Quartararo v Quartararo
2021 NY Slip Op 34320(U)
September 20, 2021
Supreme Court, Dutchess County
Docket Number: Index No. 2019-51971
Judge: Hal B. Greenwald
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SUPREME COURT- STATE OF NEW YORK
DUTCHESS COUNTY

Present:
Hon. HAL B. GREENWALD
Justice.

SUPREME COURT: DUTCHESS COUNTY

PAUL M. QUARTARARO,

Plaintiff

-against-

JOHN P. QUARTARARO, individually, LUCINDA ORR QUARTARARO, individually, JOHN P. QUARTARARO, As a Member of CHESTNUT RIDGE PARTNERS, LLC, CHESTNUT RIDGE PARTNERS, LLC, LUCINDA ORR QUARTARARO, as a Member of CLANFIELD, LLC and CLANFIELD, LLC.

Defendants.

DECISION AND ORDER
Index No. 2019-51971

The following NYSCEF documents were reviewed and considered by the Court in rendering this Decision and Order: 1, 2, 3, 10, 14, 15, 21, 31-59, 71-77, 87, 88, 91-95.

This matter is a multi-year, multi-party, multi issue lawsuit. The prior Decision and Order denied and granted certain relief. However, the claim seeking a constructive trust was not directly discussed but was dismissed as a non-specific issue. Currently, Plaintiff has filed a Motion to Reargue concerning the specific issue of whether a constructive trust should have been granted.

BRIEF RECAP OF THE LAWSUIT

It could be viewed that the basis of the lawsuit was Plaintiff PMQ's decision to invest $150,000 to become a 15% minority owner of CRP. Three months later, Plaintiff PMQ intended to become a 25% owner of CRP and wired $50,000 of the $100,000 it would take to become a full 25% owner. In August 2015, an additional $15,000 was invested making Plaintiff PMQ's total monetary contribution to CRP of $215,000 (or a 21.5% interest in CRP, but not a 25% interest as originally intended).

Plaintiff claims he was to receive between $4,000 to $8,000 per month from his investment in CRP and to date, has not received any money. Plaintiff claims that Castle Hill has deposited $541,818.02 into CRP's bank accounts, and another fund Essentia has deposited $11,082 for a total business income to CRP of $552,900.02. Therefore, JPQ claims as a 21.5% owner he is entitled to $118,873.50. Plaintiff JPQ also claims the return of his $215,000 investment for a total claim of $333,873.50. Plaintiff also seeks $1M in punitive or compensatory damages.

MOTION FOR LEAVE TO REARGUE

The relevant statute, CPLR 2221 states:

Rule 2221. Motion affecting prior order

(a) A motion for leave to …reargue a prior motion….shall be made, on notice to the judge who signed the order….

(d) A motion for leave to reargue:

1. shall be identified specifically as such;

2. 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; and

3. shall be made within thirty days after service of a copy of the order determining the prior motion and written notice of its entry. This rule shall not apply to motions to reargue a decision made by the appellate division or the court of appeals.

The instant application is properly identified as a Motion for Leave to reargue, is based upon matters of fact or law allegedly misapprehended by the court, does not include additional facts and is made timely. Accordingly, the instant Motion for leave to reargue is procedurally properly before the court as to this Court's prior Decision and Order. Motions for reargument are addressed to the sound discretion of the court which decided the original 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 ***Bueno v Allam*** 170 A.D.3d 939 (2nd Dept, 2019); citing ***Ito v. 324 E. 9th St. Corp.***, 49 A.D.3d 816, (2nd Dept, 2008). It is within the discretion of the court to grant reargument. ***E.W. Howell Co. Inc. v. S.A.F. La Sala Corp***., 36 A.D.3d 653 (2nd Dept, 2007), ***Carrillo v. PM Realty Group***, 16 A.D.3d 611 (2nd Dept, 2005).

MOTION TO REARGUE IS DISCRETIONARY AND MAY BE DENIED

As stated in several cases, a motion to reargue may be granted only upon a showing that the court overlooked or misapprehended the facts or the law, or for some reason mistakenly arrived at its earlier decision. (*300 West realty Co. v. City of New York* [1st Dep't, 1984]*; Margulis v. Teichman*, 127 Misc.2d 168 [Surrogate's Court, Nassau County, 1985]; *American Trading Co., Inc. v. Fish*, 87 Misc.2d 193 [New York County, 1975]). Further, it is proper for the court to deny a motion to reargue where the movant failed to demonstrate that the court overlooked or misapprehended the relevant facts or misapplied any controlling principle of law. *Frenchman v Lynch*, 97 A.D.3d 632 (2nd Dep't, 2012); *McGill v Goldman*. 261 A.D.2d 593 (2nd Dep't, 1999); *William P. Pahl Equipment Corp. v Kassis*, 182 A.D.2d 22 (1st Dep't, 1992). Moreover, the ability to seek leave to reargue as stated in *Rossi v Scheinbach*, 46 Misc.3d 1226(A) (N.Y.Sup. Ct. 2015), "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." (*McGill v.*

Goldman, 261 A.D.2d 593 [2d Dept.1999]; *see also Foley v. Roche,* 68 A.D.2d 558 [1st Dept.1979]).

PLAINTIFF CLAIMS THE COURT IGNORED ISSUES OF UNJUST ENRICHMENT

On April 22, 2021, Plaintiff filed the instant Motion to Reargue suggesting the Court did not reconcile the equitable issues of unjust enrichment or constructive trust, but instead focused almost entirely on money damages that may be recoverable at law. These equitable claims are based upon the fact that Plaintiff PAUL M. QUARTARARO (PMQ) and his brother, Defendant JOHN P. QUARTARARO (PRQ) were co-owners of a business venture wherein the Plaintiff invested considerable sums of money which were unaccounted for and were wrongfully taken by the Defendant JPQ. Courts have found that there is a fiduciary responsibility when family members are engaged in a business as co-owners.

PLAINTIFF CLAIMS A CONSTRUCTIVE TRUST IS PROPER

Instead of creating a new written document the Court has decided to quote directly from Plaintiff's counsel's Memorandum of Law to define a constructive trust:

> *Under New York law, a constructive trust is warranted when a party can establish four factors: (1) a confidential or fiduciary relationship, (2) a promise, (3) a transfer in reliance thereon, and (4) unjust enrichment flowing from the breach of the promise. Seidenfeld v. Zaltz, 162 A.D.3d 929, 934 (2d Dept. 2018). The factors for the imposition of a constructive trust are to be applied broadly and with flexibility, as a means "to 2 FILED: DUTCHESS COUNTY CLERK 04/22/2021 04:58 PM INDEX NO. 2019-51971 NYSCEF DOC. NO. 110 RECEIVED NYSCEF: 04/22/2021 4 of 10 remedy whatever knavery ingenious wrongdoers can invent, to give expression to the conscience of equity, and to satisfy the demands of justice." Id. (quoting Nastasi v. Nastasi, 26 A.D.3d 32, 38 (2d Dept. 2005). Accordingly, there are no strict rules to follow for the imposition of a constructive trust, a court need only determine whether one would be appropriate to satisfy the demands of justice. Kasan v. Perlin, 24 Misc.3d 1063, 1067 (Sup. Ct. Nassau Cty. 2009) (citing Matter of Estate of Knappen, 237 A.D.2d 677 (3d Dept.1997)). New York law allows for constructive trusts to be placed over real property, which would support a notice of pendency.*

Plaintiff bases his insistence that a constructive trust is necessary on the claim the facts of this case meet the four-prong test set forth above. Plaintiff and his brother, the defendant have been engaged in a business together, where the Plaintiff is the minority shareholder at 21.5%. As Defendant is the majority shareholder, it can be claimed these two parties are in a fiduciary relationship. Plaintiff is dependent upon the Defendant brother to be honest about the joint business' profits and where they are. There have been several promises made by the Defendant PRQ to the Plaintiff PMQ. One concerned the potential sale of real estate located at 560 Chestnut Ridge and that Plaintiff would be paid back his original investment of $215,000 upon such a sale. The funds were paid by Plaintiff to defendant based upon said promise, and it appears that there has been a breach of said promise in that neither the $215,000 originally invested nor the approximately $118,000 profits have been paid to the Plaintiff. There has not been any accounting of the above moneys and accordingly it appears the Defendant PRQ has been unjustly enriched.

In the event the Court were to grant a constructive trust, it would be logical to allow for the filing of a Notice of pendency on the subject real property, 560 Chestnut Ridge to ensure that the money sought to be recouped be available if said property is sold.

DEFENDANT CLAIMS THERE IS NO BASIS TO GRANT A MOTION TO

RENEW OR TO REARGUE

Defendant. In consideration of Judicial economy referred the Court to several documents that were previously filed by the Defendant and asks the Court to consider them as if they were filed in opposition to the instant Motion. Additionally, Defendant filed a memorandum of Law (NYSCEF Doc No 118) that dealt exclusively with the Motion to Renew and Reargue. Defendants' position is that there are no new facts alleged so a Motion to Renew is inappropriate and all the facts have already been alleged so that a Motion to Reargue is also inappropriate.

The first document that Defendant claims sets forth the correct facts is Defendants 23-page Answer (NYSECF Doc. No 10) to plaintiffs' 55-page complaint. These two documents are so diametrically opposed to one another as to be less than useful in resolving the instant application.

The second document is defendant JOHN P. QUARTARARO's 34-page Affidavit (NYSCEF Doc. No 34) in support of said Defendant's Motion to Dismiss. This document had been considered by the Court in rendering its prior Decision and Order dated March 23, 2021 (Greenwald, J.)

The last document is Gerald Klein, Esq. Affirmation in Reply, also in support of said Defendant's aforesaid Motion to Dismiss the complaint. This document was also reviewed and considered by the Court in rendering the March 23, 2021 Decision and Order.

PLAINTIFF PROPOSES IN HIS REPLY THAT EQUITABLE RELIEF IS NECESSARY

In his Reply Affidavit, (NYSCEF Doc. No.122) Plaintiff PMQ questions whether money damages are sufficient in this case that is riddled with allegations of promises never kept, dishonesty and theft by one family member to several members of the family and reliance based upon lies. At Paragraph 5 of his Reply states his case for equitable relief as follows:

> *Plaintiffs Affidavit in Support and defendants subsequent actions make clear that when it comes to Quartararo family transactions. Equitable relief is essential since the defendant is incapable of keeping his word to his family.*

Plaintiff proposes that the Motion to Reargue should be granted by reason that the Court overlooked the issue of unjust enrichment and its potential remedy of constructive trust. Further the facts as alleged herein support the imposition of this equitable remedy as the past history of interaction between the brothers/parties indicates that the money remedy will not be forthcoming.

By reason of all the foregoing it is

ORDERED that Plaintiff's PAUL M. QUARTARARO'S Motion to Reargue his opposition to Defendant JOHN P QUARTARARO et al's prior Motion to Dismiss pursuant to CPLR 3211 is **granted**; and it is further

ORDERED that Plaintiff's PAUL M. QUARTARARO'S Motion to Renew his opposition to Defendant JOHN P QUARTARARO et al's prior Motion to Dismiss pursuant to CPLR 3211 is denied; and it is further

ORDERED that the imposition of a Constructive Trust is hereby **granted** as to the real property know as 560 Chestnut Ridge and Plaintiff PAUL M. QUARTARARO shall submit a Judgment to the Court on or before October 29, 2021; and it is further

ORDERED that Plaintiff PAUL M. QUARTARARO shall file a Notice of Pendency upon the real property known as 560 Chestnut Ridge upon the proper payment of all necessary fees to the Dutchess County Clerk's Office, which Notice of pendency shall be filed on or before October 29, 2021

Any relief not specifically granted herein is denied.

The foregoing constitutes the decision and Order of this Court.

Dated: Poughkeepsie, New York
September 20, 2021

ENTER

Hal B Greenwald

Hon Hal B. Greenwald, J.S.C.

To: The Raiche Law Firm
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Pursuant to CPLR Section 5513, an appeal as of right must be taken within thirty days after service by a party upon the appellant of a copy of the judgment or order appealed from and written notice of its entry, except that when the appellant has served a copy of the judgment or order and written notice of its entry, the appeal must be taken within thirty days thereof. When submitting motion papers to Justice Greenwald's Chambers, please do not submit any copies. Submit only the original papers.