

**Vincent V Hodes Family Irrevocable Trust v Advance
Entertainment LLC**

2020 NY Slip Op 31786(U)

June 5, 2020

Supreme Court, New York County

Docket Number: 151712/2017

Judge: Andrea Masley

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ANDREA MASLEY

PART

IAS MOTION 48EFM

Justice

-----X

VINCENT V HODES FAMILY IRREVOCABLE TRUST,

INDEX NO. 151712/2017

Plaintiff,

MOTION DATE _____

- v -

MOTION SEQ. NO. 010

ADVANCE ENTERTAINMENT LLC, JOSEPH MELI, RESET
PARTNERS, LLC, HARSH PADIA, MOSTLY DUNE
HOLDINGS, LLC, JASON LIEBMAN, DAVID MOLNER

**DECISION + ORDER ON
MOTION**

Defendant.

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MASLEY, J.:

The following e-filed documents, listed by NYSCEF document number (Motion 010) 284, 285, 286, 287, 288, 293, 314, 315, 316, 317, 318, 319, 320, 321, 322, 329, 330

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

In motion sequence number 010, defendants Reset Partners, LLC, Mostly Dune Holdings, LLC and Jason Liebman (collectively, Moving Defendants) move, pursuant to CPLR 2221(d), for leave to reargue certain portions of this court's August 9, 2019 decision and order, which granted, in part, and denied, in part, Moving Defendants' motion to dismiss the complaint. Plaintiff Vincent V Hodes Family Irrevocable Trust cross-moves for leave to reargue the dismissal of its conversion claim.

Background

This action arises from an alleged "fraudulent investment scheme by defendant Joseph Meli, the co-CEO, head of the Entertainment Division, and a Director of DTI Management, LLC (DTI), a leading player in the live event ticket industry" (NYSCEF 304, Fourth Amended Verified Complaint [FAC] ¶1). Plaintiff was an investor in Meli's fraudulent "Ponzi" ticket scheme, investing \$300,000 (*id.* ¶4, 5). Rather than using

plaintiff's funds for the intended purpose of ticket purchases, Meli took the funds and then wired them to the accounts of the Moving Defendants (*id.* ¶15).

Plaintiff brought this action, alleging several causes of action, including conversion and unjust enrichment, the subject of this motion. On August 9, 2019, on the record, this court dismissed the claim of conversion against the Moving Defendants but denied dismissal of plaintiff's unjust enrichment claim (August 9 Decision). (NYSCEF 308, Transcript of Oral Argument). At oral argument, this court held that a question exists as to whether plaintiff and the Moving Defendants are connected by all being victims of the same Ponzi scheme. (*id.* at 58). This court contemporaneously dismissed plaintiff's cause of action for conversion, because as alleged in the complaint, plaintiff's money first went into the scheme, and once that occurred, plaintiff lost its superior possessory interest in the money (*id.* at 68).

Analysis

CPLR 2221(d) Standard

A motion for leave to reargue pursuant to CPLR 2221(d) "shall be based upon matters of fact or law allegedly overlooked or misapprehended by the Court in determining the prior motion" (CPLR 2221 [d] [2]). However, "[r]eargument is not designed to afford the unsuccessful party successive opportunities to reargue issues previously decided or to present arguments different from those originally asserted" (*William P. Pahl Equip. Corp. v Kassis*, 182 AD2d 22, 27 [1st Dept 1992] [citations omitted]). The movant bears the initial burden on a motion to reargue a prior decision pursuant to CPLR 2221 (*id.*).

Moving Defendants' Motion to Reague

The Moving Defendants argue that the court misapprehended direct precedent requiring evaluation of a threshold issue.¹ Specifically, the Moving Defendants argue that this court misapprehended or overlooked factual information leading to an incorrect application of *Georgia Malone & Co., Inc. v Rieder*, 19 NY3d 511 (2012), and *Mandarin Trading Ltd. v Wildenstein*, 16 NY3d 173 (2011). They argue that this court's finding of a connection between plaintiff and the Moving Defendants would be incorrect because these parties lack a connection which could have caused a reliance or inducement on plaintiff's part. The court did not misapprehend or overlook facts, but will nevertheless clarify its decision.

In *Georgia Malone & Co., Inc. v Rieder*, the Court of Appeals affirmed its holding in *Mandarin Trading Ltd. v Wildenstein*, holding that while a plaintiff need not "allege privity it ha[s] to assert a connection between the parties that was not too attenuated" (19 NY3d at 517, citing *Mandarin Trading Ltd.*, 16 NY3d at 182). The Court of Appeals was clear that, in order to sufficiently plead a claim for unjust enrichment, there must be sufficient allegations of a connection, such dealings between the parties or some contact (*id.* at 517-518).

The Moving Defendants argue that, in addition to a connection, plaintiff must also allege a reliance or inducement, seizing on the *Mandarin Trading Ltd.* Court's reference to "reliance" and "inducement". In *Mandarin Trading Ltd.*, the Court of Appeals stated, "[m]oreover, under the facts alleged, there are no indicia of an enrichment that was

¹ The Moving Defendants also complain that they were not permitted a sur-reply to plaintiff's sur-reply, and therefore, the issue of unjust enrichment was limited to two briefs rather than the usual three briefs; however, this is not a ground for leave to reargue.

unjust where the pleadings failed to indicate a relationship between the parties that could have caused reliance or inducement. (*Mandarin Trading Ltd.*, 16 NY3d at 182).

This quote was cited by the Court of Appeals in *Georgia Malone & Co., Inc.* (19 NY3d at 517). However, as Chief Judge Jonathan Lippman pointed out in his dissent in *Georgia Malone & Co., Inc.*,

“[t]he language describing the connection between Mandarin Trading and Wildenstein as not a ‘relationship ... caus[ing] reliance or inducement’ was merely for illustrative purposes and was dicta alluding back to how Mandarin also failed to meet the standard for negligent misrepresentation. It was not a statement of the standard for unjust enrichment actions and the majority here likewise correctly refrains from applying the heightened reliance/inducement standard”

(*Georgia Malone & Co., Inc.*, 19 NY3d at 521[citations omitted]). This court agrees that the majority in *Georgia Malone & Co., Inc.* did not apply a heightened reliance/inducement standard in analyzing the unjust enrichment claim; rather, the majority analyzed the connection between the parties and determined that the complaint lacked sufficient allegations to show dealings or contact amongst the parties.

Further, in *Mandarin Trading Ltd.*, the plaintiff argued that he relied upon defendant’s appraisal letter when purchasing a piece of art even though defendant did not know of plaintiff’s existence and the letter was not written for plaintiff’s benefit (*Mandarin Trading Ltd.*, 16 NY3d at 176-177). The Court of Appeals held that the unjust enrichment claim failed because the complaint lacked allegations indicating a relationship between the parties or an awareness of the plaintiff’s existence by the defendant (*id.* at 182). The Court then went on to opine that the mere existence of the letter, upon which the plaintiff alleged relied on, did not render the transaction “one of equitable injustice” (*id.* at 183). The Court’s mention of reliance and inducement was

based on the specific set of facts in that case where plaintiff hinged his unjust enrichment claim on his reliance on that letter. The *Mandarin Trading Ltd.* Court also did not apply this heightened standard, but rather, held that the unjust enrichment claim could not advance because the connection between the parties was “too attenuated” (*id.* at 182).

Here, this court found that there is a question as to whether the parties were connected as victims of the same Ponzi scheme (NYSCEF 308, Tr. at 58:7-9). The fourth amended verified complaint sufficiently alleges enough of a connection between plaintiff and the Moving Defendants, in so far as the Moving Defendants and plaintiff were allegedly victims in the same Ponzi scheme, and the Moving Defendants were allegedly transferred stolen funds belonging to plaintiff and have had contact with plaintiff in regard to returning those funds (NYSCEF 304, Fourth Amended Verified Complaint ¶¶ 100, 149).

The Moving Defendants’ motion for leave to reargue is denied.

Plaintiff’s Cross Motion to Reargue

Plaintiff also seeks leave to reargue on the ground that this court misapprehended the law when it held that plaintiff no longer had a superior possessory interest in the funds they placed with defendant Meli. Putting aside that plaintiff’s motion is untimely, it is simply an attempt to reargue issues previously decided and does not demonstrate that this court has overlooked or misapprehended any matters of fact or law when determining this claim. This court held that plaintiff lost its superior possessory interest once its money became part of Meli’s “Ponzi” scheme. Plaintiff

presented its arguments and its case law on the underlying motion and the court made a determination.

Plaintiff's motion for leave to reargue is denied.

All remaining arguments have been considered, including the parties' Commercial Division Rule 18 letters, and none of which change the result.

Accordingly, it is

ORDERED that defendants Reset Partners, LLC, Mostly Dune Holdings, LLC and Jason Liebman's motion for leave to reargue certain portions of this court's August 9, 2019 decision and order is denied; and it is further

ORDERED that plaintiff Vincent V Hodes Family Irrevocable Trust's cross motion for leave to reargue is denied.

6/5/2020

DATE

CHECK ONE:

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

APPLICATION: _____

CHECK IF APPROPRIATE: _____