

**Hoffinger Stern & Ross, LLP v Neuman**

2010 NY Slip Op 33613(U)

December 23, 2010

Supreme Court, New York County

Docket Number: 113111/2009

Judge: Louis B. York

Republished from New York State Unified Court  
System's E-Courts Service.

Search E-Courts (<http://www.nycourts.gov/ecourts>) for  
any additional information on this case.

This opinion is uncorrected and not selected for official  
publication.

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

LOUIS B. YORK

PRESENT: J.S.C. Justice

PART 2

Hoffinger Stern

INDEX NO. 113111/2009

MOTION DATE ~~10/15/10~~ 04

MOTION SEQ. NO. ~~113111~~ 04

MOTION CAL. NO. \_\_\_\_\_

Neuman

The following papers, numbered 1 to \_\_\_\_\_ were read on this motion to/for quash subpoena

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

PAPERS NUMBERED
_____
_____
_____

Cross-Motion:  Yes  No

**FILED**

Upon the foregoing papers, it is ordered that this motion

JAN 05 2011

NEW YORK COUNTY CLERK'S OFFICE

MOTION IS DECIDED IN A ...  
WITH ACCOMPANYING MEMORANDUM DECISION.

Dated: 12/23/10

Ley  
LOUIS B. YORK J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST  REFERENCE

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

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: IAS PART 2

-----X

HOFFINGER STERN & ROSS, LLP,

Plaintiff,

-against-

Index No.

PHILIP NEUMAN, NEUMAN ASSOCIATES, LLC.  
UNITED NATIONAL FUNDING, LLC, MAPLEWOOD  
GARDENS, LLC, SAGE TERRACE, LLC, 5<sup>TH</sup> AVENUE  
AT BLOOMFIELD ASSOCIATES, LLC, SAGE  
TERRACE DEVELOPERS, LLC, CLASSIC  
DEVELOPMENT ASSOCIATES OF CLOVE ROAD,  
LLC, PAPER CLIP REALTY, LLC, HOWSTER  
PARTNERSHIP, INTERVAL MANAGEMENT CORP.,  
NEUMAN ENTERPRISES, LLC, PREMIER BEVERAGES,  
LLC, and JOHN DOES 1-20,

113111/2009

**FILED**

**JAN 05 2011**

Defendants.

NEW YORK  
COUNTY CLERK'S OFFICE

-----X

LOUIS YORK, J. :

For convenience, the following motions shall be consolidated.

Under Mot. Seq. No. 003, defendants move for leave to reargue and/or renew their opposition to plaintiff's motion for partial summary judgment and to dismiss affirmative defenses, and for vacatur of the order and judgment granting plaintiff's motion. Under Mot. Seq. No. 004, defendant Philip Neuman (Neuman) moves to quash the subpoena served by plaintiff to take the deposition of defendants' counsel Edward Griffith (Griffith). Plaintiff cross-moves to compel Griffith to appear at a deposition, and to sanction him.

This is an action for breach of contract, account stated, unjust enrichment and quantum meruit. According to the complaint, plaintiff served as the legal counsel for Neuman and the other defendants, which are entities owned and/or controlled by Neuman and associates of

Neuman. For almost two years, plaintiff was the legal representative of defendants in over a dozen actions in New York and New Jersey. Plaintiff is seeking the recovery of fees for legal services performed in the actions, as well as other work done on behalf of defendants.

Plaintiff brought a similar action against defendants the previous year, entitled *Hoffinger Stern & Ross, LLP v Neuman, et al.*, Index No. 105427/08. In that action, plaintiff sought summary judgment against Neuman on its account stated cause of action. The court held that, pursuant to Part 137 of the Rules of the Chief Administrator (Rules), defendant had the right to arbitrate a fee dispute. The court therefore dismissed the action.

Since it was apparent that Neuman had not filed a request for arbitration, plaintiff proceeded to bring this suit. Plaintiff brought a summary judgment motion on the account stated cause of action against defendants, jointly and severally. Plaintiff also moved for dismissal of the affirmative defenses.

This court granted the summary judgment motion against Neuman on the ground that Neuman had provided insufficient proof that he objected to the invoices sent to him by plaintiff. The court also dismissed the affirmative defenses as insufficiently pleaded. Defendants have appealed the order and judgment of this court, and bring this motion for reargument and/or renewal.

Defendants contend that this court overlooked the argument that Neuman had objected to the invoices sent to him as contrary to the terms of the retainer agreements entered into by the parties. They argue for the first time that Neuman wanted to change the fee arrangement from a standard hourly fee arrangement to a flat fee periodic arrangement. They also argue that plaintiff's invoices do not support the account stated claim.

Plaintiff argues that defendants cannot raise new arguments in a motion to reargue, claiming that defendants did not raise the issue of the fee arrangement in the original motion. Plaintiff claims that defendants failed to provide all of the prior motion papers and the minutes of the oral argument conducted by the court. Plaintiff states that no motion for reargument and/or renewal may be brought after the entry of a judgment. Plaintiff argues that there has been no effort to demonstrate that reargument or renewal is appropriate.

“Motions for reargument are addressed to the sound discretion of the court which decided the prior motion and may be granted upon a showing that the court overlooked or misapprehended the facts or law or for some other reason mistakenly arrived at its earlier decision.” *Barnett v Smith*, 64 AD3d 669, 670-671 (2d Dept 2009) quoting *E.W. Howell Co., Inc. v S.A.F. La Sala Corp.*, 36 AD3d 653, 654 (2d Dept 2007) (internal quotations marks omitted); CPLR 2221 (d). An application to renew must be based upon additional material facts which existed at the time that the prior motion was made but which were not then known to the party seeking leave to renew and a valid excuse must be offered for not supplying such facts. *Cuccia v City of New York*, 306 AD2d 2 (1<sup>st</sup> Dept 2003); CPLR 2221 (e).

The court denies the motion to reargue. Defendants merely repeat their claim that Neuman objected to the invoices. Further, defendants are not allowed to raise new arguments or issues in their motion to reargue. The court also denies the motion to renew. Defendants have not provided new evidence, only a new legal argument, which is not grounds to renew.

The next motion involves the quashing of a subpoena served by plaintiff on Griffith, defendants' counsel. The information sought by plaintiff relates primarily to Neuman's finances. In an affirmation, Griffith argues that he does not have this kind of information, and

that whatever information was provided to him was for the purpose of obtaining legal advice. Thus, Griffith asserts that such information is protected under the attorney-client privilege.

In opposition, plaintiff asserts that the information sought is relevant in plaintiff's attempt to satisfy its judgment against Neuman. Plaintiff states that defendants have not substantiated the claim that the information sought is privileged. In effect, plaintiff claims that information regarding whether legal advice was obtained, and how such advice was paid for, is not protected. Plaintiff cross-moves for an order to sanction Griffith for refusing to comply with the subpoena, and to compel him to appear at a deposition.

The information sought by plaintiff includes financial agreements between Griffith and Neuman and documents related to payments made to Griffith by Neuman. This information in itself does not relate to legal communications that could fall under the attorney-client privilege. Inquiries concerning finances do not concern matters protected by the privilege in that such inquiries would not require disclosure of any confidential communications which arose in the context of an attorney-client relationship. See *Ostrin v Ostrin*, 86 AD2d 655 (2<sup>nd</sup> Dept 1982).

The court will deny the motion to quash the subpoena. However, the court will not sanction Griffith for bringing his motion. The court will grant the cross motion to compel his attendance at the deposition to be held by plaintiff.

Accordingly, it is

ORDERED that that part of defendants' motion which seeks leave to reargue and/or renew is denied; and it is further

ORDERED that that part of defendants' motion which seeks to quash the subpoena is denied; and it is further

