

Bellmer Dolls v Shaikh
2011 NY Slip Op 33826(U)
June 30, 2011
Sup Ct, New York County
Docket Number: 650237/09
Judge: Judith J. Gische
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: HON. JUDITH J. GISCHE
Justice

PART 10

Bellmer Hills

INDEX NO. 650237/09

- v -
Asim Khair

MOTION DATE _____

MOTION SEQ. NO. 007

MOTION CAL. NO. _____

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

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

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

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

Dated: June 30, 2011

[Signature]
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

BELLMER DOLLS, a partnership, PETER
MAVROGEORGIS, ANTHONY MALAT, DANIEL
SHEERIN,

Plaintiffs,

Decision/Order
Index No. 650237/09
Motion Seq. No.: 007

-against-

Present:
Hon. Judith J. Gische, JSC

ASIM SHAIKH, HUNGRY EYE RECORDS LLC,
PUBCO, DANIEL SKRIBA, and JOHN DOES 1-5,

Defendants.

-----X

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

Papers	Numbered
Pltf's OSC (reargue) w/QH affirm, exhs	1
HER and AGS opp w/JH, exhs	2
Pltf's reply w/QH affirm	3

Gische, J.:

Plaintiffs move for an order, pursuant to CPLR 2201 and 2221, staying enforcement of the decision and order of this court, dated February 9, 2011 (the Order), and for reargument of the Order, and upon reargument, modifying the Order as it relates to the eighth and eleventh counterclaims.

Plaintiffs seek reargument of these counterclaims alleging defamation and libel per se, contending that the court misapprehended facts regarding statements by proposed counterclaim-defendant Quinn Heraty in e-mail communications to businesses with which defendants dealt. They claim that the court misapprehended the content of the e-mails. "A motion for reargument,

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addressed to the discretion of the court, is designed to afford a party an opportunity to establish that the court overlooked or misapprehended the relevant facts, or misapplied any controlling principle of law” (*Foley v Roche*, 68 AD2d 558, 567 [1st Dept 1979]; *see also* CPLR 2221 [d] [2]; *McGill v Goldman*, 261 AD2d 593 [2d Dept 1999]; *Opton Handler Gottlieb Feiler Landau & Hirsch v Patel*, 203 AD2d 72 [1st Dept 1994]). It is not designed to provide the unsuccessful party with successive opportunities to argue once again the very issues previously decided (*William P. Pahl Equip. Corp. v Kassis*, 182 AD2d 22 [1st Dept], *lv dismissed in part, denied in part* 80 NY2d 1005 [1992]; *Bliss v Jaffin*, 176 AD2d 106 [1st Dept 1991], or to present arguments different from those originally asserted (*Foley v Roche*, 68 AD2d 558, *supra*).

Plaintiffs’ motion for reargument is denied. Plaintiffs fail to demonstrate that the court overlooked or misapprehended any relevant facts in dismissing only part of these counterclaims (*see* CPLR 2221 [d] [2]; *Spinale v 10 West 66th St. Corp.*, 193 AD2d 431 [1st Dept 1993] [denying motion for leave to reargue because there was no showing that the court overlooked or misapprehended relevant facts or controlling law in prior decision]; *see also Daluise v Sottile*, 15 AD3d 609 [2d Dept 2005]; *Matter of Armstead v Morgan Guar. Trust Co. of N.Y.*, 13 AD3d 294 [1st Dept 2004]). Rather, plaintiffs misstate this court’s statements regarding the facts and pleadings.

For instance, plaintiffs assert that in the Order this court attributes the statements in paragraphs 299, 312, and 356 of the Proposed Amended Answer as statements made in e-mails to businesses the defendants dealt with. The Order, however, states that the “[d]efendants also assert that the pleadings from plaintiffs’ complaint were defamatory (Proposed Amended Answer ¶ 299, 312, and 356).” The allegations regarding the e-mails were contained in paragraphs 229

and 359 of the Proposed Amended Answer, and the Order specifically referenced paragraph 359, and it set forth the allegations in both those paragraphs in the analysis of the counterclaims (Exhibit A annexed to Order to Show Cause for Motion to Reargue, at 22-23). Thus, the Order stated that the e-mails included statements beyond recounting allegations from this action, including that defendants “manufactured accounting statements, misrepresented that the accounting statements had been sent in a timely manner, failed to pay plaintiffs money due and had registered copyrights in works without authorization,” and that these statements did not indicate that they were allegations in a proceeding, but rather appeared to be facts (*id.* at 22-23). Thus, contrary to plaintiffs’ contention, the court did not misapprehend the allegations in defendants’ Proposed Amended Answer, and therefore, there is no basis to grant reargument.

Accordingly, it is

It is hereby

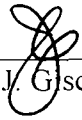
ORDERED that the Order to Show Cause for Motion to Reargue of plaintiffs is denied; and it is further

ORDERED that any relief requested not specifically 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