Collins Bros. Moving Corp. v Pierleoni
2015 NY Slip Op 32781(U)
July 24, 2015
Supreme Court, Westchester County
Docket Number: 55001/14
Judge: Linda S. Jamieson
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

[* 1]

Disp ____ Dec ___x__ Seq. No. _6__ Type __ reargue____

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

PRESENT: HON. LINDA S. JAMIESON

----------X

COLLINS BROTHERS MOVING CORPORATION, COLLINS BROTHERS INDUSTRIES, INC., COLLINS BROTHERS WORLDWIDE, LLC, COLLINS BROTHERS NATIONAL CORP., FRANK E. WEBERS, Individually and FRANK E. WEBERS, as Chief Executive Officer,

Plaintiffs,

-against-

Index No. 55001/14

DECISION AND ORDER

GREGG S. PIERLEONI, ANCHIN BLOCK & ANCHIN, LLP, PHILLIP M. ROSS, CPA, CHRISTOPHER KELLY, CPA, DANIEL STIEGLITZ, CPA, VERA KRUPNICK, CPA, RIZ ANN F. DIVA, CPA, BRIDGET KRALICK, CPA, AMY BERGER, CPA, DAVID ALBRECHT, CPA, J.P. MORGAN CHASE, N.A., CAPITAL ONE BANK, NA, AMERICAN EXPRESS COMPANY, JOANNE PIERLEONI, CHRISTOPHER PIERLEONI, DEBRA PIERLEONI and MEGAN PIERLEONI,

Defendants.

----------X

The following papers numbered 1 to 3 were read on this motion:

Paper	Number
Notice of Motion, Affirmation and Exhibits	1
Memorandum of Law in Opposition	2
Reply Affirmation	3

Plaintiffs bring their motion seeking to reargue one aspect of the Court's February 18, 2015 Decision and Order (the "Decision"). As a brief recap of the case, this litigation

arises out of defendant Gregg Pierleoni's ("Gregg") criminal actions during some of the time that he worked for plaintiff Collins Brothers Moving Corporation ("Moving") as their Chief Financial Officer. After Gregg was terminated from Moving, plaintiffs discovered that Gregg had embezzled over $5.8 million.

Plaintiffs seek to reargue one finding in the Decision regarding defendants Anchin Block & Anchin, LLP ("Anchin"), Phillip M. Ross, CPA, Christopher Kelly, CPA, Daniel Stieglitz, CPA, Vera Krupnick, CPA, Riz Ann F. Diva, CPA, Bridget Kralik, CPA, Amy Berger, CPA, and David Albrecht, CPA (collectively, the "Accounting Defendants"). The Decision found, among other things, that the parties were required to arbitrate plaintiffs' claims, but that plaintiffs were time-barred from raising any claims in arbitration based on any events that occurred prior to April 3, 2011.

There is no dispute that the services that the Accounting Defendants performed for plaintiffs arose pursuant to various engagement agreements. These agreements contained a three year statute of limitations. The Court held that

> It is well-settled that "Parties to a contract may agree to limit the period of time within which an action must be commenced to a shorter period than that provided by the applicable Statute of Limitations." *Inc. Vill. of Saltaire v. Zagata*, 280 A.D.2d 547, 547, 720 N.Y.S.2d 200, 200 (2d Dept. 2001).
>
> Plaintiffs assert that the Court should ignore this contractual limitation, because there was "a mutual understanding" that the parties had an

> "ongoing and continuous relationship" such that the statute of limitations did not begin to run until plaintiffs terminated Anchin in October 2013. The Court disagrees. The agreements specifically state that each is the "complete and exclusive statement of the agreement between us, superseding all proposals oral or written [sic] and all other communications between us." This is a merger clause, designed to indicate that the written agreement is the **sole** agreement between the parties. *Jarecki v. Shung Moo Louie*, 95 N.Y.2d 665, 669 (2001). There is, thus, no "mutual understanding" that can exist apart from the parties' agreements. *Irving O. Farber, PLLC v. Kamalian*, 16 A.D.3d 506, 506, 791 N.Y.S.2d 609, 610 (2d Dept. 2005). *See also VFS Fin. v. Ins. Servs. Corp.*, 111 A.D.3d 505, 506, 974 N.Y.S.2d 444, 446 (1st Dept. 2013). The Court finds, as a matter of law, that the limitations period contained in the agreements is enforceable. Thus, any claims against the Accounting Defendants arising before April 2011 are barred from being heard in the mediation or arbitration.

It is well-settled that CPLR § 2221(d)(2) provides that a motion to reargue "shall be based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion, but shall not include any matters of fact not offered on the prior motion." A movant on reargument must show that the Court overlooked or misapprehended the facts or law, or for some reason mistakenly arrived at its earlier decision. It may not be used as a means by which an unsuccessful party is permitted to argue again the same issues previously decided. *Haque v. Daddazio*, 84 A.D.3d 940, 922 N.Y.S.2d 548 (2d Dept. 2011). "While the determination to grant leave to reargue a motion lies within the sound discretion of the court, a motion for leave to reargue is not designed to provide an unsuccessful

party with successive opportunities to reargue issues previously decided, or to present arguments different from those originally presented." *Ahmed v. Pannone*, 116 A.D.3d 802, 984 N.Y.S.2d 104, 107 (2d Dept. 2014).

Here, on this motion, plaintiffs allege that the Court overlooked or misapprehended the controlling authority set forth in *Symbol Technologies, Inc. v. Deloitte & Touche, LLP*, 69 A.D.3d 191, 196, 888 N.Y.S.2d 538 (2d Dept. 2009). As the Court held in that case (and as plaintiffs already pointed out in their papers on the original motion), "Symbol's pleading is sufficient to establish that the parties mutually contemplated that Deloitte's work and representation for each audit year would continue after the issuance of the audit opinion/report and, therefore, the continuous representation doctrine applies." The Court there specifically held that "While each of Deloitte's audits for the years 1998, 1999, 2000, and 2001 was governed by a separate and discrete engagement letter which explicitly stated that the service to be provided was to audit and report on Symbol's financial statements for a particular fiscal year, Symbol pleaded that Deloitte had a continuing obligation to remedy defects found in those statements and, in fact, did so." *Symbol Technologies*, 69 A.D.3d at 195-96, 888 N.Y.S.2d at 538.

While the Accounting Defendants may have had a continuing obligation here to remedy past defects, the key difference

between this case and *Symbol* is that here, the parties' agreements contained both a limitations provision of three years **and** an integration clause providing that **each agreement is the "complete and exclusive statement of the agreement between us, superseding all proposals oral or written [sic] and all other communications between us."** (Emphasis added). Thus, as the Court held in the Decision (set forth above), the Court cannot consider any alleged "'mutual understanding' that can exist apart from the parties' agreements." By continuing to ignore this critical piece of information, plaintiffs' motion is fatally flawed.

There is nothing else contained in plaintiffs' papers that demonstrates that "there are matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion (CPLR 2221[d][2])". *Pezhman v. Chanel, Inc.*, 126 A.D.3d 497, 2 N.Y.S.3d 792 (1st Dept. 2015). Accordingly, the motion to reargue is denied.

The foregoing constitutes the decision and order of the Court.

Dated: White Plains, New York
July 24, 2015

HON. LINDA S. JAMIESON
Justice of the Supreme Court