

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D55433
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_____AD3d_____

Argued - January 30, 2018

REINALDO E. RIVERA, J.P.
ROBERT J. MILLER
SYLVIA O. HINDS-RADIX
JOSEPH J. MALTESE, JJ.

2017-02203

DECISION & ORDER

Capital One Bank, respondent, v Annette Phillips, also known as Annette Dreitzer, appellant.

(Index No. 741/06)

Legal Services of the Hudson Valley, White Plains, NY (Salvatore Lomanto of counsel), for appellant.

In an action to recover damages for breach of contract and on an account stated, the defendant appeals from an order of the Supreme Court, Dutchess County (Christine A. Sproat, J.), dated January 20, 2017. The order denied the defendant's motion, denominated as one for leave to renew and/or reargue, but which was, in actuality, one for leave to reargue her opposition to the plaintiff's prior motion for summary judgment on the complaint, which had been granted in an order of the same court dated November 9, 2015.

ORDERED that the appeal is dismissed, without costs or disbursements.

The plaintiff commenced this action against the defendant to recover damages for breach of contract and on an account stated in connection with an unpaid credit card balance. The plaintiff moved for summary judgment on the complaint, and the Supreme Court granted the motion. The defendant submitted a motion, denominated as one for leave to renew and/or reargue her opposition to the plaintiff's motion for summary judgment, and the court denied the defendant's motion. The defendant then submitted a second motion, also denominated as one for leave to renew and/or reargue her opposition to the plaintiff's motion for summary judgment, and the court denied the defendant's second motion. The defendant appeals from the order denying her second motion.

The defendant's second motion, which was denominated as one for leave to renew and/or reargue, was not based on new facts (*see* CPLR 2221[d][2]; [e]; *Navarette v Alexiades*, 50

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AD3d 873). Therefore, it was, in actuality, a motion for leave to reargue, the denial of which is not appealable (see *Cordero v Mirecle Cab Corp.*, 51 AD3d 707, 708; *Navarette v Alexiades*, 50 AD3d at 873; *Trahan v Galea*, 48 AD3d 791).

RIVERA, J.P., MILLER, HINDS-RADIX and MALTESE, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court