

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK
COUNTY OF NASSAU

PRESENT:

HON. IRA B. WARSHAWSKY,

Justice.

TRIAL/IAS PART 14

ONE LIBERTY PROPERTIES, INC., on its own
behalf and its subsidiaries and affiliates, including
but not limited to OLP BROOKLYN PAVILION, LLC,
OLP-MTC HOLDINGS, OLP MOVIES, LLC and
OLP MONROE PAVILION, LLC,

Plaintiffs,

INDEX NO.: 012807/2005
MOTION DATE: 07/18/2006
MOTION SEQUENCE: 006

-against-

PRITCHARD SQUARE, LLC, PRITCHARD
SQUARE CINEMA, LLC, BRITANNIA MANAGEMENT
SERVICES, L.P., RELIES CINEMA, LLC,
MONROE PAVILION, LLC, NORMAN ADIE,
SCREEN ARTS CORP., JEFFREY FISHMAN,
KASEY GITTLEMAN, MELISSA FISHMAN,
RONALD PARR and THE PARR ORGANIZATION, INC.,

Defendants.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

PRITCHARD SQUARE, LLC and
PRITCHARD SQUARE CINEMAN, LLC,

Plaintiffs,

- against -

INDEX NO. 012830/2005

ONE LIBERTY PROPERTIES, INC.,
GOULD INVESTORS, L.P., OLP BROOKLYN
PAVILION, LLC, BRITANNIA MANAGEMENT

SERVICES, INC., OLP-MTC HOLDINGS, LLC,
OLP MOVIES, LLC, MAJESTIC MANAGEMENT
PROPERTY CORP. and JEFFREY FISHMAN,

Defendants.

The following papers read on this motion:

Notice of Motion, Affirmation & Exhibits Annexed.....	1
Affirmation in Opposition of Joseph J. Cooke.....	2
Affirmation in Opposition of Kevin P. McDonough.....	3
Reply Affirmation in Further Support of Stephen L. Ukeiley & Exhibits Annexed...	4

This motion by plaintiff, One Liberty Properties, Inc., to reargue it's prior motion which resulted in an order dated June 5, 2006 denying joinder of an action pending in Suffolk County under Index No. 6081/2006 with the above captioned actions, and, upon reargument for an order granting such relief, is denied.

Reargument may be granted where the court has overlooked, or misapprehended a material factual matter or a controlling principle of law. Cisco v Lavine, 72 Misc. 2d 1087 (Sup. Ct. Nassau Co. 1973). On a motion to reargue, it is inappropriate to raise new arguments which have not previously been advanced upon the court, Simpson v. Loehman, 21 N.Y.2d 990 (1968), and new material facts need not be presented in order to reargue. Aldrich v County of Oneida, 299 A.D.2d 938 (4th Dept. 2002). Most importantly, a motion to reargue or to renew is not a procedural device to permit counsel to argue the same issues previously considered and decided.

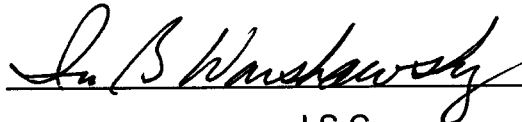
Plaintiff now reargues the same theories which were propounded on the earlier motion and which the court found insufficient to grant joinder of this third case.

Plaintiff, One Liberty, claims in this action that, inter alia, the contract to build out the Monroe theatre resulted from bribing J. Fishman to exhort monies for such construction. However, plaintiff is not prejudiced in making out it's case in this tribunal without the Suffolk case. But the plaintiff, Parr Organization, Inc., will be prejudiced in making out its claim for goods and services provided in partial construction of the Monroe theatre if joined with the above captioned actions which involves the overall

scheme of duping Liberty One. If it turns out that Liberty One was victimized, and that the Parr Organization and affiliates participated in the bribery of the then CEO, Fishman, the damages recovered in this court can include the sums paid to Parr for a construction contract unscrupulously obtained.

Movant argues that the court overlooked that the Parr Organization's claims in the Suffolk action are intertwined with One Liberty's claims against J. Fishman, its former CEO, who was involved in both the purchase and construction of the Monroe premises. Rather than intertwined, to the view of the court the aforesaid claims are the flipside of One Liberty's, and until proven guilty Parr remains innocent. It is a relatively uncomplicated Mechanic's Lien foreclosure action, which affords a special kind of protection in our system of jurisprudence to those improving real property, see Charles C. Kellogg & Sons v DeLia, 173 Misc 156 (1940), rev 262 A.D. 803; Manniello v Ghadimi, 279 A.D.2d 460 (2d Dept 2001), and can proceed without any estoppel effect to plaintiff's claims and without prejudice to ultimate recovery of damages for a contract fraudulently obtained.

Dated: September 8, 2006



J.S.C.

ENTERED
SEP 14 2006
NASSAU COUNTY
COUNTY CLERK'S OFFICE