

**Lesnevsky v Pak**

2017 NY Slip Op 31290(U)

June 15, 2017

Supreme Court, Kings County

Docket Number: 502471/14

Judge: Lawrence S. Knipel

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Commercial Part 4 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 2<sup>nd</sup> day of June, 2017.

P R E S E N T:

HON. LAWRENCE KNIPEL,  
Justice.

-----X  
EDWARD LESNEVSKY, individually and on behalf of  
NEWARK SUPPLIES LIMITED LIABILITY COMPANY,  
NEWARK FLOORING EXPRESS LLC, FORTE FLOORING  
GROUP, LLC, VEGA WORLD SUPPLY, INC., VEGA  
HOLDINGS LIMITED LIABILITY COMPANY, V & M  
BUILD INC., INTERNATIONAL BUILDING MACHINERY,  
LLC, COLUMBUS INTERNATIONAL, INC., COLUMBUS  
INTERNATIONAL, and LTD. AVANGARD,

Plaintiff,

- against -

VLADIMIR PAK, THOMAS AGRACHOV, ELENA YOFFE,  
NATALIA KOGTEVA, NEWARK SUPPLIES LIMITED  
LIABILITY COMPANY, NEWARK FLOORING EXPRESS  
LLC, FORTE FLOORING GROUP, LLC, VEGA WORLD  
SUPPLY, INC., V & M BUILD, INC., VEGA HOLDINGS  
LIMITED LIABILITY COMPANY, INTERNATIONAL  
BUILDING MACHINERY, LLC, COLUMBUS INTERNATIONAL,  
INC., COLUMBUS INTERNATIONAL, and LTD. AVANGARD,

Defendants,  
-----X

**ORDER**

Index No. 502471/14

Mot. Seq. No. 15

The following e-filed papers read herein:

Notice of Motion/Cross Motion, Affirmation,  
Memorandum of Law, and Exhibits Annexed \_\_\_\_\_

NYSCEF No.

361-373, 374

Opposing Affirmation, Memorandum of Law, and  
Exhibits Annexed \_\_\_\_\_

375-377, 378

Reply Affirmation \_\_\_\_\_

379

In this action arising out of a business divorce, plaintiff moves in Seq. No. 15 for an order, pursuant to CPLR 2221 (d) and (e), granting him leave to reargue and, as to some causes of action, for leave to renew his cross motion for partial summary judgment on liability on his 3<sup>rd</sup>, 4<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup>, 10<sup>th</sup>, 11<sup>th</sup>, 12<sup>th</sup>, 13<sup>th</sup>, 14<sup>th</sup>, and 15<sup>th</sup> causes of action of his complaint (the prior motion) and, upon reargument and renewal, granting his prior motion. By order, dated Jan. 31, 2017 (NYSCEF #345), the Court, inter alia, denied the prior motion. The reasons for denial were two-fold. As to the 3<sup>rd</sup>, 4<sup>th</sup>, 11<sup>th</sup>, 12<sup>th</sup>, and 13<sup>th</sup> causes of action, the Court found that (1) the prior motion was untimely, having been made beyond the 60-day post-Note of Issue deadline; (2) the prior motion offered no explanation for the delay; and (3) the issues raised by the aforementioned causes of action were outside those raised by the then-pending (and timely) motion made by certain defendants. As to the remaining causes of action addressed in the prior motion (*i.e.*, 8<sup>th</sup>, 9<sup>th</sup>, 10<sup>th</sup>, 14<sup>th</sup>, and 15<sup>th</sup> causes of action), the Court denied that branch of the prior motion with leave to renew upon submission of specified records.

### ***Discussion***

Starting with the branch of the instant motion which is for leave to *reargue* the branch of the prior motion which was for partial summary judgment on liability on the 3<sup>rd</sup>, 4<sup>th</sup>, 11<sup>th</sup>, 12<sup>th</sup>, and 13<sup>th</sup> causes of action, the Court *denies* the plaintiff leave to reargue. The prior motion was undisputedly untimely as to these causes of action. That the plaintiff desired to combine his opposition to the defendants' motion with his own cross motion did not obviate

his obligation to move timely on the aforementioned causes of action. That his cross motion complied with CPLR 2215 does not excuse his untimeliness under the Kings County Supreme Court Uniform Civil Term Rules, Part C, Rule 6. Therefore, the prior order, insofar as it denied the prior motion for partial summary judgment on liability on the 3<sup>rd</sup>, 4<sup>th</sup>, 11<sup>th</sup>, 12<sup>th</sup>, and 13<sup>th</sup> causes of action, remains in effect, and “no appeal lies from an order denying reargument” (*Costello v Costello Shea & Gaffney, LLP*, 93 AD3d 684, 685 [2d Dept 2012]).

Turning to the remaining branch of the instant motion which is for leave to *renew* the branch of the prior motion which was for partial summary judgment on liability on the 8<sup>th</sup>, 9<sup>th</sup>, 10<sup>th</sup>, 14<sup>th</sup>, and 15<sup>th</sup> causes of action, leave to renew is *granted* in accordance with the prior order and, *upon renewal*, the remaining branch of the prior motion is *denied*. Viewing the evidence in the light most favorable to the defendants as the non-movants (*see Red Zone LLC v Cadwalader, Wickersham & Taft LLP*, 27 NY3d 1048, 1049 [2016]), there are triable issues of fact, inter alia, whether the plaintiff abandoned his businesses (as the defendants claim, he did) or whether the defendants Vladimir Pak and Thomas Agrachov conspired to convert, and did convert, the property in the entities in which the plaintiff was part owner (as the plaintiff claims, defendants Pak and Agrachov did). Given its paucity, the plaintiff’s evidence is at best underwhelming. The deposition testimony is hopelessly conflicting on almost every issue. The documentary evidence, which plays a critical role in most commercial cases, consists here of only some checks and of several isolated pages from some of the monthly bank statements for two of the entities in which he claims an interest. The

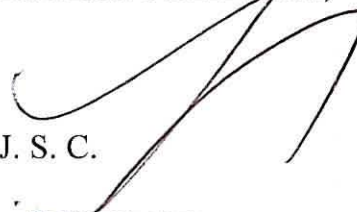
plaintiff has not laid out his case for partial summary judgment on liability on any of the causes of action numbered 8<sup>th</sup>, 9<sup>th</sup>, 10<sup>th</sup>, 14<sup>th</sup>, or 15<sup>th</sup> of his complaint. The burden is on the plaintiff to make a prima facie showing; the Court will not do it for him.

The plaintiff's motion is denied in its entirety.

The parties are reminded of their next scheduled appearance in Commercial Part, Trial 4, on June 30, 2017.

This constitutes the order of the Court.

ENTER FORTHWITH,



J. S. C.

**Justice Lawrence Knipfel**