

<b>Lui v Lin Sing Assn., Inc.</b>
2021 NY Slip Op 31299(U)
April 14, 2021
Supreme Court, New York County
Docket Number: 650803/2020
Judge: Louis L. Nock
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LOUIS L. NOCK PART IAS MOTION 38EFM

Justice

-----X

ALFRED LUI,

Plaintiff,

- v -

LIN SING ASSOCIATION, INC.,

Defendant.

-----X

LOUIS L. NOCK, J.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 32, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64

were read on this motion to/for REARGUMENT/RECONSIDERATION.

Upon the foregoing documents, and after argument, it is ordered that plaintiff's motion (seq. no. 002), by order to show cause dated March 6, 2020 (NYSCEF Doc. No. 30), "to reargue and renew" his prior motion (seq. no. 001), by order to show cause dated February 7, 2020 (NYSCEF Doc. No. 12), resulting in this court's order dated March 2, 2020 (NYSCEF Doc. No. 15), granting judgment to plaintiff for all the relief sought by him in the complaint in this action (NYSCEF Doc. No. 1), is denied, as follows.

Plaintiff is a member of defendant Lin Sing Association, Inc. (the "Association"), described as "as association whose objectives are to liaise for affinity between members, to consolidate strength among members, to help resolving difficulties for members, to enhance the welfare of members and to serve the interests of the community" (Complaint ¶ 4). The complaint took issue with the Association Advisory Committee's appointment of one - Hon Poon Leung - as president of the Association without conducting an election pursuant to the

Association's by-laws. The complaint contains a single cause of action for judgment removing Mr. Leung from said appointment and enjoining the Association from appointing anyone else president without conducting an election in accordance with its by-laws.

In motion sequence no. 001, plaintiff moved this court for a preliminary injunction which tracks the very demand for final relief sought in the complaint in this action. This court's order to show cause in connection with that motion (NYSCEF Doc. No. 12) granted plaintiff's application for a temporary restraining order which similarly tracked the relief sought in the underlying motion for a preliminary injunction and in the complaint in this action.

Subsequent to the issuance of said order to show cause, defendant's counsel filed a letter in this action, dated February 27, 2020 (NYSCEF Doc. No. 13), completely consenting to the relief sought in plaintiff's motion, and in the complaint. Accordingly, this court issued an order dated March 2, 2020 (NYSCEF Doc. No. 15), acknowledging defendant's consent and granting final judgment sought by the plaintiff in the complaint in this action. In other words – a total triumph for the plaintiff as measured by his demand for final judgment sought in his complaint.

Notwithstanding plaintiff's complete triumph in this action, he has authorized his counsel to make the within motion (seq. no. 002), cast as "Reargue and Renew." The matter is perplexing, given the fact that the order that is the subject of this motion had granted plaintiff final judgment on his complaint. Consonant with that incoherency, the ordinary standards for reargument and renewal under CPLR 2221 will not permit either reargument or renewal to ensue in these circumstances.

"A motion for leave to reargue pursuant to CPLR 2221 is addressed to the sound discretion of the court and may be granted only upon a showing 'that the court overlooked or misapprehended the facts or the law or for some reason mistakenly arrived at its earlier

decision” (*William P. Pahl Equipt. Corp. v Kassis*, 182 AD2d 22, 27 [1<sup>st</sup> Dept], *affd* 80 NY2d 1005 [1992], *rearg denied* 81 NY2d 782 [1993]). In this case, no possible grounds for reargument exist in the face of the court’s total grant of all the relief demanded in the complaint, and in plaintiff’s underlying motion (seq. no. 001), predicated upon defendant’s counsel’s unqualified consent to such relief in its post-motion correspondence of February 27, 2020. Therefore, what purports to be a motion by plaintiff to reargue is denied.

A motion to renew allows a party “to draw the court’s attention to new or additional facts which . . . were unknown to the party seeking renewal . . . .” (*Id.*) But that requires a circumstance where “that would change the prior determination” (CPLR 2221 [e] [2]). Obviously, a total win for the plaintiff, as measured by his own pleading, predicated upon defendant’s unconditional concession in this case, makes it impossible to imagine how, or why, anything new could be, or is, submitted in the nature of new facts that would change the prior determination granting complete and final judgment in plaintiff’s favor. To demonstrate the point, the complaint seeks the following final relief:

For declaratory judgment declaring the appointment of Hon Poon Leung as President of the defendant association null and void and removing Hon Poon Leung as President of the Association;

For a declaratory judgment preventing defendant from declaring another person President of the defendant Association without following the rules listed in the By-Laws.

(Complaint at 5.) Correspondingly, defendant’s counsel’s concession letter states that:

The Association hereby consents that Mr. Leung will not be sworn in as President, act as President, or declare another person as President, until a new election is held, which is the substantive relief requested in the Order to Show Cause and Temporary Restraining Order.

(NYSCEF Doc. No. 13 at 1.) That letter further promised to move forward “to conduct a new election for a new president in accordance with the Association’s By-Laws” (*id.*, at 2).

Absent any facts that could possibly “change the prior determination” of this court (CPLR 2221 [e] [2]) granting final judgment to plaintiff on his complaint, what purports to be a motion by plaintiff to renew is denied.

Defendant cross-moves for sanctions. The court is reluctant to grant the cross-motion seeing as the case was resolved, with finality, through the expedient of defendant’s February 27, 2020, concession letter. In addition, plaintiff’s motive in making this motion – perplexing as it still is – seems to find its origin not in malice; but in anxiety, as evidenced by his counsel’s letter filed herein, dated March 2, 2020 (NYSCEF Doc. No. 24), which expresses skepticism regarding the Association’s promise to conduct a new election. As plaintiff’s counsel wrote in her said letter: “plaintiff will believe it when he sees it” (*id.*). But plaintiff has a remedy which overcomes such anxiety. He may hold defendant to its promise if it is not kept because the within denials of plaintiff’s motion are without prejudice to plaintiff’s rights in the event that defendant has not fulfilled its February 27, 2020, promise “to conduct a new election for a new president in accordance with the Association’s By-Laws” (NYSCEF Doc. No. 13 at 2).

Accordingly, it is

ORDERED that plaintiff’s motion to reargue and renew is denied; and it is further

ORDERED that plaintiff remains free to commence an action in the event that defendant has not fulfilled its promise to conduct a new election in accordance with its by-laws.

This will constitute the decision and order of the court.

ENTER:

*Louis L. Nock*

<u>4/14/2021</u>			<u>LOUIS L. NOCK, J.S.C.</u>
DATE			
CHECK ONE:	<input checked="" type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> NON-FINAL DISPOSITION	
	<input type="checkbox"/> GRANTED	<input checked="" type="checkbox"/> DENIED	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE