzner, Mark Chu, Nancy Chan, Lola Gusman, Edward and Barbara Solomon, ARC Chinish Re, LLC, and Benjamin Goldschlager (the "Other Purchaser Respondents") move for an order pursuant to CPLR 5019(a) or CPLR 2221 or, alternatively, CPLR 5001, 5002 and 5004, amending the final judgment filed and docketed on August 12, 2013, contending that the Court entered a judgment awarding statutory interest from September 2, 2008, to a large majority of the purchaser respondents, but the judgment did not include an award of interest to the Other Purchaser Respondents.

In motion sequence 008, respondents Kyung Kim and Henry Myunghwan Kim ("Kims") move for leave to renew the contempt order dated May 22, 2013, pursuant to CPLR 2221, for relief from the judgment pursuant to CPLR 5015(a)(2), and/or "correction" of the judgment pursuant to CPLR 5019(a), contending that the judgment should be vacated and amended or "corrected" to change the principal amount on which interest was awarded to them from \$306,000 to \$459,000, and to increase the amount of interest awarded to them in the judgment accordingly.

Petitioner opposes both motions.

The final judgment in this proceeding was filed and docketed on August 12, 2013.

CPLR 5011 defines a judgment as "the determination of the rights of the parties in an action or special proceeding...."

A judgment resolves all issues, ending a case once and for all. "A judgment is the law's last word in a judicial controversy, being the final determination by a court of the rights of the parties upon matters submitted to it in an action or proceeding" (73 N.Y.Jur.2d Judgments section 1, citing Towley v. King Arthur Rings, Inc., 40 N.Y.2d 129 [1976]). In light of such finality, a trial court clearly has little authority to alter a judgment.

CPLR 5019(a) provides express permission for either the trial or appellate

court to cure only ministerial errors. "Under CPLR 5019(a), a trial court has the discretion to correct a judgment which contains a mistake, defect, or irregularity not affecting a substantial right of a party" (Johnson v. Societe Generale S.A., 94 A.D.3d 663, 664 [1st Dept., 2012](citation omitted)). "Where the alleged error is substantive, other than one that is clearly inconsistent with the intentions of the court and the parties as demonstrated on the record, relief should be obtained either through an appeal from the judgment, or, if grounds for vacatur exist, through a motion to vacate pursuant to CPLR 5015(a)" (Id.).

"A court has no power to reduce or increase the amount of the judgment when there is no clerical error" (73 N.Y.Jur.2d Judgments section 199). "[A]mendment of a judgment as to a matter of substance affecting the rights of a party is improper" (73 N.Y.Jur.2d Judgments section 201).

In the present context, the moving respondents are seeking far more than the mere correction of a clerical or ministerial error. Rather, they are seeking an award of a substantial sum of interest. To grant such relief to the Other Moving Respondents, the Court would have to overlook the fact that they failed to request an award of such interest at any time before the judgment was issued and docketed. To grant such relief to the Kims, the Court would have to find that there was a clerical or ministerial error.

The denial of interest was not a clerical or ministerial error. Rather, interest was denied because at no time prior to entry of the judgment did they move for interest. By contrast, the purchasers represented by Cohen & Coleman, LLP, filed a motion for an award of pre-judgment interest in February 2012, and that motion was granted in our memorandum opinion dated September 5, 2012. Movants do not even address why they failed to file a similar motion at that time.

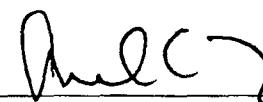
In short, this proceeding ended when the final judgment was docketed. Once the judgment was docketed, this Court's jurisdiction terminated. The moving respondents are really asking the Court for leave to renew or reargue a judgment, which is clearly procedurally improper. The Court has no authority whatsoever to award the statutory interest sought by the moving respondents at such a late stage, for it is a matter of substance that would affect the rights of the petitioner.

Accordingly, it is

ORDERED that both motions are denied.

The foregoing constitutes the decision and order of the court.

Date: 5/14/14
New York, New York



Anil C. Singh

HON. ANIL C. SINGH
SUPREME COURT JUSTICE
FILED

MAY 19 2014