

<b>Talisman Servs., Inc. v Hermitage Ins. Co.</b>
2018 NY Slip Op 33098(U)
December 3, 2018
Supreme Court, New York County
Docket Number: 151351/2016
Judge: William Franc Perry
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SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTYPRESENT: HON. W. FRANC PERRY*Justice*

PART

IAS MOTION 23EFM

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TALISMAN SERVICES, INC.

INDEX NO. 151351/2016

Plaintiff,

MOTION DATE 10/04/2018

- v -

HERMITAGE INSURANCE COMPANY,

MOTION SEQ. NO. 003

Defendant.

## DECISION AND ORDER

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The following e-filed documents, listed by NYSCEF document number (Motion 003) 48, 49, 50, 53, 54, 55, 56, 57, 58, 59, 60, 61

were read on this motion to/for

REARGUMENT/RECONSIDERATION

Upon the foregoing documents, the motion to reargue this court's August 14, 2018 decision, granting defendant Hermitage Insurance Company summary judgment, is denied.

## BACKGROUND

Defendant Hermitage Insurance Company previously moved for summary judgment pursuant to CPLR §3212, seeking an order dismissing the complaint on the grounds that the insurance policy issued by defendant does not provide coverage for personal property of others and that plaintiff is not entitled to the business personal property limit, provided by the policy.

Plaintiff, Talisman Services, Inc., cross moved for an order pursuant to CPLR §3212, on the grounds that the alleged damage to plaintiff's consigned business personal property that was caused by water damage on January 9, 2015, is covered business personal property, under the terms and conditions of the policy issued by defendant.

On August 14, 2018, this court granted defendant's motion for summary judgment and denied plaintiff's motion for summary judgment, finding that the unambiguous provisions of an

insurance contract must be given their plain and ordinary meaning, and should be analyzed in accordance with general principles of contract interpretation and insurance law. This court held that based on the unambiguous terms of the Policy, the limits of coverage for Personal Property of Others is \$2,500, which plaintiff admits was already paid by defendant; and as such, this court granted defendant's motion and denied plaintiff's motion. (NYSCEF Doc. No. 46).

Plaintiff now moves for leave to reargue this court's decision on the grounds that the court overlooked the argument that the damaged consigned goods are considered stock under the policy and as such should be covered as "Your Business Personal Property", as defined by the policy and in so doing, raises new legal arguments which were not raised in the original motion submitted to the court.

#### **STANDARD OF REVIEW/ANALYSIS**

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. NY CPLR §2221(d). While the determination to grant leave to reargue a motion lies within the sound discretion of the court, a motion for leave to reargue is not designed to provide an unsuccessful party with successive opportunities to reargue issues previously decided. *Kent v 534 E. 11<sup>th</sup> St.*, 80 AD 3d 106, 116 (1<sup>st</sup> Dept. 2010) ("Reargument is not a vehicle permitting a previously unsuccessful party to once again argue the very questions previously decided or to assert new, never, previously offered arguments."); *Foley v Roche*, 68 AD2d 558, 567 (1<sup>st</sup> Dept. 1979) (a motion to reargue does not properly serve as a "vehicle to permit the unsuccessful party to argue once again the very questions previously decided.").

A party seeking leave to reargue is also prohibited from presenting new or different arguments from those originally presented. See *Gellert & Rodner v. Gem Community Management, Inc.*, 20 A.D.3d 388, 797 N.Y.S.2d 316 (2d Dept. 2005) (stating a motion for reargument is not designed to prevent an unsuccessful party with successive opportunities to present arguments different from those originally presented).

Here, plaintiff simply rehashes the same arguments relative to the interpretation of the plain language of the policy that the consigned goods are part of Talisman's stock and are therefore covered as "Your Business Personal Property". This argument was rejected by this court when it held that "[p]laintiff's argument that the consigned property was part of its regular inventory and should be covered as 'Your Business Personal Property,' ignores the plain meaning of the Policy's terms, conditions and exclusions, and would render the Personal Property of Others coverage extension provision, meaningless." (NYSCEF Doc. No. 46).

As previously noted by the court, "in accordance with the plain language of the Policy, the only Covered Property with a limit of \$52,000 is Business Personal Property; and based upon the definition of Your Business Personal Property and Property of Others, as set forth in the Policy, it is clear that the consigned goods were not owned by plaintiff at the time of the loss but were, by her own admission 'given to her to be prepared for sale within the shop,' and thus, do not fall within the definition of Covered Property as set forth in the Policy." (id.). Accordingly, the motion to reargue is denied as it simply restates the same arguments already rejected by this court in favor of the policy's clear and unambiguous language. *William P. Pahl Equipment Corp. v. Kassis*, 182 A.D.2d 22, 588 N.Y.S.2d 8 (1<sup>st</sup> Dept. 1992) (finding that plaintiffs were not entitled to reargue a motion to dismiss where the plaintiffs made the same argument in opposition to the motion to dismiss).

Additionally, to the extent that plaintiff raises new arguments that were not raised when the motion was presented, the motion is denied. *Creative Fin. Group v. Calvary Pentecostal Church*, No. 653857/2013, 2017 WL 1292921 (N.Y. Sup. April 4, 2017) (denying defendant's motion to reargue; finding that the motion was based on a new legal argument where the defendant cited in its reargument motion a Florida statute that it failed to cite to in the prior motion).

In its motion to reargue, plaintiff cites subsection (5) of the definition of Your Business Personal Property, which provides coverage for "[1]abor, materials or services furnished or arranged by you on personal property of others" in support of its argument that this provision does in fact allow for coverage for personal property of others. In addition, plaintiff cites *CSS Publ'g Co. V. Am. Econ. Ins. Co.*, 2000-Ohio-1863, 138 Ohio App. 3d 76, 84, 740 N.E.2d 341, 347, in further support of this new argument which is raised here, for the first time. Plaintiff does not address the fact that this argument could have been raised below, nor does it attempt to explain its citation to a non-binding Ohio Court of Appeals case, which does not alter this court's conclusion that the plaintiff's arguments ignore the plain meaning of the Policy's terms, conditions and exclusions, and would render the Personal Property of Others coverage extension provision, meaningless.

ORDERED that the motion of plaintiff for leave to reargue its opposition to motion for summary judgment is denied.

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12/3/2018  
DATE

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CASE DISPOSED

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DENIED

APPLICATION:

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SETTLE ORDER

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INCLUDES TRANSFER/REASSIGN

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W. FRANC PERRY, J.S.C.

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NON-FINAL DISPOSITION

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GRANTED IN PART

SUBMIT ORDER

OTHER

FIDUCIARY APPOINTMENT

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