SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. LAURENCE L. LOVE** **PART** **IAS MOTION 63M**

Justice

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UNITED STUDIES, INC.,

Plaintiff,

- v -

GLOBAL EDUCATION NEW YORK (GENY), ISLAND HOUSE, INC.,SUNNY HOUSE, JOHN AND JANE DOE, JOHN DOE CORPORATIONS 1 THROUGH 10, OTHER JOHN DOE ENTITIES

Defendant.

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INDEX NO. 650299/2012

MOTION DATE 10/26/2020

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 91, 92, 93, 94, 95, 96, 97

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

Upon the foregoing documents, plaintiff's motion seeking leave to renew and reargue this Court's decision of May 14, 2020, which granted defendant, Global Education New York's motion for summary judgment, dismissing this action and denied plaintiff's cross-motion for summary judgment on the basis that the named plaintiff is United Studies, Inc. and the party named in the relevant contracts is United Studies, SLU (a corporate formation exclusive to Spain) and that substitution pursuant to CPLR 1003 is barred by the relevant statute of limitations.

A motion to reargue is addressed to the sound discretion of the court and is designed to afford a party an opportunity to demonstrate that the court overlooked or misapprehended the relevant facts or misapplied controlling principles of law (see, *Schneider v. Solowey*, 141 AD2d 813 [2d Dept 1988]; *Rodney v. New York Pyrotechnic Products, Inc.*, 112 AD2d 410 [2d Dept 1985]). A "motion to reargue is not an opportunity to present new facts or arguments not previously offered, nor it is designed for litigants to present the same arguments already considered

by the court" (see, *Pryor v. Commonwealth Land Title Ins. Co.*, 17 AD3d 434 [2d Dept 2005]; *Simon v. Mehryari*, 16 AD3d 664 [2d Dept 2005]).

As discussed in *Bessa v. Anflo Industries, Inc.,* 148 A.D.3d 974 (2d. Dept. 2017), '"[W]here the right party plaintiff is in court but under a defective name or title as party plaintiff, ... an amendment correcting the title is permissible.' Indeed, 'CPLR 2001 permits a court, at any stage of an action, to disregard a party's mistake, omission, defect, or irregularity if a substantial right of a party is not prejudiced' and CPLR 5019(a) gives trial and appellate courts the discretion to cure mistakes, defects, and irregularities that do not affect substantial rights of parties." (internal citations omitted; see also CPLR 305[c]).

Here, defendants have at all times been aware of plaintiff's mistake in misnaming itself in the summons and complaint and as such cannot claim any prejudice. As such, plainitff's motion seeking leave to reargue is granted and the summons and complaint in this action shall be amended to reflect the correct name of plaintiff, "United Studies, SLU." Upon reargument, the following decision is substituted for the Court's decision of May 14, 2020.

Plaintiff commenced the instant action by filing a summons and complaint on January 31, 2012 alleging causes of action for breach of contract and defamation. On February 8, 2012, Plaintiff filed an amended summons and amended verified complaint. On March 30, 2012, defendant filed an amended verified answer with affirmative defenses, and counterclaims. Plaintiff, United Studies, SLU ("United") is an international exchange program that recruits students in Spain and enrolls them in educational programs in the United States. Defendant, Global Education New York ("GENY") is an educational program, located in Manhattan, New York. which accepts international students and enrolls them into English courses. On May 23, 2011, GENY entered into a contract with United pursuant to which GENY agreed arrange

accommodations for United's students; provide acceptance letters, program schedules and all of the services outlined in GENY's literature and inform United of any changes in fees or services. United agreed to recruit at least 10 students per week starting from June 26, 2011 to October 2, 2011 and pay one month in advance for student accommodations.

Defendant, GENY now moves for summary judgment, dismissing plaintiff's claims and granting a judgment on defendant's counterclaims. United cross-moves for summary judgment. Summary Judgment should not be granted where there is any doubt as to the existence of a material issue of fact. *Zuckerman v. City of New York*, 49 N.Y.2d 557, 562, 427 N.Y.S.2d 595 (1980). The function of the court when presented with a motion for Summary Judgment is one of issue finding, not issue determination. *Sillman v. Twentieth Century-Fox Film Corp.*, 3 N.Y.2d 395, 165 N.Y.S.2d 498 (1957); *Weiner v. Ga-Ro Die Cutting, Inc.*, 104 A.D.2d331, 479 N.Y.S.2d 35 (1st Dept., 1984) *aff'd* 65 N.Y.2d 732, 429 N.Y.S.2d 29 (1985). The proponent of a motion for summary judgment must tender sufficient evidence to show the absence of any material issue of fact and the right to entitlement to judgment as a matter of law. *Alvarez v. Prospect Hospital*, 68 N.Y.2d 320 (1986); *Winegrad v. New York University Medical Center*, 64 N.Y.2d 851 (1985). Summary judgment is a drastic remedy that deprives a litigant of his or her day in court. Therefore, the party opposing a motion for summary judgment is entitled to all favorable inferences that can be drawn from the evidence submitted and the papers will be scrutinized carefully in a light most favorable to the non-moving party. *Assaf v. Ropog Cab Corp.*, 153 A.D.2d 520 (1st Dep't 1989). Summary judgment will only be granted if there are no material, triable issues of fact *Sillman v. Twentieth Century-Fox Film Corp.*, 3 N.Y.2d 395 (1957).

In support of its motion, defendant submits the affidavit of Christine Hwang, the former President of GENY, together with the relevant contracts, housing reservations, payment history,

invoices and emails related to same, and the deposition transcript of Esmerelda Herrero, director and CEO of United, which allege as follows: Plaintiff breached the Agreement by failing to enroll the minimum number of students for the weeks commencing on June 26, 2011, July 2, 2011, September 10, 2011, September 17, 2011, and September 25, 2011. Pursuant to the contracts, GENY agreed to arrange accommodations for enrolled students through an independent company, which it fulfilled by arranging accommodations for the students at Sunny House and Island House and said accommodations were approved by United. Due to plaintiff's failure to send its students' payments in a timely manner (one month in advance), the accommodations arranged by GENY were cancelled. Plaintiff's first payment was due on May 25, 2011, but GENY did not receive the first payment of $45,000.00 until on or about June 9, 2011 and United's next payment of $90,000.00, due on June 17, 2011 was not received until on or about August 5, 2011. GENY submits numerous emails allegedly relating to the late payments, which are in Spanish and not accompanied by a certified translation and as such are inadmissible. Without said emails, GENY cannot establish a prima facie entitlement to summary judgment on the breach of contract claims as there are numerous issues of fact relating to the timing of said payments.

To prove a claim for defamation, a plaintiff must show: (1) a false statement, (2) published without privilege or authorization to a third party, (3) constituting fault as judged by, at a minimum, a negligence standard, and (4) it must either cause special harm or constitute defamation per se. See Dillon v City of New York, 261 AD2d 34, 38, 704 NYS2d 1 [1st Dept 1999]; Restatement [Second] of Torts § 558. Plaintiff's allegations in its amended complaint consist of emails from students in the program to United and do not set forth any defamatory statements actually made by GENY. As such, plaintiff has failed to state a cause of action for defamation. Plaintiff fails to oppose this portion of GENY's motion.

Plaintiff's cross-motion must also be denied based upon the issues of fact discussed *supra*. As such, it is hereby;

ORDERED that plaintiff is granted leave to reargue this Court's Order dated May 14, 2020 relating to motion sequence 001 and upon reargument, it is further

ORDERED that the dismissal of this action is vacated and this case restored; and it is further

ORDERED that the portion of GENY's motion seeking dismissal of plaintiff's second cause of action alleging defamation is GRANTED and said cause of action is dismissed; and it is further

ORDERED that the portion of GENY's motion seeking summary judgment and plaintiff's cross-motion seeking summary judgment are DENIED.

1/4/2021
DATE

LAURENCE L. LOVE, J.S.C.

CHECK ONE:		CASE DISPOSED			X	NON-FINAL DISPOSITION	
		GRANTED		DENIED	X	GRANTED IN PART	OTHER
APPLICATION:		SETTLE ORDER				SUBMIT ORDER	
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN				FIDUCIARY APPOINTMENT	REFERENCE