

Weingrad v Schuster
2022 NY Slip Op 32489(U)
July 25, 2022
Supreme Court, New York County
Docket Number: Index No. 655390/2017
Judge: Debra A. James
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. DEBRA JAMES

PART 59

Justice

-----X

STEPHEN WEINGRAD,

Plaintiff,

- v -

HOWARD SCHUSTER,

Defendant.

-----X

INDEX NO. 655390/2017

MOTION DATE 10/20/2021

MOTION SEQ. NO. 002 003

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81

were read on this motion to/for REARGUMENT/RECONSIDERATION.

The following e-filed documents, listed by NYSCEF document number (Motion 003) 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107

were read on this motion to/for AMEND CAPTION/PLEADINGS.

ORDER

Upon the foregoing documents, it is

ORDERED that plaintiff's motion for reargument/renewal of the Order dated March 31, 2021 pursuant to CPLR 2221 (Motion Sequence Number 002) is DENIED; and it is further

ORDERED that plaintiff's motion for leave to amend the complaint herein is granted, and the second amended complaint in the proposed form annexed to the moving papers (NYSCEF Document Number 90) shall be deemed served upon service of a copy of this order with notice of entry thereof; and it is further

ORDERED that the defendant shall serve an amended answer to the second amended complaint (NYSCEF Document Number 90) or otherwise respond thereto within thirty (30) days from the date of such service; and it is further

ORDERED that defendant's cross-motion (Motion Sequence Number 3) is GRANTED to the extent that counsel are directed to post on NYSCEF a proposed discovery compliance conference order or competing proposed discovery compliance conference order(s), including a proposed condition directive pursuant to CPLR § 3126 and/or 22 NYCRR 202.27, at least two days before August 23, 2022, at which time counsel shall appear via Microsoft Teams, unless such appearance be waived by the court.

DECISION

Motions Sequence Numbers 002 and 003 are hereby consolidated for disposition.

Plaintiff's motion to reargue the Order dated March 31, 2021 (Motion Sequence Number 002), which denied his prior motion to amend his complaint (Motion Sequence Number 001) must be denied. Plaintiff does not state what facts or law this court overlooked. To the extent that plaintiff seeks to renew, he has not offered a reasonable excuse as to why the new evidence was not submitted on the original application. See Jones v City of New York, 146 AD3d 690 (1st Dept 2017).

Plaintiff's second amended complaint, though misfiled as a Notice of Motion on NYSCEF (Document Number 90) does name his law firm, a necessary party based upon plaintiff's allegations that "[t]he Plaintiff, personally and through Weingrad & Weingrad, P.C. made four loans to the individual Defendant" (NYSCEF Document Number 90, p 20, Second Amended Complaint, ¶ 7.) Thus, to the extent that plaintiff moves to amend the complaint to add an additional plaintiff and an additional defendant (Motion Sequence Number 003), such motion shall be granted.

Defendant cross moves to strike plaintiff's pleadings for the latter's failure to comply with a discovery order and discovery demands, and opposes plaintiff's application to amend his pleadings, which motion is enumerated as motion sequence number 003. In opposition to plaintiff's motion sequence numbers 002 and 003, defendant also argues that plaintiff's proposed amended claims lack merit based on irrefutable documentary evidence and as untimely. Given the procedural morass on both sides, with their treatment of plaintiff's second amended complaint, as a notice of motion, at this juncture, the court declines to reach the issue of the timeliness of the second amended pleadings, the applicability or inapplicability of the relation back doctrine, and/or the existence (or non-existence) of a prior claim upon which the second amended claims

can relate back. Therefore, plaintiff's motion to amend the complaint is granted, without prejudice to defendant's moving pre-answer to dismiss the second amended complaint on statute of limitations or any other grounds pursuant to CPLR 3211.

Debra A. James
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<u>7/25/2022</u>			<u>DEBRA JAMES, J.S.C.</u>	
DATE				
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART
			<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	REFERENCE