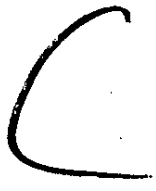


Riehm Corp. v Brennan
2020 NY Slip Op 34606(U)
July 29, 2020
Supreme Court, Bronx County
Docket Number: Index No. 21173/2017E
Judge: Robert T. Johnson
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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX**

-----X
RIEHM CORPORATION and THOMAS PEPE,

Plaintiffs,

-against-

**DECISION AND ORDER
Index No: 21173/2017E**

JOHN BRENNAN,

Defendants.

-----X

The following papers, numbered 1, 2, were considered on the motion:

PAPERS

NUMBERED

**Notice of Motion, Exhibits, Affidavits Annexed.....1
Opposition to Motion, Affidavits, Exhibits Annexed.....2**

Upon the foregoing papers, this motion is decided as follows:

Defendant John Brennan moves pursuant to CPLR 2221 (d) to reargue this Court’s decision, dated September 30, 2019 (“September 30th decision”), on defendant John Brennan’s motion to dismiss. Alternatively, defendant moves to vacate note of issue and for a new, corresponding discovery order. Plaintiff Riehm Corporation (“Riehm Corp.”), the only remaining plaintiff, submits opposition.

This Court’s previous decision granted defendant’s motion to dismiss in part and, dismissed the complaint by plaintiff Thomas Pepe. The instant action was brought by two plaintiffs: Riehm Corporation and its president and sole shareholder Thomas Pepe. This action arose out of a prior contract dispute (“2013 action”). The 2013 action named two defendants, John Brennan and Brennan Brothers, Inc. (“Brennan Bros”). The September 30th decision

dismissed all claims asserted by Thomas Pepe under CPLR 3211 (a) (7), for failure to state a cause of action.

In the instant motion to reargue, defendant John Brennan avers that Riehm Corp.'s claims should not have been allowed to proceed, and the entire action should have been dismissed. In support of reargument, defendant argues that in denying dismissal of Riehm Corp.'s claims, the Court misapprehended former plaintiff Thomas Pepe's ability to bind Riehm Corp as its president, sole shareholder, and agent. Thus, plaintiff argues, that when Pepe signed the settlement agreement, he effectively bound Riehm Corp. to its terms as well. The settlement agreement dismissed the 2013 complaint without prejudice, prescribing the procedure by which plaintiff could reinstate the action and recover if defendants defaulted on the agreed-upon payment obligations. Defendant avers that both Pepe and Riehm Corp. must follow the agreement's procedure. Riehm Corp. was also bound to the agreement, defendant asserts, the basis for dismissing Pepe's instant claims for not following this procedure necessitates dismissing Riehm Corp.'s claims as well.

CPLR §2221(d) dictates that a motion for leave to reargue "shall be based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion." Motions for reargument are addressed at the discretion of the Court. It is well settled that such motions must be founded on the same facts initially considered, in light of "some question decisive of the case, and duly submitted by counsel, that has been overlooked by the Court; or...to which the attention of the Court was not drawn." (*Mount v. Mitchell*, 32 NY 702 [1865] [and adopted by the New York Secretary of State, 2020]).

Upon a further review of the papers, this Court grants defendant's motion to reargue and upon reargument, this Court finds that under the settlement agreement, plaintiffs' remedy upon a default by defendant was to restore the 2013 action and seek enforcement of the confession of judgment. A corporation's sole shareholder or president has the power to bind the corporation. (*See Wen Kroy Realty Co., Inc. v. The Public Bank and Trust Company of New York*, 260 NY 84 [1932]). An authorized agent may similarly act on a party's behalf in binding the party to a settlement agreement. (*Hallock v. State of New York*, 64 NY2d 224 [1984] [further noting the general preference for enforcing settlement agreements]). The 2013 settlement agreement and accompanying stipulation of discontinuance clearly evince the corporate principal Riehm Corp.'s intent to empower Thomas Pepe to act on its behalf: the fourth paragraph, for example, expressly states that Thomas Pepe is acting for himself and on behalf of Riehm Corp. (*See Wen Kroy Realty Co.*, 260 NY 84 [emphasizing evidence of parties' intent]). This provision immediately follows the third paragraph, which prescribes the available remedy (entry of a confession of judgment) if defendants default on payments. There is thus no reason to disturb the agreement or enforcement of its terms, as strong policy considerations favor enforcing settlement agreements as means of resolving disputes. (*Denburg v. Parker Chapin Flattau & Klimpl*, 82 NY2d 375 [1993]).

As such, plaintiff Riehm Corp. was subject to the same settlement terms that rendered the instant filing the improper remedy, and thus served as grounds for dismissing plaintiff Pepe's claims under CPLR 3211 (a) (7).

Accordingly, it is hereby

ORDERED, that defendant John Brennan's motion to reargue this Court's September 30, 2019 decision is granted, and upon reargument, it is further

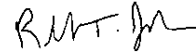
ORDERED, that defendant John Brennan's motion to dismiss plaintiff Riehm Corp.'s claims pursuant to CPLR 3211 (a) (7) is granted; and it is further

ORDERED, that plaintiffs' complaint is dismissed; and it is further

ORDERED, that the court clerk is directed to enter judgment in favor of defendant as against plaintiff Riehm Corp.

This constitutes the decision and order of this Court.

Dated: July 29, 2020



Hon. Robert T. Johnson, J.S.C.