

<b>Pensionsversicherungsanstalt v Lichter</b>
2012 NY Slip Op 31208(U)
May 1, 2012
Sup Ct, New York County
Docket Number: 116393/07
Judge: Saliann Scarpulla
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: SALIANN SCARPULLA  
*Justice*

PART 19

Index Number : 116393/2007  
PENSIONSVERSICHERUNGSANSTALT  
vs  
LICHTER, FERDINAND, THE ESTATE  
Sequence Number : 006  
REARGUMENT/RECONSIDERATIONH

INDEX NO. \_\_\_\_\_  
MOTION DATE \_\_\_\_\_  
MOTION SEQ. NO. \_\_\_\_\_  
MOTION CAL. NO. \_\_\_\_\_

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

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 and cross-motion are decided in accordance  
with accompanying memorandum decision.

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

**FILED**

MAY 08 2012

NEW YORK  
COUNTY CLERK'S OFFICE

Dated: 5/11/12

Saliann Scarpulla  
SALIANN SCARPULLA J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST  REFERENCE

SUBMIT ORDER/JUDG.

SETTLE ORDER /JUDG.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: CIVIL TERM: PART 19

-----X  
PENSIONSVERSICHERUNGSANSTALT,

Plaintiff,

Index No.: 116393/07  
Submission Date: 2/15/12

- against-

THE ESTATE OF FERDINAND LICHTER, JONA  
LICHTER, URI LICHTER, RACHEL LANDAU,  
JON DOE, JANE DOE, and THE ESTATES OF  
JOHN AND JANE DOE,

Defendants.

**DECISION AND ORDER**

**FILED**

**MAY 08 2012**

NEW YORK  
COUNTY CLERK'S OFFICE

For Plaintiff:  
Harnick & Finkelstein LLP  
645 Fifth Avenue, 7<sup>th</sup> Floor  
New York, NY 10022

For Defendants:  
B. Kogan PLLC  
236 Broadway, Suite 208  
Brooklyn, NY 11211

Papers considered in review of this motion for leave to renew and/or reargue and cross motion for leave to reargue and/or resettle:

Notice of Motion . . . . .	1
Aff in Support . . . . .	2
Notice of Cross Motion . . . . .	3
Aff in Support . . . . .	4
Memo of Law . . . . .	5
Reply Aff. . . . .	6

HON. SALIANN SCARPULLA, J.:

*In this action to recover overpayment of pension benefits, plaintiff*

Pensionsversicherungsanstalt (“plaintiff” or “PVA”) moves for leave to renew and/or reargue its motion dated December 10, 2010, which sought an order granting summary judgment in its favor, and for severance of defendant Jona Lichter (“Jona”) from the action against defendants Uri Lichter (“Uri”) and Rachel Landau (“Landau”). Defendants Jona, Uri and Landau cross-moved for summary judgment pursuant to CPLR 3212(a) dismissing

this action against them. By decision and order dated October 6, 2011, plaintiff's motion as against Uri and Landau was dismissed on consent, and I granted plaintiff's motion for summary judgment against Jona. I also found that plaintiff failed to establish the amount owed by Jona, because the supporting affidavit was executed in Vienna, Austria and was not accompanied by a certificate of conformity. Pursuant to the decision and order, plaintiff was directed to file a note of issue to pale this matter on the inquest calendar.

Plaintiff now moves for leave to renew and /or reargue, asserting that (1) a certificate of conformity was not required; (2) an inquest is not required; and (3) the affidavit should be accepted and judgment granted against Jona in the amount of €42,167.07 to be converted into US Dollars on the date of judgment with interest and costs.

Defendant Jona opposes plaintiff's motion, arguing that the affidavit should not be admitted, because it is not properly authenticated. Jona challenges plaintiff's assertion that the affidavit does not need a certificate of conformity because it was authenticated pursuant to R.P.L. §301, and argues that CPLR 2309(c) also requires a certificate of authentication, attesting to the foreign oath-giver's powers. Jona also cross moves for leave to reargue and/or resettle the portion of the October 6, 2011 decision and order which directed that an inquest be held to assess damages, asserting that an inquest is not proper, as it "suggest that [he] may not contest the damages, which is only proper upon a finding that a party is in default." He asserts that a full adversary trial is the proper method for assessing damages.

## Discussion

Pursuant to CPLR 2221(d)(2), a motion to reargue must “be based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion.” *Mangine v. Keller*, 182 A.D.2d 476, 477 (1st Dep’t 1992).

In support of its motion, plaintiff correctly notes that CPLR 2309(c) provides that

An oath or affirmation taken without the state shall be treated as if taken within the state if it is accompanied by such certificate or certificates as would be required to entitle a deed acknowledged without the state to be recorded within the state if such deed had been acknowledged before the officer who administered the oath or affirmation.

As plaintiff also properly asserts, the requirements for a “deed acknowledged without the state to be recorded within the state if such deed had been acknowledged before the officer who administered the oath or affirmation” are set forth in Real Property Law (“R.P.L.”) §301, which provides in pertinent part that

The acknowledgment or proof of a conveyance of real property situate in this state may be made in foreign countries before any of the following officers acting within his territorial jurisdiction or within that of the court of which he is an officer . . . consul-general, consul, vice-consul, consular agent, vice-consul agent, or any other diplomatic or consular agent or representative of the United States, appointment or accredited to, and residing within, the country where the acknowledgment or proof is taken.

Plaintiff also looks to R.P.L. §301-a(1) which states:

An acknowledgment or proof made pursuant to the provisions of section three hundred one of this chapter may be taken in the manner prescribed either by the laws of the state of New York or by the laws of the country where the acknowledgment or proof is taken. The acknowledgment or proof, if taken in the manner prescribed by the

laws of such foreign country, must be accompanied by a certificate to the effect that it conforms with such laws.

(Emphasis added.)

Plaintiff argues, that the affidavit submitted in support of its motion for summary judgment was authenticated by the U.S. Counsel in Vienna, Austria in accordance with R.P.L. §301, and therefore the laws of Austria were not implicated, and a certificate of conformity was therefore not required. The affidavit of Mag. Susanne Konig-Leopold (“Konig-Leopold”) submitted by plaintiff in support of its underlying motion, indicated in its preamble that it was executed at the U.S. Embassy in Vienna, Austria. This affidavit was sworn to before Megan S. Bartholomew, U.S. Vice Consul. As such, plaintiff is correct that this court misapprehended the law, and a certificate of conformity is not required.

In addition, plaintiff is correct that a certificate of authentication was not required. “Under section 311 of the Real Property Law no certificate of authentication shall be required to entitle a conveyance to be recorded when acknowledged or proved before United States diplomatic or consular agents.” *Sperry v. Serge Fliegers*, 194 Misc. 438, 439 (Sup. Ct. N.Y. Co. 1949).

Accordingly, plaintiff’s motion to reargue is granted, and judgment will be granted against Jona in the amount of €42,167.07. As such, there is no need for an inquest in this matter, and Jona’s cross motion to reargue the portion of the decision and order directing an inquest is denied as moot.

In accordance with the foregoing, it is

ORDERED that the motion by plaintiff Pensionsversicherungsanstalt for leave to reargue its motion dated December 10, 2010 is granted; and it is further

ORDERED that, upon reargument, plaintiff Pensionsversicherungsanstalt's supporting affidavit of Susanna Konig-Leopold is admitted, and its motion for judgment in the amount of €42,167.07 against defendant Jona Lichter is granted; and it is further

ORDERED that the Clerk of Court shall enter judgment in favor of plaintiff Pensionsversicherungsanstalt and against defendant Jona Lichter, in the amount of €42,167.07, to be converted to U.S. Dollars on the date of judgment, together with the interest at the rate of 9% per annum from the date of December 20, 2002 until the date of the service of a copy of this decision with notice of entry, and thereafter at the statutory rate, as calculated by the Clerk, together with costs and disbursements to be taxed by the Clerk upon submission of an appropriate bill of costs; and it is further

ORDERED that the Clerk is directed to vacate the note of issue placing this matter on the inquest calendar as moot; and it is further

ORDERED that cross motion by defendant Jona Lichter to reargue and resettle the portion of this Court's October 6, 2011 decision and order as directed that an inquest be held to assess damages is denied as moot.

This constitutes the decision and order of the Court.

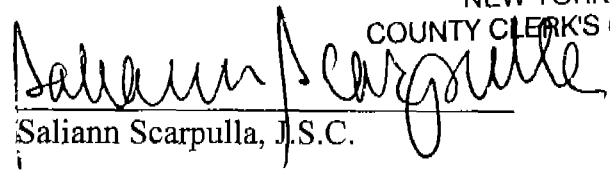
Dated: New York, New York  
May 1, 2012

**FILED**

MAY 08 2012

ENTER:

NEW YORK  
COUNTY CLERK'S OFFICE

  
Saliann Scarpulla, J.S.C.