

<b>Kitchen Winners NY Inc. v Triptow</b>
2022 NY Slip Op 33485(U)
October 3, 2022
Supreme Court, Kings County
Docket Number: Index No. 500699/2022
Judge: Leon Ruchelsman
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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS : CIVIL TERM: COMMERCIAL PART 8

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KITCHEN WINNERS NY INC.,

Plaintiff, Decision and order

- against -

Index No. 500699/2022

DAVID TRIPTOW and TT RED SOLUTIONS, LLC,  
Defendants,

October 3, 2022

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PRESENT: HON. LEON RUCHELSMAN

The defendant has moved pursuant to CPLR §2221 seeking to renew and reargue a decision and order dated April 26, 2022 which granted summary judgement in lieu of a complaint and denied a cross-motion seeking a stay. The plaintiff has opposed the motion. Papers were submitted by the parties and arguments held. After reviewing all the arguments this court now makes the following determination.

As recorded in a prior order, in February 2021 the plaintiff entered into agreements with non-parties Humpf Industrial Company Limited and Legeld Sport Limited for the purchase of disposable medical examination gloves. On February 8, 2021 the defendant executed a guaranty promising to pay the plaintiff \$450,000 in the event the goods were not delivered on time. The defendants have paid \$50,000 thus the plaintiff seeks recovery of \$400,000 and moved seeking summary judgement in lieu of a complaint. The court granted that motion noting there were no questions of fact the money was owed. The court further denied a stay on the grounds there was no evidence presented that an ongoing lawsuit

in China involved the same parties and that permitting this lawsuit to continue would enable the plaintiff to collect the same debt twice. The defendants have now moved seeking to renew and reargue that determination and present new evidence that demonstrates it is clear the plaintiff is a party to a lawsuit in China and that consequently this matter should be stayed until that lawsuit is resolved.

Conclusions of Law

It is true that generally, a motion to renew must contain evidence that existed at the time the original motion was filed but was unknown to the moving party (Brooklyn Welding Corp., v. Chin, 236 AD2d 392, 653 NYS2d 631 [2d Dept., 1997]). However, that rule has been defined as 'flexible' and a party may file a motion to renew even if the evidence was known at the time of the original motion provided the party offers a reasonable explanation why the additional facts were not included within the original motion (Progressive Northeastern Insurance Company v. Frenkel, 8 AD3d 390, 777 NYS2d 652 [2d Dept., 2004]).

The court already concluded that a lawsuit in China between T-Z Cargo Company Ltd., as the plaintiff and Textile Printing and Dyeing Company Ltd., as the defendant does not warrant a stay of this proceeding because there is no evidence that Kitchen Winners is a party to that lawsuit. The unsigned letter from the legal

representative and CEO of T-Z Cargo Company does not raise any questions of fact warranting revisiting the issue. That letter states that T-Z Cargo Company and Kitchen Winners and TT Red Solutions all agreed that T-Z Cargo, a Chinese company with the ability to maintain standing in China, commence an action against Textile Printing and Dyeing Company Ltd. The letter further states that "T-Z further agreed with TT RED and Kitchen Winners that once T-Z receives the judgment amount in the China suit, T-Z will retain same for and on behalf of Kitchen Winners for current and future payment obligations" (see, Letter [NYSCEF Doc #37]). Thus, according to an unsigned and unauthenticated letter the plaintiff and the defendant in this case both agreed to allow another entity to secure funds owed to Kitchen Winners. That curious assertion is not supported by any affidavit from any party in this case. Thus, the defendants have not supported this assertion at all. The affidavit of Mr. Triptow never affirmatively states that his entity conspired with Kitchen Winners and T-Z Cargo to sue another entity of behalf of Kitchen Winners. Further, the affidavit fails to explicitly state the two actions are for the identical goods. The plaintiff, it must be noted, disputes the entire scheme. Thus, the letter, of dubious origin, cannot possibly raise any questions whether a lawsuit in China concerns the same goods as this lawsuit when no party in this lawsuit has made such an assertion. Moreover, the

letter itself states that Kitchen Winners was owed money for "different work" (id) further undermining the assertion the letter addresses the same goods as this current lawsuit.

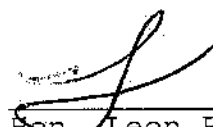
Therefore, the defendants have failed to present any basis why the prior decision should be revisited and consequently, the motion seeking reargument or renewal is denied.

The plaintiff's request for attorney's fees in the amount of \$35,000 inclusive of disbursements is granted. The guaranty provides for such fees and the defendant has failed to present any evidence why such provisions of the guaranty should not be honored.

So ordered.

ENTER:

DATED: October 3, 2022  
Brooklyn N.Y.

  
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Hon. Leon Ruchelsman  
JSC