

Genger v Genger

2014 NY Slip Op 30138(U)

January 16, 2014

Supreme Court, New York County

Docket Number: 104249/07

Judge: Cynthia S. Kern

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This opinion is uncorrected and not selected for official publication.

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SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: _____
Justice

PART _____

Index Number : 104249/2007
GENGER, ARIE
vs.
GENGER, SAGI
SEQUENCE NUMBER : 009
REARGUMENT/RECONSIDERATION

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. _____

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

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ | No(s). _____
Answering Affidavits — Exhibits _____ | No(s). _____
Replying Affidavits _____ | No(s). _____

Upon the foregoing papers, it is ordered that this motion is

is decided in accordance with the annexed decision.

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

FILED
JAN 21 2014
NEW YORK
COUNTY CLERK'S OFFICE

Dated: 1/16/14

PK, J.S.C.

- 1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
- 2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
- 3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER
 DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: Part 55

-----X
ARIE GENGER,

Plaintiff,

Index No. 104249/07

-against-

DECISION/ORDER

SAGI GENGER and DALIA GENGER,

FILED

JAN 21 2014

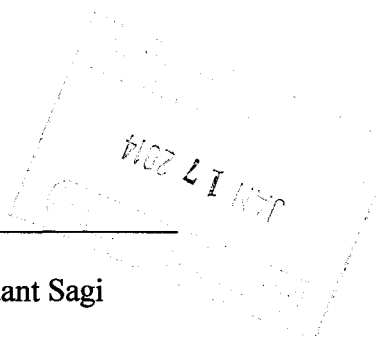
Defendants.

-----X
HON. CYNTHIA S. KERN, J.S.C.

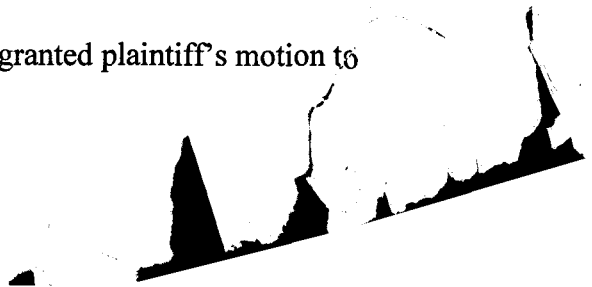
NEW YORK
COUNTY CLERK'S OFFICE

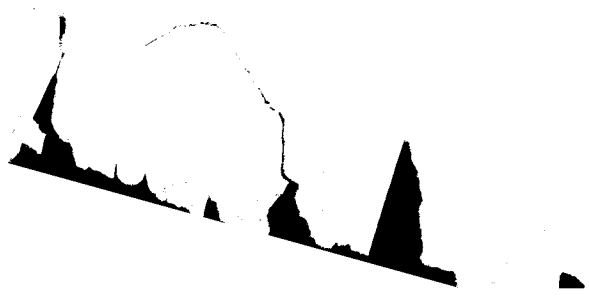
Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion for : _____

Papers	Numbered
Notice of Motion and Affidavits Annexed.....	<u>1</u>
Answering Affidavits.....	<u> </u>
Cross-Motion and Affidavits Annexed.....	<u>2</u>
Answering Affidavits to Cross-Motion.....	<u> </u>
Replying Affidavits.....	<u>3</u>
Exhibits.....	<u>4</u>



Plaintiff Arie Genger commenced the instant action against his son, defendant Sagi Genger ("Sagi"), to recover a money judgment on debt allegedly due to plaintiff on three promissory notes and a stock purchase agreement (collectively referred to as the "Notes"). In July 2013, plaintiff moved pursuant to CPLR § 3212 for summary judgment on the Notes. In August 2013, plaintiff moved for an Order (1) pursuant to CPLR § 3211(a)(1) and (7) dismissing the counterclaims asserted by Sagi in his amended answer; and (2) pursuant to 22 NYCRR § 130-1.1.g granting him sanctions against Sagi. In a decision dated October 10, 2013, this court denied plaintiff's motion for summary judgment on the Notes; granted plaintiff's motion to





dismiss Sagi's counterclaims asserted against him; and denied plaintiff's motion for sanctions against Sagi. Sagi now moves for an Order (1) pursuant to CPLR § 2221(d) granting him leave to reargue this court's finding that no factual issues exist as to the ownership of the Notes; and (2) pursuant to CPLR § 2221(e) granting him leave to renew this court's dismissal of Sagi's second counterclaim against plaintiff for breach of fiduciary duty. For the reasons set forth below, Sagi's motion is denied.

On a motion for leave to reargue, the movant must allege that the court overlooked or misapprehended matters of fact or law. *See* CPLR 2221(d)(2). Here, Sagi's motion for an Order granting him leave to reargue that portion of this court's decision finding that no factual issues exist as to the ownership of the Notes is denied as he has not alleged that this court overlooked or misapprehended matters of fact or law.

On a motion for leave to renew, the movant must allege new facts not offered on the prior motion and a reasonable justification for the failure to present those facts on the prior motion. *See* CPLR 2221(e)(2) and (3). "A motion to renew is not a second chance freely given to parties who have not exercised due diligence in making their first factual presentation." *Sobin v. Tylutki*, 59 A.D.3d 701, 702 (2d Dept 2009). Here, Sagi asserts that the new fact not offered on the prior motion is that Arie has judicially admitted that he had a fiduciary relationship with Sagi. Specifically, Sagi points to a brief allegedly filed by Arie in a separate action in which Arie stated that

...Sagi was entrusted to act in Arie's interests and to take all necessary actions to ensure that Arie would maintain voting control of 52.85% of TRI Shares in accordance with the express intent of all parties to the Stipulation of Settlement and 2004 Transaction Documents; to manage and protect TPR's ownership of the TRI Shares for the

benefit of Arie and the Orly Trust; and not to devalue or alienate Arie's and the Orly Trust's beneficial ownership of the TRI Shares or strip Arie of his voting rights with respect to those shares.

However, such statement is insufficient to grant Sagi renewal. As an initial matter, Sagi has not provided a reasonable justification for his failure to present that fact on the prior motion.

Additionally, even if he had provided a reasonable justification, the fact that Arie alleged a fiduciary relationship in a separate action is immaterial as that relationship involved Sagi's duties in his role as CEO of TPR and his control over certain shares of stock. The above statement does not relate to any duties that existed between plaintiff and Sagi in the instant action. Thus, Sagi's motion for leave to renew is denied.

Accordingly, Sagi's motion is denied in its entirety. This constitutes the decision and order of the court.

Dated:

1/16/14

Enter:

CR

J.S.C.

FILED

JAN 21 2014

NEW YORK
COUNTY CLERK'S OFFICE