

SUPREME COURT OF T STATE OF NEW YORK
COUNTY OF KINGS

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ALAYNE REAL ESTATE, INC. and SETAM
REALTY ASSOCIATES, L.L.C.,

Plaintiffs,

-against-

ALAN D. LASHER and ANGELA MILLWATER,

Defendants.

-----X
ANGELA MILLWATER,

Third-Party Plaintiff,

-against-

CHERYL UNTERBERG,

Third-Party Defendant.
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CIVIL TERM, PART 11

DECISION and ORDER

Index No. 11134/00

PRESENT:

HON. RANDOLPH JACKSON

June 13, 2005

THE FOLLOWING PAPERS NUMBERED 1 TO 18 READ ON THIS

MOTION:

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NO. 2 ON CALENDAR OF May 17, 2005 PAPERS¹ NUMBERED

NOTICE OF MOTION - ORDER TO SHOW CAUSE - AFFIDAVIT(S)

AFFIRMATION(S) - PETITION - EXHIBITS ANNEXED 1-5

ANSWERING AFFIDAVIT(S) - AFFIRMATION(S) - EXHIBITS 6-15

REPLY AFFIDAVIT(S) - AFFIRMATION(S) 16

AFFIDAVIT(S) - AFFIRMATION(S) _____

EXHIBITS AND OTHER PAPERS _____

SUR-REPLY 17-18

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After oral argument and upon the foregoing papers:

Defendant ALAN D.LASHER and ANGELA MILLWATER move for leave to reargue a motion to strike defendant's answer, third party complaint and to grant judgment by default in their favor granted in a December 9, 2004 Decision and Order.

In the instant application, the movants allege that this court erred in basing the above Decision and Order to strike defendant's answer on the defendant's suspension from the practice of law. The movants also contend that the current motion is timely.

Opposing the motion, the plaintiffs, ALAYNE REAL ESTATE, INC. and SETAM REALTY ASSOCIATES, L.L.C. ("ALAYNE") allege that the defendant's current motion is untimely and that in any event, the defendant's motion should not be granted since the motion to strike was properly decided due to the defendants' failure to obey previous court orders.

In their reply, the defendants state that although their motion was untimely, it should nevertheless be considered on its merits, since the defendants were ill and unable to submit the motion within the time limitations.

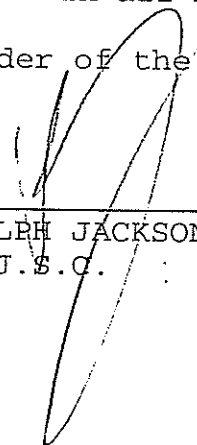
A motion for reargument, addressed to the sound discretion of the court, is designed to afford a party an opportunity to establish that the court overlooked or misapprehended the relevant facts, or misapplied any controlling principle of law. Its purpose is not to serve as a vehicle to permit the unsuccessful party to argue once again the very questions previously decided (Foley v. Roche, 68 A.D.2d 558, 567 (1st Dept. 1979); F&G Heating Co., Inc. Board of Educ. Of City of NY, 103 A.D.2d 79 (2nd Dept. 1984)). Additionally, an order denying

reargument is not appealable. Wehringer v. Linnigan, 89 N.Y.2d 980 (1997).

This court notes at the outset that the defendant's motion to reargue is untimely under CPLR §2221(d)(3), which states, "[a] motion for leave to reargue... shall be made within thirty days after service of a copy of the order determining the prior motion and written notice of its entry." CPLR §2221(d)(3). Given that the Decision and Order was served with notice of entry on December 28, 2004, and the defendants filed this motion on March 15, 2005, this motion is obviously untimely.

Because the defendants' motion is untimely, pursuant to CPLR §2221(d)(3), this court need, and will not, address the merits of the defendants' motion to reargue. It suffices that the defendants have not submitted a timely motion. Glicksman v. Board of Education/Central Board of Comsewogue Union Free School District, 717 N.Y.S.2d 373, 374-75 (2nd Dept 2001).

Accordingly, the motion to reargue is denied in all respects. This shall constitute the decision and order of the Court.



RANDOLPH JACKSON
J.S.C.