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| DOCKET NO. DBD-CV-23-6046280-S | : | SUPERIOR COURT |
| H. D. DANBURY, LLC | : | J. D. OF DANBURY |
| V. | : | AT DANBURY |
| CITY OF DANBURY | : | JUNE 12, 2024 |



**MEMORANDUM OF DECISION**
**RE: PLAINTIFF'S MOTION TO OPEN JUDGMENT AS AMENDED #115, #118**
**AND MOTION TO REARGUE #116**

The plaintiff, H.D. Danbury, LLC, began this action by filing an appeal of the defendant, the city of Danbury's, tax assessment of the plaintiff's property pursuant to General Statutes § 12-117a. Subsequently, the defendant filed a motion to dismiss the appeal which was granted by the court. Docket Entry Nos. 108, 113.01. The plaintiff has now filed a motion to open the judgment, an amended motion to open and a motion to reargue. Docket Entry Nos. 115, 118 and 116. The defendant has filed objections to both motions and the plaintiff has filed a reply thereto. Docket Entry Nos. 120, 121, 123. Oral argument was held on May 6, 2024. For the reasons set forth below, the court grants both the motion to open the judgment and the motion to reargue.

As to the motion to open the judgment, Practice Book § 17-4 vests discretion in the trial court to determine whether there is a good and compelling reason to modify or vacate its judgment. *Mazziotti* v. *Allstate Insurance Co.*, 240 Conn. 799, 809, 695 A.2d 1010 (1997). See also General Statutes § 52-212a.

As to the motion to reargue, "[T]he purpose of a reargument is . . . to demonstrate to the court that there is some decision or some principle of law which would have a controlling effect, and which has been overlooked, or that there has been a misapprehension of facts. . . . It also may be used to address alleged inconsistencies in the trial court's memorandum of decision as well as

claims of law that the [movant] claimed were not addressed by the court. . . . [A] motion to reargue [however] is not to be used as an opportunity to have a second bite of the apple or to present additional cases or briefs which could have been presented at the time of the original argument." (Citations omitted; internal quotation marks omitted.) *Opoku* v. *Grant*, 63 Conn. App. 686, 692-93, 778 A.2d 981 (2001).

In this instance, prior to the court granting the defendant's motion to dismiss, it had issued decisions in two other matters with essentially identical fact patterns and issues as to the matter now before the court. See *Danbury Gas Realty* v. *Danbury*, Superior Court, judicial district of Danbury, Docket No. CV-23-6046184-S (November 21, 2023, *Shaban, J.*) and *American Petroleum Realty* v. *Danbury*, Superior Court, judicial district of Danbury, Docket No. CV-23-6046185-S (November 21, 2023, *Shaban, J.*). In both of those matters, the court denied the motion to dismiss reasoning that although the plaintiff had failed to meet the deadline for the filing of the appraisal with the court, the defendant had received the appraisal from the plaintiff prior to oral argument on the motion to dismiss and therefore there was no prejudice to the defendant from proceeding with the matter as the defendant had been fully informed of the claimed value of the property well in advance of any trial of the matter. The court also referenced the long-held principle of our courts that its preference is to have matters heard on the merits as opposed to having them decided on procedural grounds. While the court certainly had the discretion to dismiss the matters, it elected not to do so given that a dismissal was not mandatory.

"A motion to reargue is proper either when its purpose is to direct the court's attention to a case or legal principle that the court has overlooked or when the movant seeks to correct a misapprehension of facts." (Citation omitted.) *Benedetto* v. *Dietze & Associates, LLC*, 159 Conn. App. 874, 879, cert. denied, 320 Conn. 901, 127 A.3d 185 (2015). In this case, given the court's

prior rulings, the plaintiff could reasonably have believed that in granting the motion to dismiss, the court had overlooked those rulings. Such an argument does not constitute a prohibitive second bite at the apple.

Upon reflection and argument, the court considers the dismissal entered in the present matter to be inconsistent with the court's prior rulings on the same issue now before it. A party seeking to reopen a judgment within four months from the date of its issuance may do so for a good and compelling reason. The court finds that the reasons underlying its prior decisions in the *Danbury Gas Realty* and *American Petroleum Realty* matters denying the motions to dismiss and the inconsistency of the ruling in this matter dismissing the action constitutes a good and compelling reason to warrant the reopening of the judgment so that it may be heard on the merits. No real prejudice exists to the defendant as no trial dates had been set as of the date of dismissal and it fully retains its ability to challenge the claims of the plaintiff.

The court believes the interests of justice warrant the reopening of the judgment and the reargument of the matter which was allowed at the short calendar hearing.[1] The court notes that should future matters with similar fact patterns come before it, the court still retains the ability to exercise its discretion to dismiss such matters where it is argued that there has been a failure to comply with statutory deadlines for the filing of appraisals. This is true given that similarly situated plaintiffs are now acutely aware of the language of General Statutes § 12-117a (as may be amended).

Shaban, J.

[1] In the interests of judicial economy, counsel were allowed to present their arguments for reargument at the short calendar hearing so that if the court were to grant the motion to reopen, they did not have to return for another hearing date.