

Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE THOMAS D. RAFFAELE IA Part 13  
Justice

\_\_\_\_\_  
URIS JACKSON, X

Plaintiffs,

-against-

JAMAICA EQUITY, INC. and J & S  
WESTCHESTER LLC and BRANDS FOR LESS  
d/b/a FULTON CLOSEOUT VALUE DEPOT,  
INC.,

Defendants.

Index  
Number: 703384/14

Mot. Date: 3/7/18

Motion Seq. No. 5

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JAMAICA EQUITY, INC., X

Third-Party Plaintiff,

-against-

J & S WESTCHESTER LLC and BRANDS FOR  
LESS d/b/a FULTON CLOSEOUT VALUE DEPOT,  
INC.,

Third-Party Defendants.

The following papers numbered 1 to 12 read on this motion by defendants/third-party defendants, J & S Westchester, LLC and Brands for Less, d/b/a Fulton Closeout Value Depot, Inc., (the J&S Defendants), for an order, pursuant to CPLR Section 2221 granting reargument of the decision and order of this court, dated December 12, 2017 and upon reargument, dismissing the underlying action, cross-claim and third-party claims against J & S Westchester, LLC and Brands for Less d/b/a Fulton Closeout Value Depot, Inc., in their entirety and for such other and further relief as this court deems just and proper. Plaintiff cross moves, pursuant to CPLR Section 2221(d) for leave to reargue the Amended Short Form order, dated December 12, 2017, and for such other and further relief as this court deems just and proper.

Papers  
Numbered

Notice of Motion - Affidavits - Exhibits..... 1-4

Affirmation in Opposition (Jamaica Equity).....	5-7
Notice of Cross Motion- Affidavits-(Plaintiff).....	8-10
Affirmation in Opposition to Cross (the J&S Defendants)	11-12

Upon the foregoing papers, the motion in chief by the J&S Defendants is denied in its entirety. The purpose of a motion for reargument is to afford a party an opportunity to demonstrate that the court overlooked or misapprehended the law or facts pertinent to the original motion (See CPLR 2221[d][2]; see also *Delgrosso v 1325 Limited Partnership*, 306 AD2d 241 [2d Dept. 2003]); *Foley v Roche*, 68 AD2d 558 [1<sup>st</sup> Dept. 1979] *app denied* by 56 NY2d 507 [1982]). Its purpose is not to serve as a vehicle to permit the unsuccessful party to argue once again the very questions previously decided or to present arguments different from those originally presented (See *Gellert & Rodner v Gem Community Management, Inc.*, 20 AD3d 388 [2d Dept. 2005]; see also *McGill v Goldman*, 261 AD2d 593 [2d Dept. 1999]; *Foley v Roche, supra*).

The J& S defendants have failed to set forth any reasons to substantiate the court's alleged misinterpretation of the law. As such, they have failed to set forth any misinterpretation of the law or facts by this court warranting an opportunity to reargue the underlying motion. Rather, the court finds that it ruled in accordance with the relevant law applicable to the case at bar.

Contrarily, the cross motion by plaintiff for leave to reargue the Amended Short Form Order, dated December 12, 2017 is granted solely to the extent of editing the fourth paragraph on page 2. As such, upon reargument the fourth paragraph on page four is deleted and amended to read as follows:

In the case at bar, it is undisputed that Jamaica is an out of possession landlord who had no notice of any defective condition. It is well settled that "an out-of-possession landlord is not liable for injuries occurring on the premises unless it has retained control of the premises, is contractually obligated to perform maintenance and repairs, or is obligated by statute to perform such maintenance and repairs" (see *Denemark v 2857 West 8<sup>th</sup> Street Assocs.*, 111 AD3d 660 [2d Dept 2013], citing *Alnashmi v Certified Analytical Group, Inc.* 89 AD3d 10 [2d Dept 2011]). Although plaintiff testified that she did not observe any defective conditions on the stairs (see Jackson EBT transcript at 103), her deposition transcript raises questions of fact, specifically but not limited to whether the merchandise was

situated in a manner which created a trap-like situation and whether the area where plaintiff's "foot went down" was a dangerous condition created by the tenants, defendants/third-party defendants J& S Westchester, LLC and Brands for Less d/b/a Fulton Closeout Value Depot, Inc. (*id* at 30, 31 and 33).

The remainder of the Amended Short Form Order of this court, dated December 12, 2017 remains in full force and effect.

All remaining parties are directed to appear in the Trial Scheduling Part of the court, courtroom 25, on Tuesday, May 8, 2018 at 9:30 A.M.

The foregoing constitutes the decision and order of this court.

Dated: March 28 2018



Thomas D. Raffaele, J.S.C.

