SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

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DIDIER CASSAGNOL,

Plaintiff,

-against-

VILLAGE OF HEMPSTEAD, DON RYAN, in his official capacity as Mayor, CHERICE P. VANDERHALL, in her official capacity as Village Attorney, and LISA BARRINGRTON, in her official capacity as Director of Human Resources,

Defendants.

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IAS Part 12
Index No. 608733/2019
Motion Seq. Nos. 003-004

DECISION AND ORDER

LEONARD D. STEINMAN, J.

The following submissions, in addition to any memoranda of law, were reviewed in preparing this Decision and Order:

Plaintiff's Notice of Motion, Affirmation, Affidavits & Exhibit…..……....1
Defendants' Notice of Cross-Motion, Affirmation & Affidavits…...……2
Plaintiff's Reply Affirmation……..……...3
Defendants' Supplemental and Reply Affirmations & Exhibits……..……4

Pursuant to a decision and order dated November 14, 2019 (the Order), this court granted defendants' cross-motion to dismiss this action, which sought to rescind a December 2013 settlement agreement between plaintiff and the defendant Village of Hempstead. Plaintiff now moves for leave to reargue and renew. Defendants cross-move for sanctions.

MOTION TO REARGUE

Pursuant to CPLR § 2221(d), 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 but shall not include any matters of fact not offered on the prior motion." CPLR § 2221(d)(2). A motion to reargue is addressed to "the sound discretion of the court

which decided the prior motion and may be granted upon a showing that the court overlooked or misapprehended the facts or law, or for some reason mistakenly arrived at its earlier decision." Beverage Marketing USA, Inc. v. South Beverage Co., Inc. 58 A.D.3d 657 (2d Dept. 2009); CPLR § 2221. But a motion for leave to reargue "is not designed to provide an unsuccessful party with successive opportunities to reargue issues previously decided, or to present arguments different from those originally presented." Mazinov v. Rella, 79 A.D.3d 979, 980 (2d Dept. 2010), quoting McGill v. Goldman, 261 A.D2d 593, 594 (2d Dept. 1999); see also Ahmed v. Pannone, 116 A.D.3d 802 (2d Dept. 2014).

Plaintiff argues that the court incorrectly found that plaintiff ratified the parties' agreement. Plaintiff asserts that the doctrine of ratification only applies where a plaintiff alleges a lack of capacity. This is incorrect. See, e.g., Megibow v. Caron.Org, 105 A.D.3d 549 (1st Dept. 2013). And it is clear from the facts as alleged in the complaint—namely, plaintiff's acceptance of benefits under the agreement combined with his delay in challenging it—that plaintiff ratified the agreement. As a result, it was appropriate to grant defendants' cross-motion to dismiss. See Allen v. The Riese Organization, Inc., 106 A.D.3d 514 (2d Dept. 2013).

The court considered and rejected plaintiff's arguments that he received no true benefit under the settlement agreement and that the agreement is contrary to public policy. The court's statement at page 2 of its Order that plaintiff "does not argue that the settlement agreement violates any federal or state law or regulation" accurately reflects the claims alleged in the complaint. The court found unpersuasive plaintiff's argument that the agreement violated the public policies underpinning the anti-discrimination laws.

A review of plaintiff's submissions reflects that he cannot point to anything that the court overlooked. Plaintiff simply disagrees with the court's analysis and conclusion. But his appropriate remedy is an appeal. Having failed to demonstrate that the court overlooked or misapprehended facts or law, plaintiff's motion for leave to reargue is denied. Mazionov v. Rella, 79 A.D.3d 979 (2d Dept. 2010).

MOTION TO RENEW

Plaintiff submits two affidavits in support of his renewal motion: an affidavit from the plaintiff and one from the president of the Police Benevolent Association of Hempstead. Both affidavits are submitted to bolster plaintiff's claim that he did not ratify the 2013 agreement.

A motion for leave to renew "'shall be based upon new facts not offered on the prior motion that would change the prior determination' (CPLR § 2221(e)(2)) and 'shall contain reasonable justification for the failure to present such facts on the prior motion' CPLR § 2221(e)(3)." Barnett v. Smith, 64 A.D.3d 669, 670 (2d Dept. 2009)(citations omitted). Renewal cannot be based on facts available to the movant at the time of the original motion unless the movant explains the prior omission. Singh v. Mohamed, 54 A.D.3d 933, 935 (2d Dept. 2008).

It is not necessary to determine whether plaintiff provided a reasonable justification for his failure to present the new facts in opposition to defendants' cross-motion since the new facts would not change the prior determination. See Amtrust-NP SFR Venture, LLC v. Thompson, 181 A.D.3d 762 (2d Dept. 2020). The agreement was executed in 2013 and plaintiff enjoyed its benefits through September 2016—the date his resignation was to take effect and he was to be hired in another capacity other than police officer. That plaintiff may have been led to believe in September 2016 that he wouldn't be transferred merely explains why he did not sue at that time, but he nonetheless still enjoyed all of the benefits afforded to him under the agreement previously. This is the basis of the court's finding that he ratified the agreement.

Defendants' cross-motion for sanctions is denied as unwarranted.

All other requested relief, not specifically addressed herein, is hereby denied.

This constitutes the Decision and Order of this court.

Dated: April 15, 2020
Sea Cliff, New York

LEONARD D. STEINMAN, J.S.C.
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ENTERED

Apr 20 2020

NASSAU COUNTY
COUNTY CLERK'S OFFICE