SHORT FORM ORDER

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

P R E S E N T : HON. JEFFREY S. BROWN
JUSTICE

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STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Plaintiffs,

-against-

M.V.B. COLLISION INC. d/b/a MID ISLAND COLLISION,

Defendant.

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TRIAL/IAS PART 12

INDEX # 606797/17

Mot. Seq. 2
Mot. Date 1.9.17
Submit Date 1.23.18

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The following papers were read on this motion: E File Docs Numbered

Notice of Motion, Affidavits (Affirmations), Exhibits Annexed..... 49
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Defendant MVB Collision Inc. d/b/a Mid Island Collision (MVB) moves pursuant to CPLR 2221(d) to reargue the court's decision and order dated December 8, 2017 which granted plaintiff a lien validity hearing, and pursuant to CPLR 2221(e) to renew its contention that plaintiff State Farm Mutual Automobile Insurance Company (State Farm) lacks standing to bring this action.

On the underlying motion, defendant MVB argued that this action was not timely commenced within ten days after service of the notice of sale within the mandates of Lien Law § 210-a. By its prior order, the court found that the action was timely commenced because the defendant had not complied with the precise requirements of notice contemplated by Lien Law § 210. In particular, the court stated:

> "According to [State Farm's representative] Ms. Cook and as corroborated by the date stamp on the document, the notice of lien and sale was received by State Farm on July 6, 2017. The instant action was commenced on July 21, 2017. Lien Law § 201-a

> provides that '[w]ithin ten days after service of the notice of sale, the owner or any person entitled to notice pursuant to section two hundred one of this article may commence a special proceeding to determine the validity of the lien.' MVB contends that this action is untimely as it was brought beyond the ten-day statutory period. However, the precise requirements of service pursuant to Lien Law § 201, have not been satisfied here. (*See Travis v. 29-33 Convent Ave. HDFC*, 19 Misc3d 749 [Sup. Ct. N.Y. County 2008] [strict compliance with technical requirements of Lien Law § 201 required for the ten day limit to warrant dismissal]). The statute requires a lienor to serve the notice of sale upon the owner of the disputed property and 'upon any person who shall have given to the lienor notice of an interest in the property.' Ms. Cook states by her affidavit that MVB was notified on June 5, 2017 that the vehicle was a total loss and all work should cease, which would indicate that State Farm was paying the insured for the market value of the car. Mr. McGauvran [MVB's representative], in his affidavit, does not dispute that the information was received. Accordingly, MVB was required by the statute to serve a notice of lien and sale upon State Farm, which it failed to do." (Short Form Order, Brown, J., Dec. 8, 2017)

MVB does not quibble with the notion that strict compliance with Lien Law § 201 is required to trigger the ten day period. Rather, MVB now contends that the court should grant reargument because the parties did not brief, and the court did not address, what it means to provide "notice" of an interest in property. Moreover, defendant asserts that even if something less than written notice is contemplated by the statute, plaintiff's allegations that it provided notice are based on inadmissible hearsay.

MVB further contends that renewal is appropriate as the salvage certificate for the correct vehicle was produced after the motion was decided and, according to MVB, it establishes that State Farm did not have standing to commence the instant action.

A motion to reargue is addressed to the discretion of the court and is designed to afford a party an opportunity to establish that the court overlooked or misapprehended the relevant facts, or misapplied a controlling principle of law. (CPLR 2221[d][2]; *see Haque v. Daddazio*, 84 AD3d 940 [2d Dept 2011]). It is not designed as a vehicle to afford the unsuccessful party with successive opportunities to argue once again the very questions previously decided. (*Ahmed v. Pannone*, 116 AD3d 802 [2d Dept 2014]; *Gellert & Rodner v. Gem Community Mgt., Inc.*, 20 AD3d 388 [2d Dept 2005]). Nor is it designed to provide an opportunity for a party to advance arguments different from those originally tendered. (*V. Veeraswamy Realty v. Yenom Corp.*, 71 AD3d 874 [2d Dept 2010]; *Amato v. Lord & Taylor, Inc.*, 10 AD3d 374, 375 [2d Dept. 2004]) or argue a new theory of law or raise new questions not previously advanced (*Haque*, 84 AD3d

940). Instead, the movant must demonstrate the matters of fact or law that he or she believes the court has misapprehended or overlooked. (*Hoffmann v. Debello-Teheny*, 27 AD3d 743 [2d Dept 2006]). Absent a showing of misapprehension or the overlooking of a fact, the court must deny the motion. (*Barrett v. Jeannot*, 18 AD3d 679 [2d Dept 2005]).

A motion to renew is intended 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. (*Morrison v Rosenberg*, 278 AD2d 392 [2d Dept 2000]).

What qualifies as "notice" of an interest in property is not expressly defined in the statute. Cases citing this section have found that "[t]he quoted language apparently refers to those persons only who have given the lienor actual notice of their claimed interests in the car (*see Commercial Credit Corp. v. Moskowitz*, 142 Misc. 773, 775, affd. 238 App.Div. 831 . . .)." (*Motor Disc. Corp. v. Scappy & Peck Auto Body, Inc.*, 12 N.Y.2d 227, 230 [1963]; *see National Surety Co. v. Gotham Garage Co.*, 127 Misc. 422 [App. Term 1st Dept 1926] [actual notice that possessor of a vehicle was not the owner and still owed money on account "should have put [lien holder] on inquiry as to the respective rights" of the parties in the subject vehicle]). "Actual notice" must be contrasted with the legal concept of "constructive notice." (*See Commercial Credit Corp. v. Moskowitz*, 142 Misc. 773 [N.Y. City Ct. 1932], *aff'd,* 238 A.D. 831 [N.Y. App. Div. 1933] [recording of a conditional sales contract, i.e. "notice implied in law" did not constitute actual notice within the requirements of the statute]). But actual notice need not be limited to written notice.

Lien Law § 201 specifically requires the manner of notice to be provided to the owner of the property and to interested parties. However, when referring to the notice of a property interest, the statute simply qualifies "any person who shall have given to the lienor notice of an interest in the property subject to the lien." Pursuant to the general rule that "words of ordinary import used in a statute are to be given their usual and commonly understood meaning, unless it is plain from the statute that a different meaning is intended" (N.Y. Stat. Law § 232), there is no basis upon which to read a requirement of written notice into the statute. That written notice is mandated in other contexts, such as criminal forfeiture, is inapposite here.

Next, MVB contends that State Farm's assertions of notice are inadequate as they are based upon inadmissible hearsay. On the underlying motion, MVB raised no evidentiary objection or factual dispute even though the issue was presented in both State Farm's complaint (paragraph 16) and in Ms. Cook's affidavit, and despite that MVB presented its own affidavit in opposition. Thus, the objection is not a proper subject for reargument. (*Ahmed v. Pannone*, 116 AD3d at 805; *see also People v. Berry*, 16 AD2d 790 [2d Dept 1962]).

Finally, the issue of State Farm's standing was resolved in the court's previous order and the new salvage certificate does not warrant renewal of the motion.

Accordingly, it is hereby

ORDERED, that the defendant's motion to reargue is granted and upon reargument, the court adheres to its initial determination.

This constitutes the decision and order of this court. All applications not specifically addressed herein are denied.

Dated: Mineola, New York
February 13, 2018

ENTER:

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J.S.C.

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