

Dougenis v Peter Marcelle Project
2019 NY Slip Op 32361(U)
August 5, 2019
Supreme Court, New York County
Docket Number: 652133/2018
Judge: Andrew Borrok
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART IAS MOTION 53EFM

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MIRIAM DOUGENIS,

Plaintiff,

- v -

PETER MARCELLE PROJECT A/K/A, HAMPTON ROAD
GALLERY, INC.

Defendant.

INDEX NO. 652133/2018

03/15/2019,
07/03/2019,
08/01/2019

MOTION DATE

MOTION SEQ. NO. 003 004 005

DECISION AND ORDER

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HON. ANDREW BORROK:

The following e-filed documents, listed by NYSCEF document number (Motion 003) 95, 96, 97, 98, 110, 111, 112

were read on this motion to/for REARGUMENT/RECONSIDERATION.

The following e-filed documents, listed by NYSCEF document number (Motion 004) 101, 102, 103, 104, 105, 107, 108, 109

were read on this motion to/for ATTORNEY - DISQUALIFY/RELIEVE/SUBSTITUTE/WITHDRAW.

The following e-filed documents, listed by NYSCEF document number (Motion 005) 114, 115, 116, 117

were read on this motion to/for TRIAL PREFERENCE.

Miriam Dougenis’ motion pursuant to CPLR §§ 2221 (a) and (d) for leave to reargue Peter Marcelle’s motion to dismiss (motion sequence 002) is granted as a motion to renew based on new facts not previously before the court on the prior motion for the reasons set forth below.

Ms. Dougenis submits two documents produced by the defendants during discovery that raise new facts not previously before the court. The court may treat a motion to reargue as a motion to renew where the moving party brings new facts to the court’s attention for the first time

(*Stridiron v Jacob's Ladder Realty, L.L.C.*, 33 AD3d 320, 320 [1st Dept 2006]). A motion for leave to renew must be “based on new facts not offered on the prior motion that would change the prior determination” and set forth a reasonable justification as to why such facts were not presented on the prior motion (CPLR §§ 2221 [e] [2] and [3]).

Here, Ms. Dougenis presents (i) a sales invoice, dated September 24, 2014, indicating that payment is to be made directly to Peter Marcelle in his individual capacity in the amount of \$2,500 for one of Ms. Dougenis' works (NYSCEF Doc. No. 111) and (ii) a poster for a show curated by Peter J. Marcelle, in his individual capacity, with no mention of any other entity or gallery, which included Ms. Dougenis' art (NYSCEF Doc. No. 112). This new evidence clearly demonstrates that there is a factual basis to find that Mr. Marcelle was acting in his individual capacity as Ms. Dougenis' art dealer.

Accordingly, it is

ORDERED that the plaintiff's motion for leave to renew the defendants' motion to dismiss is granted; and it is further

ORDERED that, upon renewal, the Court vacates its prior Order, dated February 14, 2019, to the extent that the defendants' motion to dismiss is denied and Peter Marcelle is reinstated as a named defendant; and it is further

ORDERED that the caption shall be amended to reflect the reinstatement of Peter Marcelle in his individual capacity as a defendant; and it is further

ORDERED that the note of issue is hereby vacated and the case is stricken from the trial calendar; and it is further

ORDERED that the motion of Reisman Peirez Reisman & Capobianco LLP to be relieved as counsel for the defendants is granted without opposition; and it is further

ORDERED that, within 10 days from entry, said attorneys shall serve a copy of this order with notice of entry upon the former client at his last known address by certified mail, return receipt requested, and upon the attorneys for all other parties appearing herein by posting to the New York State Courts Electronic Filing System; and it is further

ORDERED that, together with the copy of this order with notice of entry served upon the former client, moving counsel shall forward a notice directing the former client to appoint a substitute attorney by the next status conference on August 26, 2019 and the client shall comply therewith, except that, in the event defendant Peter Marcelle intends instead to represent himself, he shall notify the Clerk of the Part of this decision in writing prior to said date; and it is further

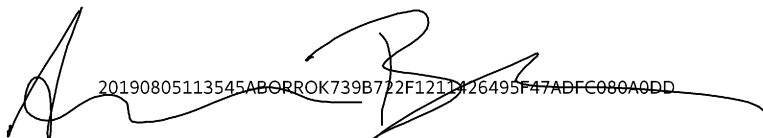
ORDERED that any new attorney retained by defendant shall file a notice of appearance with the Clerk of the General Clerk's Office (60 Centre Street, Room 119) and the Clerk of the Part prior to the status conference on August 26, 2019; and it is further

ORDERED that the departing attorney shall, within 10 days from entry, serve a copy of this order with notice of entry on the Clerk of the General Clerk’s Office (Room 119); and it is further

ORDERED that such service upon the Clerk of the General Clerk’s Office, the filing of a notice of appearance as provided herein, and the filing of papers as aforesaid shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the “E-Filing” page on the court’s website at the address www.nycourts.gov/supctmanh); and it is further

ORDERED that the plaintiff’s motion for a trial preference pursuant to CPLR § 3403 (mtn seq. no. 005) is withdrawn without prejudice; and it is further

ORDERED that the parties are directed to appear for a status conference on August 26, 2019 at 11:30 AM (60 Centre Street, Room 238).



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8/5/2019
DATE

ANDREW BORROK, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>
			<input type="checkbox"/>	DENIED	OTHER
					REFERENCE