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| <b>Molinsky v Moskowitz</b>  |
| 2019 NY Slip Op 32632(U)   |
| August 22, 2019  |
| Supreme Court, Kings County  |
| Docket Number: 502410/2018   |
| Judge: Leon Ruchelsman   |
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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS : CIVIL TERM: COMMERCIAL PART 8

-----x  
SIMON MOLINSKY,

Plaintiff,

Decision and order

- against -

Index No. 502410/2018

ABE MOSKOWITZ,

MS # 6

Defendant,

August 22, 2019

-----x  
PRESENT: HON. LEON RUCHELSMAN

The plaintiff has moved pursuant to CPLR §2221 seeking to reargue a decision and order dated June 18, 2019 which denied the plaintiff's summary judgement motion in lieu of a complaint. The defendant has opposed the motion. Papers were submitted by the parties and arguments held. After reviewing all the arguments this court now makes the following determination.

Findings of Fact

As recorded in the prior order on December 26, 2007 the plaintiff and the defendant entered into a settlement agreement whereby the defendant admitted that he owed the plaintiff \$1,045,000.00 and agreed to pay the plaintiff said sum. The agreement provided that "in no event shall repayment be later than ten years from the execution of this agreement" (see, Settlement Agreement, §1(a)). The plaintiff sued the defendant for that amount upon the defendant's failure to repay and sought summary judgement arguing there were no questions of fact the defendant owed the money to plaintiff. The court denied the

motion on the grounds the debt was the fruit of a criminal enterprise and pursuant to the doctrine of in pari delicto the court could not enforce the agreement.

Upon reargument the plaintiff argues the court's reliance upon that doctrine was unduly broad since this lawsuit is based upon a validly entered settlement agreement. The plaintiff argues the court should enforce the terms of the agreement that per se are unrelated to any criminal activity.

#### Conclusions of Law

A motion to reargue must be based upon the fact the court overlooked or misapprehended fact or law or for some other reason mistakenly arrived at its earlier decision (Deutsche Bank National Trust Co., v. Russo, 170 AD3d 952, 96 NYS2d 617 [2d Dept., 2019]).

It is well settle that where both parties to a contract are equally culpable concerning illegal activity then the court will not intercede but rather will leave the parties where they are (Burgers Bar Five Towns, LLC v. Burger Holdings Corp., 118 AD3d 657, 987 NYS2d 410 [2d Dept., 2014]). Thus, denying judicial relief when the parties are in pari delicto is grounded in two policies, namely that courts do not address disputes between wrongdoers and that denying relief in such cases is an effective method of deterring illegal conduct (see, Bateman Eichler, Hill,

Richards Inc., v. Berner, 472 US 299, 105 S.Ct. 2622 [1985]).


The plaintiff argues the settlement agreement reached is not tainted by an illegality and is consequently enforceable. Thus, the plaintiff asserts that declaring the settlement agreement unenforceable "overlooks the distinction between the claims in the prior lawsuit, which are in essence what Defendant now says should have been barred by *in pari delicto*, and the claim in this Action, which concerns only enforcement of a settlement agreement" (see, Affirmation in Support, ¶ 16). However, in National Petrochemical Co., of Iran v. M/T Stolt Sheaf, 930 F2d 240 [2d Cir. 1991] the court held that "a perfectly legitimate contract may be rendered unenforceable by its 'direct connection' with an illegal transaction" (*id.*). Thus, it is not a specific contract or agreement that renders the doctrine of *in pari delicto* applicable, rather the transaction as a whole. There is no dispute the settlement agreement reached was rooted in criminal activity and flows, directly, from that illegal activity. Consequently, the court cannot involve itself in enforcement of the agreement.

Plaintiff further argues that it is inequitable to enter into an agreement with the express intent to settle a dispute where such agreement cannot be enforced. Thus, the plaintiff asserts that on equity grounds the court should enforce the agreement. However, all parties are generally charged with knowledge of policies that would affect the enforceability of any

agreement (see, Restatement (Second) of Contracts § 180 (1981)).  
Therefore, based on the foregoing the motion seeking reargument  
is denied.

So ordered.

ENTER:



DATED: August 22, 2019  
Brooklyn N.Y.

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Hon. Leon Ruchelsman  
JSC

KINGS COUNTY CLERK  
FILED  
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