

<b>Precious Care Mgt. LLC v Monsey Care LLC</b>
2021 NY Slip Op 32174(U)
October 26, 2021
Supreme Court, Kings County
Docket Number: Index No. 506072/21
Judge: Leon Ruchelsman
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS : CIVIL TERM: COMMERCIAL 8  
-----x

PRECIOUS CARE MANAGEMENT LLC,  
Plaintiff, Decision and order

- against - Index No. 506072/21

MONSEY CARE LLC,  
Defendant, October 26, 2021  
-----x

PRESENT: HON. LEON RUCHELSMAN

The plaintiff has moved pursuant to CPLR §2221 seeking to reargue a decision and order dated July 19, 2021. In that decision the court granted defendant's motion dismissing the complaint on the grounds all the claims are represented in another ending action and denied the plaintiff's motion seeking to amend the complaint. The defendant opposes the motion. Papers were submitted by the parties and arguments held. After reviewing all the arguments this court now makes the following determination.

As recorded in the prior order, UMUC Management Monsey LLC was formed December 14, 2016. It was owned by the plaintiff Precious Care Management LLC and JM UC Group LLC. During 2018 JM UC accused Precious Care of misappropriating profits and other financial irregularities. On October 10, 2018 JM UC and Precious Care entered into a Membership Interest Purchase Agreement (MIPA) and on November 15, 2018 JM UC became obligated to purchase Precious Care's share for two million dollars. JM UC never paid the funds and instituted an action against Precious Care in Kings

County (Index Number 522369/2019) alleging that Precious Care improperly inflated the true value of UMUC and presented false information about its projected revenue. That action alleges breach of the original operating agreement, breach of the MIPA, conversion, fraud, unjust enrichment, tortious interference with business relationships, breach of fiduciary duty, an accounting and various claims seeking a declaratory judgement. The defendant in that case, namely Precious Care filed counterclaims for breach of contract alleging JM UC never paid the two million dollars pursuant to the agreement. Further, Precious Care asserted a counterclaim for unjust enrichment and a counterclaim that JM UC fraudulently transferred the operations of UMUC to Monsey Care LLC, the defendant in this action. This lawsuit was filed by Precious Care against the defendant alleging the defendant tortiously interfered with the operating agreement entered into between Precious and JM UC by operating the facility. Further, the complaint alleges the defendant's operation of the facility tortiously interfered with the MIPA.

The court denied the plaintiff's request seeking to add causes of action the defendant engaged in a fraudulent conveyance in violation of debtor creditor Law §270 and other claims since those claims were adequately raised in the prior lawsuit. Indeed, the court granted the defendant's request dismissing the entire action. Upon reargument the plaintiff asserts the court

erred when it dismissed the complaint because Monsey Care LLC is a distinct entity from JM UC and the plaintiff may pursue claims against Monsey Care irrespective of any claims that exist in the prior action where Monsey Care is not a party.

#### 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 in its earlier decision (Deutsche Bank National Trust Co., v. Russo, 170 AD3d 952, 96 NYS2d 617 [2d Dept., 2019]).

First, in the Memorandum of Law in support of the motion (page 2) and in Reply (page 1) the plaintiff insists that the two cases should have been consolidated and that attempts to consolidate were negotiated between the parties, however, no agreement was ever reached. However, the plaintiff fails to explain why, even if an agreement to consolidate could not be secured, a motion to consolidate was never filed. The plaintiff asserts that "we respectfully submit that this Court can consolidate this action with the already pending action" (see, Reply Memorandum, page 1). Nevertheless, no such motion was made in this regard. Thus, even if the plaintiff is correct that it could not procedurally add Monsey Care to the other action, continuing this action and pursuing redundant claims is surely a

waste of judicial resources when a consolidation motion would have resolved any procedural impediment to pursuing any claims. The plaintiff chose to maintain two separate actions and is bound by that choice. Thus, there is no basis to grant reargument and permit the complaint to be amended merely to accommodate the plaintiff's interest in pursuing claims against Monsey Care.

Indeed, the only argument the plaintiff raises demonstrating the two actions may not be redundant is that "Monsey Care does not deny that PCM may encounter difficulties enforcing a judgment against JM on assets held by Monsey Care...Monsey Care is clearly attempting to position itself so that it can frustrate any judgment PCM may obtain in the related matter. That is precisely why JM fraudulently transferred its assets to Monsey Care in the first place" (Reply Memorandum, page 2). However, that very issue, whether Monsey Care can frustrate any judgement the plaintiff may obtain, is adequately protected in the other proceeding. This is true based upon the nature of the counterclaims in that proceeding. As noted in the prior decision, maintaining two lawsuits will place the parties in an impossible situation should different trials yield different verdicts. The plaintiff seeks to avoid the consequences of that possibility by urging a reinstatement of the complaint and then a consolidation. However, the plaintiff never moved seeking a consolidation. An unsuccessful trial strategy is an improper


basis upon which to seek a motion to reargue. Therefore, the plaintiff in this action has not presented any basis for the court to revisit its earlier ruling.

Consequently, the motion seeking to reargue or renew is hereby denied.

So ordered.

ENTER:

DATED: October 26, 2021  
Brooklyn N.Y.

  
\_\_\_\_\_  
Hon. Leon Ruchelsman  
JSC