

Unger v A.W. Chesterton Co.
2022 NY Slip Op 30760(U)
March 30, 2022
Supreme Court, New York County
Docket Number: Index No. 190098/2020
Judge: Adam Silvera
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ADAM SILVERA PART 13

Justice

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EDWARD UNGER, LISA UNGER,

Plaintiff,

INDEX NO. 190098/2020

MOTION DATE 12/14/2021

MOTION SEQ. NO. 022

- v -

A.W. CHESTERTON COMPANY, ABB, INC., ALL ACQUISITION CORPORATION, LLC, AIR & LIQUID SYSTEMS CORPORATION, ALFA LAVAL, INC., ALLEN-BRADLEY COMPANY, INC., AMTROL, INC., ARMSTRONG INTERNATIONAL, INC., ATWOOD & MORRILL CO., INC., AURORA PUMP COMPANY, BLACKMER PUMP, BURNHAM CORPORATION, BWIP INTERNATIONAL CO., CARRIER CORPORATION, CATERPILLAR INC., CBS CORPORATION, CLARK RELIANCE CORPORATION, CLEAVER-BROOKS COMPANY, CRANE CO., CROWN BOILER CO., CUMMINS ENGINE COMPANY, INC., CUMMINS INC., CUMMINS NORTHEAST, INC., DEZURIK, INC., EATON CORPORATION, ELECTROLUX HOME PRODUCTS, INC., ELLIOTT TURBOMACHINERY CO., INC., FLOWSERVE US, INC., FMC CORPORATION, FOSTER WHEELER, LLC, GENERAL ELECTRIC COMPANY, GENUINE PARTS COMPANY, GOULD ELECTRONICS, INC., GOULDS PUMPS, INC., GREENE, TWEED & CO., INC., GRINNELL CORPORATION, HENRY TECHNOLOGIES, INC., HONEYWELL INTERNATIONAL, INC., HOWDEN BUFFALO, INC., I.T.T. INDUSTRIES, INC., INGERSOLL RAND, INC., JENKINS BROS., LENNOX INDUSTRIES, INC., LIGHTOLIER INCORPORATED, METROPOLITAN LIFE INSURANCE COMPANY, MORSE TEC LLC, NAPA AUTO PARTS, NASH ENGINEERING COMPANY (THE), NEW ENGLAND INSULATION CO., PNEUMO ABEX CORPORATION, PNEUMO-ABEX LLC, PROGRESS LIGHTING, INC., RHEEM MANUFACTURING COMPANY, INC., ROCKWELL AUTOMATION, INC., SCHNEIDER ELECTRIC USA, INC., SPENCE ENGINEERING COMPANY, INC., SPIRAX SARCO, INC., SPX COOLING TECHNOLOGIES, INC., SUPERIOR LIDGERWOOD MUNDY CORP., THRUSH CO., INC., TUTHILL CORPORATION, UNION CARBIDE CORPORATION, VELAN VALVE CORP., WARREN PUMPS LLC, WEIL MCLAIN, WILLIAM POWELL COMPANY (THE), YORK INTERNATIONAL CORPORATION, BARNES & JONES, INC., MUELLER CO., O.C. KECKLEY COMPANY, SKIDMORE PUMP, WATTS REGULATOR COMPANY, INDIVIDUALLY AND AS SUCCESSOR TO WARREN

DECISION + ORDER ON MOTION

WEBSTER, WATTS WATER TECHNOLOGIES, INC., CAMERON INTERNATIONAL CORPORATION INDIVIDUALLY AND AS SUCCESSOR TO PENNSYLVANIA PUMP & COMPRESSOR COMPANY AND COOPER BESSEMER, SID HARVEY INDUSTRIES, INC., SID HARVEY SUPPLY, INC., SIEMENS CORPORATION, INDIVIDUALLY AND AS SUCCESSOR TO MURRAY & FURNAS, DISTRIBUTOR CORPORATION OF NEW ENGLAND, EMERSON SWAN, INC., HAJOCA CORPORATION, HAJOCA PLUMBING SUPPLY COMPANY, PEABODY SUPPLY CO., ECR INTERNATIONAL, INC., INDIVIDUALLY AND AS SUCCESSOR TO DUNKIRK, DUNKIRK BOILERS AND UTICA BOILERS, KOHLER CO., HUBBELL INCORPORATED (DELAWARE), GRUNDFOS CBS INC., INDIVIDUALLY AND AS SUCCESSOR TO PACO PUMPS AND PACIFIC PUMPS, PACO PUMPS, INC., PCC FLOW TECHNOLOGIES, INC., F/K/A PCC FLOW TECHNOLOGIES LP, INDIVIDUALLY AND AS SUCCESSOR TO PACO PUMPS AND PACIFIC PUMPS, PCC FLOW TECHNOLOGIES LP, AS SUCCESSOR IN INTEREST TO PACO PUMPS, INC., PRECISION CASTPARTS CORP., INDIVIDUALLY AND AS SUCCESSOR TO PACIFIC PUMPS AND PACO PUMPS, SULZER PROCESS PUMPS (US), INC., INDIVIDUALLY AND AS SUCCESSOR TO PACO PUMPS AND SULZER PUMPS, HOUSTON, INC., SULZER PUMPS (US), INC., INDIVIDUALLY AND AS SUCCESSOR TO JOHNSTON PUMP AND AHLSTROM PUMPS AND PACO PUMPS AND SULZER PUMPS, HOUSTON, INC., SIEMENS INDUSTRY, INC., SUCCESSOR IN INTEREST TO SIEMENS ENERGY & AUTOMATION, INC., AERMOTOR PUMPS, INC., INDIVIDUALLY AND AS SUCCESSOR TO MUELLER PUMP AND WEINMAN PUMP, AMW PUMP COMPANY, INC., INDIVIDUALLY AND AS SUCCESSOR TO MUELLER PUMP, AERMOTOR, AND WEINMAN, GRINNELL CORPORATION, INDIVIDUALLY AND AS SUCCESSOR TO MUELLER PUMP AND WEINMAN PUMP, JIM WALTER CORPORATION, INDIVIDUALLY AND AS SUCCESSOR TO MUELLER CO., MUELLER WATER PRODUCTS AND MUELLER PUMP, MUELLER PUMP COMPANY, MUELLER WATER PRODUCTS INC., INDIVIDUALLY AND AS SUCCESSOR TO MUELLER PUMP COMPANY, AMW PUMPS, AND WEINMAN PUMP, MUELLER STEAM SPECIALTY, I.G. MARSTON CO., INC., COOPER CAMERON CORPORATION, INDIVIDUALLY AND AS SUCCESSOR TO PENNSYLVANIA PUMP & COMPRESSOR COMPANY AND COOPER BESSEMER AND GROVE REDUCER VALVES;, PRATT & WHITNEY POWER SYSTEMS, INC., UNITED TECHNOLOGIES CORPORATION, INDIVIDUALLY AND AS SUCCESSOR TO PRATT & WHITNEY (PRATT & WHITNEY/AIRCRAFT DIVISION), RAYTHEON TECHNOLOGIES CORPORATION F/K/A UNITED TECHNOLOGIES CORPORATION, BLAKE

GROUP HOLDINGS, INC., F.W. WEBB COMPANY,
 INDIVIDUALLY AND AS SUCCESSOR TO BERGEN
 INDUSTRIAL SUPPLY CO., FORT KENT HOLDINGS, INC.
 F/K/A DUNHAMBUSH, INC., GRUNDFOS PUMPS
 CORPORATION, INDIVIDUALLY AND AS SUCCESSOR-
 IN-INTEREST TO PACIFIC PUMP COMPANY, JOMAR
 DISTRIBUTORS, INC., MCMASTER-CARR SUPPLY
 COMPANY, TACO, INC., TOTAL AIR SUPPLY INC., VIKING
 PUMP, INC., A UNIT OF IDEX CORPORATION, W. W.
 GRAINGER, INC., BALTIMORE AIRCOIL COMPANY,
 INC., NASH ENGINEERING HOLDINGS LLC,

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 022) 781, 782, 783, 784, 819, 820, 829, 840, 847

were read on this motion to/for

VACATE - DECISION/ORDER/JUDGMENT/AWARD.

Upon the foregoing documents, it is hereby ordered that defendants Watts Regulator Co. and Watts Water Technologies, Inc.'s (hereinafter referred to as Watts Defendants) joint motion to vacate and reargue the order to show cause dated October 28, 2021 is denied for the reasons set forth below.

Here, Plaintiffs made several requests for discovery from Watts Defendants from May of 2020 to October 8, 2021, when Plaintiffs and Watts Defendants appeared before the Special Master. Plaintiffs sought responses to the discovery they requested from Watts Defendants. Watts Defendants argued that under due process and New York law, the Court must establish jurisdiction over the claims of the Plaintiff before discovery ensues, and that further discovery was improper since Plaintiff certified discovery was complete and that the case was ready for trial. The Special Master issued her ruling on October 18, 2021, requiring Watts Defendants to respond to all of the requested discovery. Thereafter, Watts Defendants filed an Order to Show Cause pursuant to N.Y. CPLR 3103(a) and the Case Management Order (hereinafter referred to as the CMO), Section III.C., objecting to the ruling. Watts Defendants' objections were primarily based on the violation of due process, New York law, and Plaintiffs' certification that discovery was complete. This Court

declined to sign the order to show cause, stating that Watts Defendants failed to comply with the CMO. Watts Defendants now move to reargue and vacate this Court's declination to sign its order to show cause.

Preliminarily, Watts Defendants' motion to reargue the declination to sign an order to show cause is without merit as "[t]here is no right of appeal from an order that does not determine a motion on notice. . . including an order declining to sign an order to show cause". *Kalyanaram v New York Inst. of Tech.*, 91 AD3d 532 (1st Dept 2012) (internal citations omitted). Thus, this Court has issued no order or decision for Watts Defendants to reargue or vacate.

Even considering Watts Defendants instant motion on the merits, its arguments still fail. CPLR 2221(d)(2) permits a party to move for leave to reargue a decision upon a showing that the court misapprehended the law in rendering its initial decision. The Court may exercise its discretion in determining whether a motion to reargue should be granted on the rationale that the Court "overlooked or misapprehended the facts or the law or for some reason mistakenly arrived at its earlier decision". *Sachar v Columbia Pictures Indus., Inc.*, 129 AD3d 420, 421 (1st Dept 2015) (internal citations omitted). According to the CMO, section III, subsection C, "[a]ny party objecting to a ruling by the Special Master shall notify by email the Special Master and all other interested parties within three business days of receiving the Special Master's ruling. Upon receipt of this email, the Special Master shall promptly reduce the recommended ruling to writing. The objecting party shall present its objections by order to show cause to the Coordinating Judge within seven business days of receipt of the Special Master's written ruling, unless this time is extended by the Coordinating Judge or the Special Master."

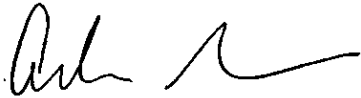
Watts Defendants contend that the Court misapprehended the facts in rendering its decision that they did not comply with the CMO. However, a review of the records reveals that Watts Defendants failed to object to the Special Master's ruling within three business days as required by the CMO. As such, this Court did not misapprehend the law or facts in declining to sign Watts Defendants' prior order to show cause, and Watts Defendants instant motion is denied.

Accordingly, it is

ORDERED that Defendants' Motion to Vacate / Reargue the declination to sign the order to show cause dated October 28, 2021 is denied; and it is further

ORDERED that Defendants' shall comply with the recommendation of the Special Master and provide the ordered discovery within 30 days.

This constitutes the decision/order of the court

<u>3/30/2022</u> DATE					 ADAM SILVERA, J.S.C.	
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	DENIED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
APPLICATION:	<input type="checkbox"/>	GRANTED			<input type="checkbox"/>	GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/>	SETTLE ORDER			<input type="checkbox"/>	OTHER
	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN			<input type="checkbox"/>	FIDUCIARY APPOINTMENT
					<input type="checkbox"/>	REFERENCE