NAACP N.Y. State Conference Metro. Council of Branches v Philips Electronics N. Am. Corp.
2016 NY Slip Op 32133(U)
October 13, 2016
Supreme Court, New York County
Docket Number: 156382/15
Judge: Manuel J. Mendez
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: MANUEL J. MENDEZ *Justice* **PART** 13

NAACP NEW YORK STATE CONFERENCE METROPOLITAN COUNCIL OF BRANCHES,

Plaintiffs,

-against-

PHILIPS ELECTRONICS NORTH AMERICA CORPORATION, KONIKLIJKE PHILIPS N.V., NTT DATA, INC., RECALL HOLDINGS LIMITED, RECALL TOTAL INFORMATION MANAGEMENT, INC., ADVANCE TECH PEST CONTROL, and DOES 1-100,

Defendants,

AND

MONSTER WORLDWIDE, INC., ZIPRECRUITER, INC., INDEED, INC.,

Joined Defendants.

INDEX NO. 156382/15
MOTION DATE 09-28-16
MOTION SEQ. NO. 008
MOTION CAL. NO.

The following papers, numbered 1 to 4 were read on this Motion pursuant to CPLR §2221[d] to reargue and renew :

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	1 - 2
Answering Affidavits — Exhibits _____cross motion _____	3
Replying Affidavits _____	4

Cross-Motion: Yes X No

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

Upon a reading of the foregoing cited papers it is Ordered that Monster Worldwide, Inc., Ziprecruiter Inc., and Indeed, Inc.'s motion pursuant to CPLR §2221[d] to reargue and renew their motion filed under Motion Sequence 001, and this Court's April 8, 2016 Decision and Order denying dismissal pursuant to CPLR §3211 [a],[3] and [7] and CPLR §1003, is denied.

Plaintiff brought this class action on behalf of African American residents of the City of New York that are banned from employment by the defendants because they have a felony conviction. This class action seeks a declaratory judgment that entities posting job openings on the joined defendants' websites have engaged in practices that are unlawful pursuant to the New York City Human Rights Law, and Article 23-A of the New York State Corrections Law. The joined defendants are named as necessary parties because their platforms are utilized by the defendant class to disseminate ads that include the blanket felony bans.

Monster Worldwide, Inc., Ziprecruiter Inc., and Indeed, Inc.'s (hereinafter collectively referred to as "joined defendants") under Motion Sequence 001 pursuant to CPLR §3211 [a],[3] and [7] and CPLR §1003, sought to dismiss those causes of action asserted against them with prejudice.

Joined defendants motion pursuant to CPLR §2221[d] seeks to reargue and renew their motion filed under Motion Sequence 001, and to have this Court dismiss the claims asserted against them. Joined defendants argue that this Court misapprehended that there are no allegations asserted against them for either wrongdoing or damages and misconstrued the scope of the Federal Communications Decency Act of 1996, Section 230 ("CDA"). Joined defendants also argue that this court overlooked alleged controlling precedent in Misthopoulos v. Ruhl, 183 A.D. 2d 651, 584 N.Y.S. 2d 42 [1st Dept. 1992], cited by them for the first time in their Memorandum of Law in Reply on Motion Sequence 001 (NYSEF docket #33).

The Court has discretion to grant a motion to reargue upon a showing that it, "overlooked or misapprehended the relevant facts, or misapplied any controlling principle of law" (Foley v. Roche, 68 A.D. 2d 558, 418 N.Y.S. 2d 588 [1st Dept., 1979]). Reargument is not intended to afford an unsuccessful party successive opportunities to argue issues previously decided, or to present arguments different from those originally asserted. The movant cannot use a motion to reargue as a successive opportunity to merely restate previously unsuccessful arguments (DeSoignies v. Cornasesk House Tenants' Corp., 21 A.D. 3d 715, 800 N.Y.S. 2d 679 [1st Dept., 2005] and Mangine v. Keller, 182 A.D. 2d 476, 581 N.Y.S. 2d 793 [1st Dept., 1992]).

The April 8, 2016 Decision and Order did not misapprehend that plaintiff included the joined defendants as parties for purposes of investigation and identification of potential class members and specifically states, "Plaintiff's allegations asserted against the joined defendants are seeking to, 'investigate discrimination from the producers of discriminatory content,' not establish liability as publishers or speakers of the content" (NYSCEF docket # 75). There was no finding that the defendants were liable for wrongdoing or damages at this early stage of the litigation. The April 8, 2016 Decision and Order found a potentially meritorious claim existed as stated, avoiding dismissal. Defendants have not cited precedent distinguishing, Shiamili v. Real Estate Group of New York, 17 N.Y. 3d 281, 952 N.E. 2d 1011, 929 N.Y.S. 2d 19 [2011], this Court's application of that decision, or the CDA.

New arguments raised for the first time in reply papers, deprive the opposing party of an opportunity to respond, and are not properly made before the Court (Ball v. Brodsky, 126 A.D. 3d 448, 5 N.Y.S. 3d 448 [1st Dept.,2015] and Chavez v. Bancker Const. Corp., Inc., 272 A.D. 2d 429, 708 N.Y.S. 2d 325 [2nd Dept., 2000]). Joined defendants in relying on precedent and argument raised for the first time on reply did not provide plaintiffs an opportunity to respond. This Court is not required to address an argument not properly before it. In any case, Misthopoulos v. Ruhl, 183 A.D. 2d 651, supra, can be distinguished because it does not involve a class action certification and identification of a class. Joined defendants have not stated a basis for reargument and are merely restating previously unsuccessful arguments.

Renewal applies to the submission of new evidence not available at the time the original motion was submitted (Laura Vazquez v. JRG Realty Corp., 81 A.D. 3d 555, 917 N.Y.S. 2d 562 [1st Dept. 2011]). Renewal is not available to parties that seek a "second chance" because of failure to exercise due diligence (Chelsea Piers Management v. Forrest Electric Corporation, 281 A.D. 2d 252, 722 N.Y.S. 2d 29 [1st Dept., 2001] and Berktas v. McMillian, 40 A.D. 3d 563, 835 N.Y.S. 3d 388 [2nd Dept., 2007]).

Joined defendants are not entitled to renewal because the settlement entered into with the named defendants after the April 8, 2016 Decision and Order, will not effect the joined defendants status in this action.

Accordingly, it is ORDERED that Monster Worldwide, Inc., Ziprecruiter Inc., and Indeed, Inc.'s motion pursuant to CPLR §2221[d] to reargue and renew their motion filed under Motion Sequence 001, and this Court's April 8, 2016 Decision and Order denying dismissal pursuant to CPLR §3211 [a],[3] and [7] and CPLR §1003, is denied.

ENTER:

MANUEL J. MENDEZ
J.S.C.

MANUEL J. MENDEZ,
J.S.C.

Dated: October 13, 2016

Check one: ☐ FINAL DISPOSITION X NON-FINAL DISPOSITION
Check if appropriate: ☐ DO NOT POST ☐ REFERENCE