

**Signature Bank v Three Daughters, LLC**

2011 NY Slip Op 31782(U)

June 30, 2011

Supreme Court, New York County

Docket Number: 107719/09

Judge: Judith J. Gische

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  
HON. JUDITH J. GISCHE

PRESENT: \_\_\_\_\_

PART 10

*Justice*

Index Number : 107719/2009

**SIGNATURE BANK**

vs.

**THREE DAUGHTERS, LLC**

SEQUENCE NUMBER : 002

REARGUMENT/RECONSIDERATION

INDEX NO. \_\_\_\_\_

MOTION DATE \_\_\_\_\_

MOTION SEQ. NO. 002

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

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 IS DECIDED IN ACCORDANCE WITH  
THE ACCOMPANYING MEMORANDUM DECISION.**

**FILED**

JUL 01 2011

NEW YORK  
COUNTY CLERK'S OFFICE

Dated: June 30, 2011

  
HON. JUDITH J. GISCHE J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST  REFERENCE

SUBMIT ORDER/ JUDG.

SETTLE ORDER/ JUDG.

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 10**

-----X  
Signature Bank,

Plaintiff (s),

**-against-**

Three Daughters, LLC and  
Wafa Kiriakos, Individually,

Defendant (s).  
-----X

**DECISION/ ORDER**  
Index No.: 107719/09  
Seq. No.: 002

**PRESENT:**  
Hon. Judith J. Gische  
J.S.C.

Recitation, as required by CPLR § 2219 [a] of the papers considered in the review of this (these) motion(s):

**Papers**

|  |   |
|--|---|
| Def WK n/m (RR) w/WK affid, exhs ..... | 1 |
| Pltf's opp w/JET affirm, exhs .....    | 2 |
| Stip of adj (5/10/11) .....            | 3 |

**FILED** Numbered  
**JUL 01 2011**

-----X  
Upon the foregoing papers, the decision and order of the **NEW YORK COUNTY CLERK'S OFFICE** follows:

**GISCHE J.:**

This is an action by Signature Bank ("plaintiff") to enforce the terms of a Signature Bank Business Revolving Credit Agreement ("credit agreement"). Plaintiff contends that Three Daughters, LLC ("Three Daughters") borrowed from the line of credit but then defaulted in repaying the loan. The line of credit was personally guaranteed by Wafa Kiriakos, a member of Three Daughters.

After issue was joined, plaintiff moved for summary judgment and its motion was granted for reasons set forth in the court's decision/order dated September 20, 2010 ("prior order"). Although Wafa Kiriakos a/k/a Wafa Ennabi opposed that motion (motion sequence no. 1), Ms. Kiriakos now moves to reargue the court's prior order on the basis

that she was not allowed to orally argue the motion and that she “has a meritorious oral argument that will give specifics that will give rise to [a triable issue of fact]...” Ms. Kiriakos is self represented.

A motion for leave to reargue may be granted on a showing that the court overlooked or misapprehended the facts or the law (CPLR 2221; Williams P. Pahl Equip. Corp. v. Kassis, 182 A.D.2d 22 [1<sup>st</sup> Dept. 1992]). It is not an opportunity for the unsuccessful party to reargue points already made and rejected by the court (Id.).

Permission to reargue the court’s prior order is denied for each of the reasons that follow:

The underlying motion for summary judgment was, in fact, scheduled for oral argument on January 7, 2010 but Ms. Kiriakos failed to appear. The court noted the default and took the motion on submission without argument. Plaintiff served Ms. Kiriakos with a copy of the court’s order noting the default. Although the proof of service indicates the order was sent May 3, 2010, the court did not decide the motion until September 20, 2010 because it was inadvertently marked as “disposed.” Both the default order and the decision were mailed to Ms. Kiriakos at the address she continues to use on court papers. Ms. Kiriakos’ only explanation for why she did not appear for oral argument although she knew about the date is that she “overlooked the date.” Thus, the absence of oral argument was due solely to defendant’s own actions.

Oral argument is, in any event, generally for the benefit of the court. Plaintiff’s motion was not granted on default. Rather, Ms. Kiriakos had written opposition to plaintiff’s motion which the court considered. Such opposition consisted of her answer and a sworn affidavit. If Ms. Kiriakos had other arguments that she wanted the court to

consider, she has not explained why they were not articulated in her written opposition. Significantly, although she claims there were arguments or facts she wanted the court to put before the court, Ms. Kiriakos is vague about they are. Ms. Kiriakos simply states that she will provide "specifics" at a later time. A party has an obligation to exercise due diligence in making their factual presentation clear in their original motion papers and a motion to reargue is not an opportunity for an unsuccessful party who has not done so to try again (see Prime Income Asset Management, Inc. v. American Real Estate Holdings L.P., 82 A.D.3d 550 [1<sup>st</sup> Dept 2011]; Leone Properties, LLC v. Board of Assessors for Town of Cornwall, 81 A.D.3d 649 [2<sup>nd</sup> Dept 2011]).

Having failed to identify any facts that were misconstrued or misapprehended by the court in its prior order, it may be that Ms. Kiriakos may actually be interested in placing new facts or arguments before the court, a motion to renew must be based upon the discovery of material facts which existed at the time the prior motion was made but were not then known to the party and for that reason not disclosed to the court (CPLR 2221 [e]), Foley v. Roche, 68 A.D.2d 558, 567 [1<sup>st</sup> Dept 1979]). Ms. Kiriakos has not addressed what new "facts" there are or that they were unknown to her. Thus, to the extent she seeks renewal, not reargument, permission to renew is denied as well.

Finally, this motion is untimely (CPLR § 2221[a][3]). Plaintiff served Ms. Kiriakos with a copy of the court's prior order with notice of entry on October 22, 2010 and this motion was brought April 19, 2011, well beyond the time set forth in the statute. Although the judgment with notice of entry was recently served, that is not the operative date for bringing a motion to reargue. Ms. Kiriakos provides no explanation for her delay in bringing this motion to reargue.

In accordance with the foregoing,

It is hereby

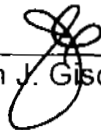
**ORDERED** that the motion by Wafa Kiriakos for reargument of the court's prior order dated September 20, 2010 is **DENIED** in all respects; stays, if any, on enforcing the judgment entered against defendants March 15, 2011 are hereby vacated forthwith; and it is further

**ORDERED** that any relief not expressly addressed is hereby denied; and it is further

**ORDERED** that this constitutes the decision and order of the court.

Dated: New York, New York  
June 30, 2011

So Ordered:

  
\_\_\_\_\_  
Hon. Judith J. Gische, JSC

**FILED**

**JUL 01 2011**

**NEW YORK  
COUNTY CLERK'S OFFICE**