

MPEG LA, L.L.C. v Samsung Elecs. Co., Ltd.

2017 NY Slip Op 31038(U)

May 2, 2017

Supreme Court, New York County

Docket Number: 654454/2015

Judge: Shirley Werner Kornreich

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: JUSTICE SHIRLEY WERNER KORNREICH

PART 54

Justice

Index Number : 654454/2015
MPEG LA, LLC
vs.
SAMSUNG ELECTRONICS CO., LTD
SEQUENCE NUMBER : 004
DISMIS Reassignment & Renewal

INDEX NO. _____
 MOTION DATE 3/21/17
 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) 39-58, 62

Answering Affidavits — Exhibits _____ | No(s) 73-81

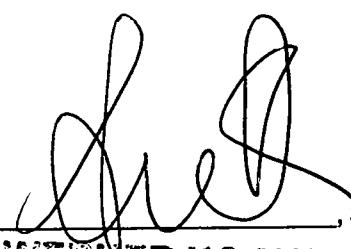
Replying Affidavits _____ | No(s) 106

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

MOTION IS DENIED
**WITH ACCOMPANYING MEMORANDUM
 DECISION AND ORDER**

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

Dated: 5/2/17


 _____, J.S.C.
SHIRLEY WERNER KORNREICH

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 54

-----X
MPEG LA, L.L.C.,

Index No.: 654454/2015

Plaintiff,

DECISION & ORDER

-against-

SAMSUNG ELECTRONICS CO., LTD.,

Defendant.

-----X
SHIRLEY WERNER KORNREICH, J.:

Samsung moves, pursuant to CPLR 2221(d) and (e), for reargument and renewal of its motion to dismiss and MPEG’s cross-motion for summary judgment, which the court decided in an order dated November 28, 2016. *See* Dkt. 24 (the Prior Decision).¹ The court assumes familiarity with the Prior Decision; capitalized terms not defined herein have the same meaning as in the Prior Decision. MPEG opposes Samsung’s motion, which is denied for the reasons that follow.

Samsung’s motion (made by new counsel, retained after it lost on the prior round of motions) is entirely without merit. Its main argument is that the court should consider emails, not submitted on the prior motion, to interpret the four agreements governing the parties’ rights regarding the ATSC Patent Pool. For the reasons extensively set forth in the Prior Decision, the court finds the disputed provisions of the contracts to be unambiguous and, therefore, resort to extrinsic evidence for the purpose of finding an ambiguity is absolutely prohibited under settled New York law. *W.W.W. Assocs., Inc. v Giancontieri*, 77 NY2d 157, 163 (1990) (“extrinsic and parol evidence is not admissible to create an ambiguity in a written agreement which is complete

¹ References to “Dkt.” followed by a number refer to documents filed in this action on the New York State Courts Electronic Filing (NYSCEF) system.

and clear and unambiguous upon its face.”); see *Impala Partners v Borom*, 133 AD3d 498, 499 (1st Dept 2015) (“Only where a contract term is ambiguous may parol evidence be considered to clarify the disputed portions of the parties’ agreement.”).

The court does not believe it overlooked any material law or fact in rejecting Samsung’s “partial termination” interpretation of the AAL. Section 7.2 of the AAL is quite clear that the third prong required for termination of the AAL is termination of the LAA, section 11.2.1 of which provides that the LAA may not be voluntarily terminated prior to January 1, 2017. Ergo, Samsung could not voluntarily terminate the AAL on October 5, 2015 because it had no right, at that time, to terminate the LAA. Since this expression of the parties’ intent is not susceptible to a reasonable alternative interpretation, the court held that section 7.2 of the AAL is unambiguous and ruled on its meaning as a matter of law.

Samsung does not proffer a valid basis for reargument or renewal of this holding. All of its arguments were either raised or could have been raised on the prior motion, making them improperly proffered on a reargument motion. See *Setters v AI Props. & Devs. (USA) Corp.*, 139 AD3d 492 (1st Dept 2016) (“Reargument is not designed to afford the unsuccessful party successive opportunities to reargue issues previously decided ... or to present arguments different from those originally asserted.”), quoting *William P. Pahl Equip. Corp. v Kassis*, 182 AD2d 22, 27 (1st Dept 1992). Likewise, there is no reason Samsung could not have submitted *its own* emails in opposition to MPEG’s cross-motion for summary, and thus Samsung’s basis for renewal is without merit. *Abu Dhabi Commercial Bank, P.J.S.C. v Credit Suisse Secs. (USA) LLC*, 114 AD3d 432 (1st Dept 2014) (“A motion for leave to renew a prior 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 'shall contain reasonable justification for the failure to present such facts on the prior motion.'"), citing *Am. Audio Serv. Bureau Inc. v AT & T Corp.*, 33 AD3d 473, 476 (1st Dept 2006);² see *Chelsea Piers Mgmt. v Forest Elec. Corp.*, 281 AD2d 252 (1st Dept 2001) ("Renewal is not available as a 'second chance' for parties who have not exercised due diligence in making their first factual presentation."). Indeed, there is a good reason Samsung's prior counsel likely did not submit those emails, namely that *both* parties took the position that the contracts are unambiguous and should be interpreted without resort to extrinsic evidence. See Dkt. 22 at 4 (Samsung stating in its reply brief that the "agreements are unambiguous and amenable to interpretation on this motion as a matter of law.")³

Simply put, the court's finding that the contracts are unambiguous precludes the court from considering the emails submitted by Samsung, regardless of why they were not previously submitted. Accordingly, it is

ORDERED Samsung's motion for reargument and renewal is denied.

Dated:

May 2, 2017

ENTER:

J.S.C.

² The court rejects Samsung's suggestion that reviewing its own emails would have been premature or burdensome because the "explanation that the documents were overlooked because the files are voluminous is simply not a reasonable justification." *Am. Audio*, 33 AD3d at 476.

³ It should be noted that Samsung's claim that it was not aware that partial summary judgment on liability was at stake on the prior motions is clearly erroneous because both MPEG's opposition brief and Samsung's reply brief note the summary judgment posture of the motion. Indeed, Samsung itself requested that "summary judgment should be entered in Samsung's favor." See Dkt. 22 at 16.