

Rosenfeld v Schreiber
2016 NY Slip Op 32315(U)
November 22, 2016
Supreme Court, New York County
Docket Number: 650360/2014
Judge: Jeffrey K. Oing
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL PART 48

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DR. STEVEN ROSENFELD,

Plaintiff,

-against-

JOEL SCHREIBER, DR. SAMUEL WAKSAL,
KADMON CAPITAL, LLC & KADMON
CORPORATION, LLC

Defendants,
-----x

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DECISION AND ORDER

JEFFREY K. OING, J. :

Plaintiff Steven Rosenfeld moves, pursuant to CPLR 2221, for an order granting reargument of this Court's decision and order dated July 21, 2016 (the "Order"), which denied his motion to compel defendants to produce: (1) documents relevant to any other fund raising agreements defendants may have had with third parties; and (2) certain documents created after the filing of the complaint (NYSCEF Doc. No. 183).

To sustain a motion for reargument, plaintiff must demonstrate that the Court either: (1) overlooked or misapprehended the relevant facts; or (2) misapplied a controlling principle of law (William P. Paul Equip. Corn. v Kassis, 182 AD2d 22, 27 [1st Dept 1992]). New arguments that were not previously advanced may not be brought up on reargument,

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nor may a reargument motion be used as a vehicle to repeat, or reargue what has already been considered and determined (Id.; Foley v Roche, 68 AD2d 558 [1st Dept 1979]).

In the Order that is the subject of this reargument motion, I held that demanded documents were not relevant to this action. Plaintiff argues that I overlooked or misapprehended relevant facts because the Order incorrectly stated that the alleged breach of contract occurred "in or around July 2009," when, in fact, that was the date when the contract was initially formed. This argument is unavailing.

The alleged breach necessarily occurred prior to the filing of the complaint, and virtually all of the events relevant to the breach of contract claim (the execution of the contract and plaintiff's fulfillment of his obligations thereunder) occurred in late 2009 (Second Am. Compl., ¶¶ 33-34). As such, the post-complaint documents demanded by plaintiff are not reasonably likely to be relevant evidence to his breach of contract or quantum meruit claims. Relatedly, while plaintiff argues that the Order overlooked requests regarding communications between defendants' counsel after commencement of this action, these documents were encompassed by the Order's determination that post-complaint documents are not relevant.

Finally, plaintiff argues that many of the "subject [document] requests seek relevant information irrespective of date" (Plaintiff's Memo. of Law., p. 7). A review of this argument demonstrates that it is supported by conclusory assertions. Such assertions are insufficient to support a motion for reargument because they fail to establish that I either overlooked or misapprehended the relevant facts or misapplied a controlling principle of law.

Accordingly, that branch of plaintiff's motion seeking reargument is denied.

Plaintiff also moves for an order granting renewal. A renewal motion requires that, inter alia, it is "based upon new facts not offered on the prior motion that would change the prior determination (CPLR 2221[e]).

Here, plaintiff seeks again production of documents concerning the fund raising agreements between defendants and third parties. The Order denied plaintiff's application for this discovery demand because his complaint did not allege that the agreement between the parties contained any exclusivity provision regarding fund raising. Plaintiff has now amended his complaint to assert that such an exclusivity provision existed. Given defendants' pending motions to dismiss the third amended

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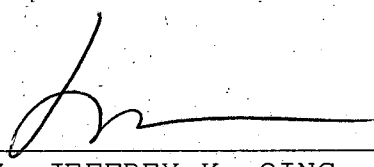
complaint, and to stay discovery, this branch of plaintiff's motion seeking renewal is denied without prejudice to renew after the determination of defendants' dispositive motions.

Accordingly, it is

ORDERED that plaintiff's motion is denied.

This memorandum opinion constitutes the decision and order of the Court.

Dated: 11/22/16


HON. JEFFREY K. OING, J.S.C.
JEFFREY K. OING
J.S.C.