

Razzano v Woodstock Owners Corp.

2015 NY Slip Op 32958(U)

April 20, 2015

Supreme Court, New York County

Docket Number: 111966/09

Judge: Paul Wooten

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: HON. PAUL WOOTEN
Justice

PART 7

BIANCA RAZZANO,
Plaintiff,

INDEX NO. 111966/09

-against-

MOTION SEQ. NO. 004

WOODSTOCK OWNERS CORP., THE BOARD OF DIRECTORS OF WOODSTOCK OWNERS CORP., jointly and severally; ORSID REALTY CORP., and APRIL ANDERSON,
Defendants.

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The following papers were read on this motion by the defendants to reargue and renew.

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

Answering Affidavits — Exhibits (Memo) _____

Reply Affidavits — Exhibits (Memo) _____

Cross-Motion: Yes No

FILED

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PAPERS NUMBERED

In this case involving a dispute over the control rights of a shareholder in a cooperative, Woodstock Owners Corp., the Board of Directors of Woodstock Owners Corp., Orsid Realty Corp., and April Anderson (collectively, defendants) move, pursuant to CPLR 2221 to renew and reargue the Decision and Order of this Court filed May 19, 2014 and dated May 15, 2014 (Prior Order); and/or for an order to amend the Prior Order pursuant to CPLR 5015 to comport with the terms of the Order of the Appellate Division, First Department dated November 19, 2013; and/or for an order pursuant to NYCRR § 202.21(e) vacating the plaintiff's Note of Issue filed on June 13, 2014, and/or for an Order pursuant to CPLR 3124 compelling plaintiff to provide outstanding discovery which is the basis to the proposed vacature of the Note of Issue. Defendants also move for an Order to amend the caption, in particular to remove all defendants but Woodstock Owners Corp., the only party remaining against which any claims remain after the November 19, 2013 Order of the Appellate Division, First Department. The underlying facts

are fully set out in the prior decision in this action, familiarity with which is presumed.

DISCUSSION

A motion for leave 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" (CPLR 2221[d][2]; see *Kent v 534 E. 11th St.*, 80 AD3d 106, 116 [1st Dept 2010] ["A motion for reargument is addressed to the court's discretion and 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"]; see also *Foley v Roche*, 68 AD2d 558, 567 [1st Dept 1979]). "A motion for reargument . . . is not to serve as a vehicle to permit the unsuccessful party to argue once again the very questions previously decided [or] . . . to provide a party an opportunity to advance arguments different from those tendered on the original application" (*id.* at 567-568; see also *Mariani v Dyer*, 193 AD2d 456 [1st Dept 1993]; *William P. Pahl Equip. Corp. v Kassis*, 182 AD2d 22 [1st Dept 1992]; *McGill v Goldman*, 261 AD2d 593, 594 [2d Dept 1999]).

A renewal motion "shall be based upon new facts not offered on the prior motion that would change the prior determination or shall demonstrate that there has been a change in the law that would change the prior determination . . . [and a] reasonable justification for the failure to present such facts on the prior motion" (CPLR 2221[e][2] and [3]). "Renewal is granted sparingly, and only in cases where there exists a valid excuse for failing to submit the additional facts on the original application" (*Matter of Weinberg*, 132 AD2d 190, 210 [1st Dept 1987], *appeal dismissed sub nom Matter of Beiny*, 71 NY2d 994 [1988] [internal citation omitted]); *CPA Mut. Ins. Co. of Am. Risk Retention Group v Weiss & Co.*, 80 AD3d 431, 432 [1st Dept 2011]). Renewal "is not a second chance freely given to parties who have not exercised due diligence in making their first factual presentation" (*Henry v Peguero*, 72 AD3d 600, 602 [1st Dept 2010], citing *Matter of Weinberg*, 132 AD2d at 210, *app dismissed*, 15 NY3d 820 [2010], *reconsideration denied*, 16 NY3d 726 [2011]).

Based upon the papers before the Court, the defendants have not demonstrated that this Court in its Prior Order overlooked or misapprehended any matters of fact or law which would have changed the determination of the prior motion (see CPLR 2221[d][2]), which granted the plaintiff's motion to restore and the matter was directed to proceed to an inquest. Additionally, defendants also fail to meet the relevant standard for renewal in as much as they fail to demonstrate that there has been a change in facts or in the law that would change the prior determination. The Court notes that this is an improper motion to reargue, as the relief sought herein by the defendants was not sought by either party in the prior motion. Furthermore, plaintiff's motion to restore and for a hearing on damages was unopposed, as defendants stated in their affirmation in response to plaintiff's motion that they did not object to the relief sought by plaintiff (see Affirmation in Opposition, exhibit B at ¶ 1). However, the portion of defendants' motion to amend the caption, in particular to remove all defendants but Woodstock Owners Corp., the only party against which any claims remain after the November 19, 2013 Order of the Appellate Division, First Department, is granted. The remainder of the defendants' motion is denied. The Court has considered the parties' remaining arguments and finds them unavailing.

CONCLUSION

Accordingly, it is hereby

ORDERED that the portion of defendants Woodstock Owners Corp., the Board of Directors of Woodstock Owners Corp., Orsid Realty Corp., and April Anderson's motion to renew and reargue the Decision and Order of this Court filed May 19, 2014 and dated May 15, 2014 is denied; and it is further,

ORDERED that the portion of defendants Woodstock Owners Corp., the Board of Directors of Woodstock Owners Corp., Orsid Realty Corp., and April Anderson's motion to amend the caption to remove all defendants but Woodstock Owners Corp., consistent with the November 19, 2013 Order of the Appellate Division, First Department, is granted; and it is

further,

ORDERED that the new caption shall bear the following form:

-----X

BIANCA RAZZANO,
Plaintiff,

- against -

WOODSTOCK OWNERS CORP.,
Defendant.

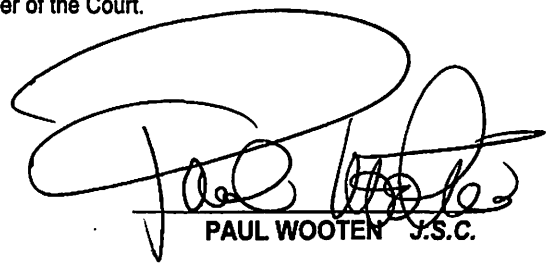
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And it is further,

ORDERED that counsel for defendants is directed to serve a copy of this Order with Notice of Entry upon the plaintiff and upon the County Clerk and the Clerk of the General Clerk's Office, who is directed to mark the Court's records accordingly.

This constitutes the Decision and Order of the Court.

Dated: 4/20/15


PAUL WOOTEN J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION
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