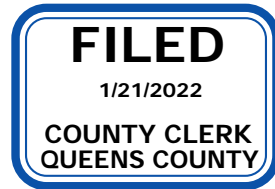


Short Form Order
NEW YORK SUPREME COURT - QUEENS COUNTY
PRESENT: HON. ROBERT I. CALORAS
Justice

PART 36

-----X
GIOVANNI IPPOLITO and TANYA
VLACANCICH IPPOLITO,

Index No. 708258/20
Seq. No. 2



Plaintiffs,
-against-
DISTEFANO LLC.
Defendants

-----X

The following papers numbered E90-E91, E94-E96 read on this motion by Defendant for an order for the following: (1) pursuant to CPLR 2221(d), granting defendant leave to reargue the Defendant's cross-motion for summary judgment on the grounds the Court overlooked matters of fact and law; (2) upon reargument, for an order granting defendant's cross-motion for summary judgment; and the cross motion by Plaintiffs for an order for the following: (1) pursuant to CPLR 2221(d), granting the Ippolitos leave to reargue their motion for summary judgment on the grounds that, in its Short Form Order, dated August 5, 2021, the Court overlooked matters of fact and law; (2) upon reargument, (i) pursuant to CPLR 3212, entering summary judgment in favor of the Ippolitos and against Defendant-Counterclaimant Distefano LLC, (ii) dismissing the Defendant's affirmative defenses and counterclaim, and (iii) entering an Order declaring that the Ippolitos, and no one else, are the lawful owners of the Disputed Property (as defined in the motion papers).

	PAPERS <u>NUMBERED</u>
Notice of Motion-Affirmation-Exhibits.....	E90-E91
Notice of Cross Motion-Memo of Law in Support of the Cross and in Opposition to the Motion	E94-E95
Memo of Law in Opposition to the Cross Motion	
And in further support of the Motion.....	E96

Upon the foregoing papers, it is ordered that Defendant's motion and Plaintiffs' cross motion are denied for the following reasons:

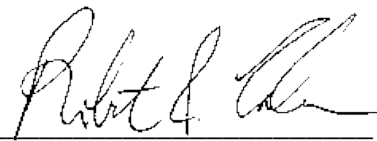
In an order issued by this Court on August 5, 2021, the branch of Plaintiffs' motion seeking summary judgment on their claim that they acquired title by adverse possession to the portion of the Home which encroaches upon defendant's property was granted, and the remaining branches of Plaintiffs' motion for summary judgment declaring that they own the disputed parcels, to wit, the Deck and Walkway in fee simple by adverse possession, were denied. In addition, this Court also denied Defendants' cross motion for summary judgment in the prior order. Defendant now seeks to reargue its prior cross motion that was denied, and Plaintiffs seek to reargue the branch of their prior motion that was denied.

"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' " (Grimm v Bailey, 105 AD3d 703, 704, (2d Dept

AD3d 1157, 1158 [2d Dept. 2011]). "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, or to present arguments different from those originally presented" (Matter of Anthony J. Carter, DDS, P.C. v Carter, 81 AD3d 819, 820 [2d Dept 2011], [citations and internal quotations omitted]).

Here, this Court has reviewed its prior order and the instant motion and cross motion and finds that it would be an improvident exercise of its discretion to grant reargument to either moving party. This Court finds that the moving parties have failed to demonstrate that the Court overlooked or misapprehended any matters of fact or law in denying the branch of Plaintiffs' prior motion for summary judgment that sought a declaration declaring that they own the disputed parcels, to wit, the Deck and Walkway in fee simple by adverse possession, and denying Defendants' prior cross motion (*See, Ahmed v Pannone*, 116 A.D.3d 802 (2d Dept 2014)). Accordingly, the instant motion and cross motion are denied.

Dated: January 19, 2022



ROBERT I. CALORAS, J.S.C.