SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: HON. PAUL G. FEINMAN PART 12

Index Number : 602986/2006
PU, RICHARD
VS
MITSOPOULOS, GEORGE
Sequence Number : 011
REARGUMENT/ RECONSIDERATION

INDEX NO. 602986/2006
MOTION DATE
MOTION SEQ. NO. 011
MOTION CAL. NO.

The following papers, numbered 1 to _____ were read on this motion to/for _____

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	
Answering Affidavits — Exhibits	
Replying Affidavits	

Cross-Motion: ☑ Yes ☐ No

Upon the foregoing papers, it is ordered that this motion

MOTION AND CROSS MOTION(S) ARE DECIDED
IN ACCORDANCE WITH ANNEXED DECISION AND ORDER

FILED

DEC 15 2010

NEW YORK
COUNTY CLERK'S OFFICE

Dated: 12/14/2010

Paul G. Feinman
J.S.C.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

Check one: ☐ FINAL DISPOSITION ☒ NON-FINAL DISPOSITION

Check if appropriate: ☐ DO NOT POST ☐ REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: CIVIL TERM: PART 12

----------X

RICHARD PU,

Plaintiff,

- against -

GEORGE MITSOPOULOS, SPOSTOLOS MITSOPOULOS, EFROSINI MITSOPOULOS, TITAN PHARMACEUTICALS AND NUTRITION, INC.

Defendants.

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Index No. 602986/06
Mot. Seq. No. 011
DECISION and ORDER

Appearances:

For Plaintiff:
Richard Pu, pro se
120 East 90th Street, 10C
New York, Y 10128

For Defendants:
Alatsas & Taub, P.C.
By: Asher E. Taub, Esq.
2115 Avenue U
Brooklyn, NY 11229

Papers considered in review of this motion and cross motion:

Papers	Document Number
Notice of motion	1
Appendix	2
Brief in support	3
Notice of cross motion	4
Affirmation in support and opposition and exhibits	5
Plaintiff's second brief	6
Reply appendix	7

PAUL G. FEINMAN, J.:

Plaintiff moves "for an order pursuant to the [c]ourt's inherent powers and CPLR § 2221 clarifying the [c]ourt's 6/30/08 [d]ecision." Defendants cross-move for costs and sanctions. For the reasons discussed below, the motion is denied and the cross motion is granted.

The underlying facts of this case are fully set forth in a decision and order of this court dated October 1, 2009 (Doc. 2, at 120-134), which was affirmed by decision and order of the Appellate Division, First Department entered December 14, 2010 (*Pu v Mitsopoulos*, 2010 NY Slip Op 09176 [1st Dept 2010]). As is pertinent here, by order dated June 30, 2008, another justice of this court dismissed, among other things, plaintiff's fifth and seventh causes of action

alleging fraudulent conveyance *in their entirety* (Kapnick, J.) (Doc. 2, at 1-32). This court made that much clear by its order dated October 1, 2009 (Doc. 2, at 122 ["the order dismissed plaintiff's claim for punitive damages, and dismissed in their entirety the fifth and seventh causes of action alleging fraudulent conveyances"]). Plaintiff then moved for, among other things, leave to reargue that portion of the June 30, 2008 order (Doc. 4, Ex. 4), which motion this court denied by order dated March 24, 2010 (Doc. 4, Ex. 8).

On November 19, 2009, the Appellate Division, First Department, unanimously affirmed the June 30, 2008 order (Doc. 4, Ex. 9). Plaintiff then moved to reargue the order issued by the First Department, which motion the First Department denied (Doc. 4, Ex. 13). Now, plaintiff is seeking a *sixth* bite at the proverbial apple by moving this court "for an order pursuant to the [c]ourt's inherent powers and CPLR § 2221 clarifying the [c]ourt's 6/30/08 [d]ecision." As explained in the latest decision from the Appellate Division, plaintiff seeks "to conduct discovery as to an alleged fraudulent conveyance in spite of this Court's finding that he 'had no basis for challenging the underlying conveyances' and that 'there is no indication that such conveyances were at all fraudulent'(67 AD3d 561, 562 [2009])" (*Pu v Mitsopoulos*, 2010 NY Slip Op 09176 [1st Dept 2010]).

CPLR 2221 governs motions to revisit a prior order. Such motions include motions to renew, reargue, or to resettle (*see* Siegel, NY Prac §§ 253-254 [4th ed]). 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" (CPLR 2221 [d] [2]). A motion for leave to renew "shall be based upon new facts not offered on the prior motion that would change the prior determination or shall

demonstrate that there has been a change in the law that would change the prior determination" (CPLR 2221 [e] [2]). "Resettlement of an order is a procedure designed solely to correct errors or omissions as to form, or for clarification. It may not be used to effect a substantive change in or to amplify the prior decision of the court" (*Foley v Roche*, 68 AD2d 558, 566 [1st Dept 1979]).

Plaintiff's motion in essence seeks the relief he has been denied at least three times by this court, *vis a vis* two justices, and now affirmed thrice by the Appellate Division. Plaintiff's motion cannot be deemed a motion for leave to reargue because it is not premised upon "matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion" (CPLR 2221 [d] [2]). Nor is it premised "upon new facts not offered on the prior motion" such that it could be deemed a motion for leave to renew (CPLR 2221 [e] [2]). Finally, plaintiff's motion cannot be deemed one for resettlement because twice two justices of this court and now thrice different justices of the Appellate Division, First Department, have ruled upon the merits of the relief sought. No discernable "errors or omissions as to form, or for clarification" are discernable; in fact, it could not be more clear that plaintiff is attempting to "effect a substantive change in . . . the prior decision of the court" (*Foley v Roche*, 68 AD2d at 566). In short, plaintiff simply refuses to accept the rulings of this court and of the Appellate Division that his allegations of fraudulent conveyances are no longer in the case and his continued insistence on this issue is, as defendants argue in their cross motion, wilful and contumacious. Plaintiff's motion must be denied.

Defendants cross-move for costs and sanctions. Under 22 NYCRR 130-1.1, sanctions are warranted when "any party or attorney engages in frivolous conduct," which includes conduct

that "is completely without merit in law and cannot be supported by a reasonable argument for an extension, modification or reversal of existing law[,]" is undertaken for the purposes of delay or harassment, or "asserts material factual statements that are false" (*see Matter of 155 W. 21st St., LLC v McMullan*, 61 AD3d 497, 501-502 [1st Dept 2009]). Inasmuch as the propriety of sanctions is a discretionary determination for this court to make (*see Grozea v Lagoutova*, 67 AD3d 611, 611 [1st Dept 2009]), this court need not consider the numerous prior instances in which the plaintiff has been sanctioned "for frivolous and vexatious litigation practices" (*Pu v Shahzad*, 21 Misc 3d 129[A] [App Term 1 Dept 2008 per curiam]; *e.g. Matter of Pu*, 37 AD3d 56 [1 Dept 2006], *lv dismissed* and *lv denied* 8 NY3d 877 [2007]) to determine that plaintiff's conduct in the instant action sufficiently rises to the level of harassment and frivolity to warrant a sanction. Plaintiff has wilfully and contumaciously refused to accept the rulings of this court, as affirmed by the Appellate Division, First Department, that the allegations of fraudulent conveyances are simply no longer at issue in the case. While plaintiff was certainly free to seek reargument of that issue in the Appellate Division, once it denied reargument it became the binding law of the case; his willful refusal to abide by that court's ruling and to expeditiously complete discovery in this 2006 case are a pattern of vexatious and harassing litigation strategies in this case. Accordingly, the court sanctions plaintiff Richard Pu, in the amount of $7,500.00, to be paid to the Lawyers' Fund for Client Protection. The court notes that the current status of Mr. Pu remains "registered" but "suspended" in the attorney registration database available to the court online. Inasmuch as he remains registered as an attorney, the court is of the view that the Lawyers' Fund has jurisdiction to enforce the sanction.

The branch of the cross motion which seeks costs is also granted. Cross movant avers that

counsel expended 20 hours of billable time and charges $350 per hour, or $7,000 in fees. Upon consideration of the fact that much of the cross motion is also a repeat of what has already been addressed, the court finds that an award of $4,000 in costs and attorney's fees is appropriate. Accordingly, it is

ORDERED that plaintiff's motion is denied in its entirety; and it is further

ORDERED that defendants' cross motion is granted to the extent that plaintiff shall compensate defendants' counsel $ 4,000.00 as attorney's fees for the time expended in connection with this motion and shall pay $7,500.00 as sanctions pursuant to 22 NYCRR 130-1.1 to the Lawyers' Fund for Client Protection, 119 Washington Avenue, Albany, NY 12210 within 15 days of entry of this order..

ORDERED that defendants shall serve a copy of this order upon plaintiff together with notice of its entry.

This constitutes the decision and order of the court.

Dated: December 14, 2010
New York, New York

J.S.C.

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