

<b>Giabourani v Anastasiou</b>
2022 NY Slip Op 30296(U)
January 14, 2022
Supreme Court, New York County
Docket Number: Index No. 657000/2020
Judge: Erika M. Edwards
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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. ERIKA EDWARDS**

**PART 11**

*Justice*

-----X

ANNA GIABOURANI,

Plaintiff,

- v -

NIKOLAOS ANASTASIOU and EPEXYL, USA INC.,

Defendants.

-----X

**INDEX NO. 657000/2020**

**MOTION DATE 12/14/2021**

**MOTION SEQ. NO. 003**

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 003) 39, 40, 41, 42, 43, 44 were read on this motion to/for RENEW/REARGUE/RESETTLE/RECONSIDER.

Upon the foregoing documents, the court grants Plaintiff Anna Giabourani’s (“Plaintiff”) motion to reargue Defendants Epexyl USA, Inc.’s (“Epexyl”) and Nikolaos Anastasiou’s (“Anastasiou”) (collectively, “Defendants”) motions to dismiss under motion sequences 001 and 002, respectively, and upon reconsideration, the court reverses its previous decision granting the motions and denies both motions.

Plaintiff brought this action against Defendants to recover outstanding legal fees allegedly owed to her based on claims of breach of contract, unjust enrichment and quantum meruit. Plaintiff sent three invoices to Epexyl for a total of \$15,187.50 and two invoices to a non-party Greek company, Epexyl S.A., for over \$58,000.00, for a total of \$73,387.00.

Defendants moved to dismiss Plaintiff’s complaint and Plaintiff opposed the motions.

In its consolidated decision and order dated October 12, 2021 (NYSCEF Doc. Nos. 34 and 35), the court granted the motions to dismiss based upon failure to state a cause of action and documentary evidence. The court found that Plaintiff failed to comply with a condition precedent to filing this action since Plaintiff failed to comply with the notice of a client’s right to arbitrate

provisions of 22 NYCRR Part 137. Additionally, the court found that Defendants demonstrated that Plaintiff's invoices were untimely and that Plaintiff improperly combined the invoices for legal fees sent to two separate entities. Therefore, the total amount of the invoices sent to Defendant Epexyl was less than \$50,000.00 thus triggering the requirements of Part 137. The court also found that Plaintiff's allegations in support of her arguments to pierce the corporate veil and hold Anastasiou liable for the invoices were conclusory in nature and insufficient to sustain each cause of action. Therefore, the court dismissed the complaint without prejudice to renew if Plaintiff demonstrates compliance with Part 137 and can demonstrate one or more viable causes of action.

Plaintiff now moves to reargue Defendants' motions to dismiss Plaintiff's complaint and Defendants oppose the motion. Plaintiff argues in substance that the court misapprehended controlling law in *Filemyr v Hall* (186 AD3d 117 [1<sup>st</sup> Dept 2020]), misapplied the facts and erred in granting Defendants' motions to dismiss.

Pursuant to CPLR 2221(d)(2), a motion for leave to reargue is left to the sound discretion of the court and may be granted only where the moving party contends that an issue of law or fact had been overlooked or misapprehended by the court when deciding the original motion (CPLR §2221[d][2]). It is not designed to provide the unsuccessful party successive opportunities to reargue issues previously decided by the court or to present new evidence or different arguments than previously raised (*William P. Pahl Equip. Corp. v Kassis*, 182 AD2d 22, 27 [1<sup>st</sup> Dept 1992] [internal citations and quotation marks omitted]).

Upon review of the arguments raised by the parties, the court determines that it erred by not giving sufficient support to some of the factual allegations set forth in Plaintiff's complaint and in her Affirmation submitted in support of her opposition to Defendants' motions to dismiss.

Although the court afforded the complaint a liberal construction, the court erred by finding many of the allegations to be too conclusory to support the causes of action. Additionally, the court should have accepted all facts alleged in the complaint as true and accorded Plaintiff the benefit of every possible inference as to her explanations for the alleged contradictory documentary evidence. Specifically, on a motion to dismiss, the court should have given more weight to Plaintiff's explanations as to why she billed the non-party Greek company for work she performed for Defendant Epexyl; whether it was appropriate to combine the invoices so that the total amount exceeded \$50,000 which did not require Plaintiff to comply with 22 NYCRR 137; whether her invoices were timely; whether there was an agreement for Defendants to pay her legal fees; and whether her claims against Anastasiou and her allegations that the court should pierce the corporate veil were sufficient.

Therefore, the court grants Plaintiff's motion to reargue and upon reconsideration, the court reverses its previous ruling and denies Defendants' motions to dismiss under motion sequences 001 and 002.

The court has considered all remaining arguments of the parties not specifically discussed herein and the court denies any additional requests for relief not expressly granted herein.

As such, it is hereby

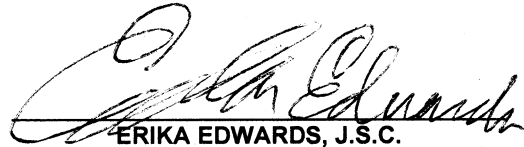
ORDERED that the court grants Plaintiff Anna Giabourani's motion to reargue Defendants Epexyl USA, Inc.'s and Nikolaos Anastasiou's motions to dismiss under motion sequences 001 and 002, respectively, and upon reconsideration, the court reverses its previous decision granting the motions and denies both motions to dismiss; and it is further

ORDERED that the court directs the parties to appear virtually for a Preliminary Conference before the court via Microsoft Teams on February 22, 2022, at 12:00 p.m. (separate links will be provided).

This constitutes the decision and order of the court.

1/14/2022

DATE

  
ERIKA EDWARDS, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE