

Hunter v Coty, Inc.

2022 NY Slip Op 31145(U)

April 7, 2022

Supreme Court, New York County

Docket Number: Index No. 190326/2020

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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FAYE HUNTER, BENJAMIN HUNTER,

Plaintiff,

INDEX NO. 190326/2020

MOTION DATE 03/01/2022

MOTION SEQ. NO. 004

- v -

COTY, INC.,COTY US, LLC,KOLMAR LABORATORIES, INC.,PFIZER INC.,JOHN DOE 1 THROUGH JOHN DOE 75 (FICTITIOUS), AVON PRODUCTS, INC.,CHANEL, INC.,COLGATE-PALMOLIVE COMPANY (FOR CASHMERE BOUQUET), CYPRUS AMAX MINERALS COMPANY, SUED INDIVIDUALLY, DOING BUSINESS AS, AND AS SUCCESSOR TO AMERICAN TALC COMPANY, METROPOLITAN TALC CO. INC.,CHARLES MATHIEU, INC.,SIERRA TALC COMPANY, UNITED TALC COMPANY, RESOURCE PROCESSORS, INC.,WINDSOR MINERALS INC.,AND VERMONT TALC, CYPRUS MINES CORPORATION INDIVIDUALLY, DOING BUSINESS AS, AND AS SUCCESSOR-IN-INTEREST TO AMERICAN TALC COMPANY, METROPOLITAN TALC CO. INC.,CHARLES MATHIEU INC.,RESOURCE PROCESSORS, INC.,CYPRUS INDUSTRIAL MINERALS COMPANY, ESTEE LAUDER, INC.,WHITTAKER CLARK & DANIELS, INC.

DECISION + ORDER ON MOTION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 004) 191, 192, 193, 195, 200, 201, 202, 203, 209

were read on this motion to/for REARGUMENT/RECONSIDERATION

Upon the foregoing documents, it is hereby ordered that Defendant Chanel, Inc.'s (hereinafter referred to as Chanel) motion to reargue and vacate the Decision/Order of this Court dated February 24, 2022 (hereinafter referred to as the Prior Decision) is granted in part for the reasons set forth below.

In the instant matter, Plaintiff is an 84-year-old mesothelioma patient who brought suit against Chanel for alleged exposure to asbestos. Over the course of two days, Plaintiff testified at her deposition lasting over seven hours. Subsequently, her anxiety condition prevented her from

continuing. Chanel then joined the motions of Whittaker Clark and Daniels, Inc. (hereinafter referred to as WCD) and Colgate Palmolive Company (hereinafter referred to as Colgate) to compel the continuation of plaintiff's testimony or otherwise preclude Plaintiff's testimony already on the record. Defendant Colgate withdrew its motion, and this Court denied WCD's motion to preclude and compel Plaintiff's testimony. Chanel now moves to reargue and vacate the Prior Decision as to the admissibility of the incomplete deposition testimony. Plaintiff opposes and Chanel replies.

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. "A motion for leave to reargue pursuant to CPLR 2221 is addressed to the sound discretion of the court and 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." *William P. Pahl Equip. Corp. v Kassis*, 182 AD2d 22, 27 (1st Dep't 1992), *appeal denied in part, dismissed in part* 80 NY2d 1005 (1992) (internal quotations omitted).

Chanel contends that this Court misapprehended the facts, arguing that defendants did not have a full opportunity to litigate the admissibility of Plaintiff's incomplete deposition testimony with the Special Master, defendants did not have the opportunity to ask the necessary questions to render Plaintiff's deposition transcript admissible, and that the Court confused its ability to resolve discovery with the admissibility of such evidence. According to Chanel, as it did not have an opportunity to cross-examine Plaintiff, preclusion should have been granted. Chanel "sought the Special Master's guidance as to the admissibility of the incomplete deposition transcript and was advised to seek a decision from [this Court]." Affirmation In Support Of Chanel, Inc.'s Motion For Leave To Reargue Pursuant To CPLR 2221(d), p.2, ¶ 4. Chanel further states that as "the onus

[is] on defendants to pursue the completion of a plaintiff's deposition in certain circumstances, defendants are forced to continue to demand the completion of plaintiff's deposition until all defendant's options are exhausted." *Id.* at p.2-3, ¶ 5. Chanel also states that seeking guidance of this Court, as directed by the Special Master, may not be considered frivolous motion practice. Moreover, Chanel contends that this Court misapprehended the law in that Chanel was not afforded the opportunity to cross examine and as such, there was no authority for the Court to admit the incomplete deposition testimony.

Preliminarily, the Court notes that Chanel correctly argues that it did not have the opportunity to cross-examine Plaintiff prior to the unexpected end of her deposition testimony due to her anxiety. As such, Chanel's motion to reargue is granted solely to the extent that this Court will modify the Prior Decision to remove the last sentence of the first paragraph on page 3 of the Prior Decision which reads "[a]lthough WCD's contention that defendants have the right to cross examine is correct, such right has been satisfied given the Plaintiff's appearance and cooperation". Such sentence is hereby vacated. However, the remainder of Chanel's arguments fail.

Here, Chanel "asked the Special Master to compel Mrs. Hunter's continued deposition or, alternatively, to preclude the deposition transcript at trial." Plaintiff's Opposition To Defendant Chanel, Inc.'s Motion For Leave To Reargue Pursuant To CPLR 2221(d), p.7. For the same reasons stated in the Prior Decision, this Court will not subject Plaintiff to additional scrutiny of a deposition when interrogatories are a suitable substitute. Thus, this Court must now address Chanel's argument that the issues of discovery resolution and admissibility were confused. Chanel argues that it did not have the opportunity to cross-examine Plaintiff such that Plaintiff's incomplete deposition transcript is inadmissible at trial pursuant to CPLR §3117. In the Prior Decision, the Court remedied such situation and, in its discretion to resolve discovery disputes and

to order discovery, ordered defendant WCD to complete Plaintiff's deposition by interrogatories. However, rather than comply with the Court's order, and take the opportunity to cross-examine Plaintiff and complete the deposition through interrogatories, Chanel has opted for more motion practice. Here, Chanel has wholly failed to establish that the Court misapprehended the facts or the law in ordering the completion of Plaintiff's deposition testimony through interrogatories.

The Appellate Division, First Department in *Kuriakose v Motor Veh. Acc. Indem. Corp.*, 169 AD3d 502 (1st Dept 2019), held that “[t]he court's discovery order was a provident exercise of discretion, despite the fact that a prior court had denied plaintiff's motion for a protective order seeking a video deposition”. (internal citations omitted). Although Chanel argues that this case is distinguishable from the instant matter, since “the First Department did not determine whether a judge of first instance had the discretion to ignore or modify rules of evidence or CPLR requirements to admit Mrs. Hunter's incomplete deposition testimony at trial” Affirmation In Support Of Chanel, Inc.'s Motion For Leave To Reargue Pursuant To CPLR 2221(d), p.5, in *Kuriakose*, the Appellate Division held that “[t]he court providently fashioned a remedy tailored to the discovery issue at hand where plaintiff. . . [had] difficulties [appearing for a physical deposition].” This is precisely what was done in the Prior Decision. The Court ordered discovery to remedy the discovery issue at hand and to complete Plaintiff's deposition testimony while providing defendants with the opportunity to cross-examine Plaintiff such that the incomplete deposition transcript, along with the interrogatories, would constitute a complete deposition and be admissible at trial. The use of interrogatories gives Chanel the opportunity of inquisition, while protecting the health and welfare of Plaintiff.

Lastly, it is well settled that “unless public policy is affronted, parties to a civil dispute are free to chart their own litigation course”. *Mitchell v New York Hosp.*, 61 NY2d 208, 214 (1984).

Chanel originally moved this Court to compel Plaintiff's deposition or for preclusion, yet Chanel now argues that this Court does not have the authority to make a ruling as to the admissibility of Plaintiff's deposition transcript, as Chanel did not have a full and fair opportunity to litigate whether the testimony is admissible at trial. Notably, Counsel appeared for oral arguments on the prior motion and had the opportunity to submit papers to argue all of the issues raised in its own motion. Having chosen to move to preclude, Chanel cannot now argue that it did not have an opportunity to argue admissibility at trial when Chanel's own motion was the vehicle which brought the admissibility of Plaintiff's deposition transcript to the Court's attention and sought the Court's ruling. Thus, Chanel's arguments fail.

Accordingly, it is

ORDERED that Defendants' motion to reargue this Court's decision of February 24, 2022 is granted solely as to vacate the last sentence of the first paragraph on page 3 of the Prior Decision as indicated above; and it is further

ORDERED that Chanel shall serve interrogatories on Plaintiff within 45 days to complete Plaintiff's deposition; and it is further

ORDERED that failure to complete discovery as ordered herein shall result in the waiver of such discovery; and it is further

ORDERED that, within 20 days of entry, plaintiff shall serve upon Defendant a copy of this decision and order, together with notice of entry.

This constitutes the decision / order of the Court.

4/7/2022
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	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> GRANTED		<input type="checkbox"/> GRANTED IN PART	
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> SUBMIT ORDER	
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE