

Swezy v Merrill Lynch, Pierce, Fenner & Smith, Inc.
2022 NY Slip Op 33127(U)
September 19, 2022
Supreme Court, New York County
Docket Number: Index No. 155600/2013
Judge: Andrew S. Borrok
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 53

-----X

OSQUGAMA F SWEZY, JOSE DURAN, ON THEIR
BEHALF AND AS RESPRESTATIVES OF A CLASS OF
JUDGMENT CREDITORS OF THE ESTATE OF
FERDINAND E. MARCOS,

Petitioner,

- v -

MERRILL LYNCH, PIERCE, FENNER & SMITH
INCORPORATED, NEW YORK CITY DEPARTMENT OF
FINANCE,

Respondent.

-----X

INDEX NO. 155600/2013
MOTION DATE N/A
MOTION SEQ. NO. 011

**DECISION + ORDER ON
MOTION**

HON. ANDREW S. BORROK:

The following e-filed documents, listed by NYSCEF document number (Motion 011) 209, 210, 211, 212, 213, 214, 215, 216, 217, 219, 220, 221

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

Upon the foregoing documents, the Proposed Intervenors’ motion for leave to reargue or renew the Court’s Decision and Order dated March 31, 2022 (the **Prior Decision**; NYSCEF Doc. No. 208) must be denied because (i) the Court did not overlook or miscomprehend any matters of law or fact in determining the Prior Decision and (ii) there are no new issues of fact that would change the Court’s determination in the Prior Decision. Terms used but not otherwise defined herein shall have the meaning ascribed to them in the Prior Decision.

A motion for leave to reargue must be based on matters of fact or law allegedly overlooked or misapprehended by the Court in determining the prior motion but cannot include any matters of fact not offered on the prior motion (CPLR 2221[d]). A motion for leave to renew must be based on new facts not offered on the prior motion that would change the Court’s determination on the

prior motion or would demonstrate that there has been a change in the law that would change the prior determination and must contain reasonable justification for the failure to present such facts on the prior motion (CPLR 2221[e]).

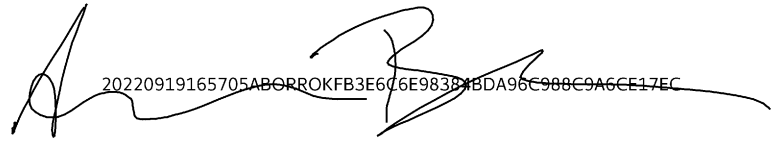
The Proposed Intervenors incorrectly argue that the Court improperly relied on its Decision and Order dated April 4, 2019, wherein it denied the Petitioners' motion to lift the stay in this case in determining the Prior Decision. The decision not to lift the stay was not determinative of the Prior Decision. In the Prior Decision, the Court held that (i) it was appropriate for the Proposed Intervenors to demonstrate standing to intervene in the Federal Enforcement Action, not here, and (ii) that the decision by the DC Federal Court to deny the Proposed Intervenors' motion to intervene in the Federal Enforcement Action underscored why the decision not to lift the stay was correctly decided (NYSCEF Doc. No. 208, at 3). In other words, because the Court has now twice determined that the court of primary jurisdiction is the federal court hearing the Federal Enforcement Action, a lift of the stay in this case while the Federal Enforcement Action is still pending is inappropriate. This is true whether the sought lift of the stay is temporary or permanent. Nor was the Court mistaken in determining that the Proposed Intervenors were forum shopping in seeking to intervene here before they addressed the DC Federal Court's concern that they lacked standing. That the Estate of Roger Roxas has now demonstrated standing and successfully intervened in the Federal Enforcement Action does not make the Court's statement in the Prior Action mistaken.

The Court also did not overlook or misapprehend any issues of fact in deciding that intervention was improper pursuant to CPLR 1012 or 1013. The Proposed Intervenors mistakenly argue that

they did identify statutes that permit them to intervene as a matter of right pursuant to CPLR 1012. The statutes they cite explicitly provide that the court may permit intervention. These statutes may support intervention pursuant to CPLR 1013 but did not confer the right to intervene on the Proposed Intervenors. Finally, the Court did not permit intervention pursuant to CPLR 1013 because the Court did not find it appropriate to lift the stay while the Federal Enforcement Action was pending and directed the Proposed Intervenors to seek to demonstrate standing in the Federal Enforcement Action. The Court did not misapprehend any issues of fact or law and the motion for leave to reargue is denied.

The motion to renew must also be denied. The Proposed Intervenors argue that their motion for leave to renew should be granted because Southern District of New York court allowed the Estate of Roger Roxas to intervene in the Federal Enforcement Action. This is not a new fact that would change the Court's determination in the Prior Decision. In fact, in the Prior Decision the Court instructed the Proposed Intervenors to demonstrate their standing in the Federal Enforcement Action, not in this proceeding. That the Estate of Roger Roxas was able to intervene while Golden Budha Corporation was not because it did not timely move is not a basis to reargue the Prior Decision. The Proposed Intervenors' intervention in the Federal Enforcement Action may ultimately provide a basis for subsequent intervention in this case when the stay is lifted. It is not a sufficient basis to reargue the Prior Decision and the motion for leave to renew must be denied.

It is hereby ORDERED that the Proposed Intervenors' motion for leave to reargue or renew is denied.



20220919165705ABORROKFB3E606E983B48DA96C988C9A6CE17EC

9/19/2022

DATE

ANDREW S. BORROK, 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