

Weinberg v March for Science, Inc.
2022 NY Slip Op 31046(U)
March 28, 2022
Supreme Court, New York County
Docket Number: Index No. 657335/2019
Judge: Frank Nervo
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. FRANK NERVO PART 04

Justice

-----X

C. WEINBERG,

Plaintiff,

- v -

MARCH FOR SCIENCE, INC., VALORIE AQUINO, RUFUS
COCHRAN, JUSTIN SHAFER, LUCKY TRAN, MATT
TRANCHIN, ASTRID WILLIS-COUNTEE

Defendant.

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INDEX NO. 657335/2019

MOTION DATE 01/04/2022

MOTION SEQ. NO. 003

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 003) 28, 29, 30, 31, 32, 33, 34

were read on this motion to/for RENEW/REARGUE/RESETTLE/RECONSIDER .

Defendant's counsel moves for leave to renew the Court's decision on motion sequence 002 to the extent same imposed sanctions upon defense counsel. The motion is unopposed.

A motion to renew "shall be based upon new facts not offered on the prior motion that would change the prior determination..." (CPLR § 221[e][2]). Where a motion for renewal is not based upon new evidence unavailable at the time of the original motion, and the movant fails to offer a reasonable excuse for the failure to submit evidence upon the original motion, renewal is properly denied (*Schumann v. City of New York*, 242 AD2d 616 [2d Dept 1997]). A motion for leave to renew is not a second chance freely given to parties who have not

exercised due diligence in making their first factual presentation (*Elder v. Elder*, 21 AD3d 1005 [2d Dept 2005]).

Here, defense counsel concedes that the facts upon which he seeks renewal were available to him at the time of the original motion. The Court finds the proffered excuse for failing to provide same, to wit, “counsel’s erroneous desire to treat the motion in an expedient manner” an unreasonable basis for renewal (see NYSCEF Doc. No. 34 at p. 1). Notwithstanding, the Court deems that portion of defense counsel’s motion seeking renewal based upon the prior order being issued without notice as a motion for reargument.

The purpose of reargument is to provide “a party an opportunity to establish that the court overlooked or misapprehended relevant facts or misapplied principles of law” (*Foley v. Roche*, 68 AD2d 558, 567 [1st Dept 1979]; see CPLR § 2221[d][2]). “Its purpose is not to serve as a vehicle to permit the unsuccessful party to argue once again the very questions previously decided” (*id.*). Nor is reargument a proper forum to present arguments different from those originally asserted (*William P. Pahl Equip. Corp. v. Kassis*, 182 AD2d 22 [1st Dept 1992] *lv. dismissed in part and denied in part* 80 NY2d 1005 [1992]).

Here, the prior order imposing sanctions on defense counsel was issued *sua sponte* by the Court in deciding plaintiff's motion to compel depositions of defendants and plaintiff did not seek sanctions against defense counsel. 22 NYCRR 130-1.1 provides, in relevant part, that sanctions may be imposed on the Court's own initiative, after a reasonable opportunity to be heard. Consequently, the Court finds, under these circumstances, that defense counsel should have been provided with an opportunity to be heard as to the Court's motion on sanctions, and was deprived of same (22 NYCRR 130-1.1[d]).

Accordingly, it is ORDERED that the motion is granted to the extent of granting defense counsel leave to reargue the Court's decision on motion sequence 002, limited to the issue of sanctions, and otherwise denied; and it is further

ORDERED that papers opposing sanctions, if any, shall be filed via NYSCEF, with courtesy copy to chambers via first-class mail, no later than April 22, 2022; and it is further

ORDERED that papers in support of sanctions, if any, shall be filed via NYSCEF, with courtesy copy to chambers via first-class mail, no later than April 29, 2022; and it is further

ORDERED that failure to timely file papers opposing sanctions shall constitute waiver of the opportunity to be heard on same, as afforded by 22 NYCRR 130-1.1(d), as well as waiver as to the imposition of sanctions for the reasons set forth in motion sequence 002.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

3/28/2022
DATE


FRANK NERVO, J.S.C.

CHECK ONE:

CASE DISPOSED
 GRANTED DENIED

NON-FINAL DISPOSITION
 GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE