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

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QUIK PARK WEST 57 LLC, QUIK PARK EAST 66 LLC, QUIK PARK EAST 72 LLC, and QUIK PARK EAST 87 LLC,

Plaintiffs,

Index No. 651524/2013
Motion Date: 12/9/2013
Motion Seq. No.: 002

-against-

BRIDGEWATER OPERATING CORPORATION,

Defendants.

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BRANSTEN, J.

Plaintiffs Quik Park West 57 LLC, Quik Park East 66 LLC, Quik Park East 72 LLC, and Quik Park East 87 LLC's (collectively "Quik Park") seek renewal and reargument of this Court's September 26, 2013 decision, denying, *inter alia*, their motion for a *Yellowstone* injunction (the "Decision"). Defendant Bridgewater Operating Corporation ("Bridgewater") opposes. For the reasons that follow, Quik Park's motion is denied in its entirety.

I. Background

This matter stems from Quik Park's operation of four parking garages in Manhattan, pursuant to a "Parking Garage Management Agreement" ("Management Agreement" or "Agreement") entered into with Defendant Bridgewater on August 28, 2009. The Management Agreement was set to run from September 1, 2009 through

August 31, 2019, unless terminated earlier for reasons provided in the Agreement. *See* Affidavit of Rafael Llopiz[1] ("Llopiz Aff.") Ex. A (Management Agreement) ¶ 3.

On April 24, 2013, Defendant Bridgewater sent a letter to Quik Park, entitled "Notice of Termination," seeking to end "any permission you have to enter upon, use, operate and manage the Garages" on April 30, 2013. *See* Llopiz Aff. Ex. B at 1. According to the letter, the termination was due to Quik Park's alleged misappropriation of funds in violation of Paragraph 8(b) of the Management Agreement, as well as Quik Park's failure to submit audited yearly statements on a timely basis under Paragraph 4(f). *See id.* at 1-3. Bridgewater stated that such breaches were incapable of being cured. *Id.* at 3. Beyond these breaches, Bridgewater also noted that Quik Park purportedly failed to maintain the requisite levels of insurance under Paragraph 9 of the Agreement. *Id.*

Plaintiff Quik Park filed the instant action and sought injunctive relief in response to Bridgewater's letter. Through its motion, Quik Park requested a *Yellowstone* injunction, and in the alternative, a preliminary injunction, preventing Bridgewater from terminating the Management Agreement and evicting Quik Park.

On September 23, 2013, the Court denied Quik Park's motion, holding that *Yellowstone* relief was unavailing since the Management Agreement was not a lease. The

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[1] This document was submitted by Plaintiffs in support of their application for a *Yellowstone* injunction. *See* Docket No. 3.

Court also held that Quik Park's request for a preliminary injunction failed to demonstrate the requisite element of irreparable harm. Only the first part of the Court's ruling is at issue on the instant motion for renewal and reconsideration.

II. Discussion

Quik Park's motion for renewal is premised on Bridgewater's post-Decision production of two reports: (1) a report authored by Doug Sarini – a garage consultant retained by Defendant's forensic auditor and (2) a "parking garage abstract" prepared by the same forensic auditor. According to Quik Park, these reports state their authors' view that the Management Agreement was a lease. Thus, Quik Park maintains that these reports provide sufficient basis for renewal of their request for *Yellowstone* relief. *See* Quik Park's Moving Br. at 2. In the alternative, Quik Park seeks reargument of the Court's denial of its motion for a *Yellowstone* injunction. Each request will be considered in turn.

A. *Motion for Renewal*

A motion to renew allows a party to "draw the court's attention to new or additional facts which, although in existence at the time of the original motion, were unknown to the party seeking renewal and therefore not brought to the court's attention."

See William P. Pahl Equip. Corp. v. Kassis, 182 A.D.2d 22, 27 (1st Dep't 1992). Relevant to the instant motion, CPLR 2221(e) requires the movant to demonstrate that the new facts offered "would change the prior determination." The reports cited by Quik Park do not satisfy this test.

Quik Park urges that these reports demonstrate the nature of the Management Agreement as a lease. However, Quik Park has presented no basis for the consideration of these documents. "Extrinsic evidence of the parties' intent may be considered only if the agreement is ambiguous, which is an issue of law for the courts to decide." *NFL Enterprises LLC v. Comcast Cable Commc'n, LLC*, 51 A.D.3d 52, 58 (1st Dep't 2008). Here, Quik Park does not argue that the Management Agreement is ambiguous. Further, the Court did not so conclude in the Decision. Indeed, the Court relied on the clear and unambiguous language of the Management Agreement in determining that it was not a lease and therefore did not satisfy the threshold requirement for a *Yellowstone* injunction. *See* Decision at 4-5. Accordingly, Quik Park's new extrinsic evidence cannot be used by the Court in construing the Management Agreement, and consequently, is not evidence that "would change the prior determination," as required for a renewal motion.

Since Quik Park presents no other bases for renewal, its motion is denied.

B. *Motion for Reargument*

Quik Park's motion for reargument under CPLR 2221(d) likewise fails. "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 Adderley v. State*, 35 A.D.3d 1043, 1043-44 (1st Dep't 2006). It "is not designed to afford the unsuccessful party successive opportunities to reargue issues previously decided." *William P. Pahl Equip. Corp.*, 182 A.D.2d at 27.

The sum and substance of Quik Park's argument is that the Decision was wrongly decided. Quik Park argues that "well settled New York law" dictates that the Management Agreement is a lease. *See* Moving Br. at 7. In support, Quik Park rehashes the case law cited in its briefing on the underlying motion. While the Court notes Quik Park's disagreement with the Decision, such divergence of opinion fails to provide a proper basis for reargument. Accordingly, Quik Park's motion for reargument is denied.

III. Conclusion

Accordingly, it is

ORDERED that Plaintiffs Quik Park West 57 LLC, Quik Park East 66 LLC, Quik Park East 72 LLC, and Quik Park East 87 LLC's motion to reargue and renew its motion for a *Yellowstone* injunction is denied.

Dated: New York, New York
February 26, 2014

ENTER:

Hon. Eileen Bransten, J.S.C.