

Cooke v Greenhouse Hudson, LLC
2022 NY Slip Op 35247(U)
October 28, 2022
Supreme Court, Columbia County
Docket Number: Index No. E012022018190
Judge: Henry F. Zwack
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STATE OF NEW YORK
SUPREME COURT

COUNTY OF COLUMBIA

ERIN GOLDMAN COOKE,

Plaintiff,

-against-

GREENHOUSE HUDSON, LLC, GREEN STREET FLORAL, LLC,
JENNIFER MOJO, individually as aider and abettor, and DAVID
MOJO, individually as aider and abettor,

Defendants.

GREEN STREET FLORAL, LLC,

Third-Party Plaintiff,

-against-

ERIN GOLDMAN COOKE,

Counterclaim Defendant,

-and-

G.G. & G. FLOWER CO., LLC and
DARRYN COOKE,

Third-Party Defendants.

All Purpose Term

Hon. Henry F. Zwack, Acting Supreme Court Justice Presiding
Index No. E012022018190

Appearances:

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DECISION/ORDER**Zwack, J.:**

The plaintiff and third Party Defendant Erin Goldman Cooke (“Cooke”) now moves pursuant to CPLR 2221(d) to reargue the Court’s August 30, 2022 Decision and Order of this Court dated August 30, 2022, which denied her motion to dismiss the counterclaims and third party claims made by Third Party Plaintiff Green Tree Floral, LLC. Defendants Greenhouse, LLC (“Greenhouse”), Green Street Floral (“Green Street”) and David Mojo (“Mojo”) and collectively “Defendants” oppose.

For the reasons that follow the Court denies the motion to reargue in its entirety.

Here, the Court is mindful that a “motion for leave to reargue is addressed to the sound discretion of the motion court” (*Fein v Fein*, 192 AD3d 1083 [2d Dept 2021]), and the “motion must be based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion, but shall not include any matters of fact not offered on the prior motion” (*A.R. Conelly, Inc. v New York City Charter High School for Architecture, Engineering and Construction*, 206 AD3d 787 [2d Dept 2022]). Reargument is simply not another chance for any litigant to reargue an issue previously decided by the Court (*Pro Brokerage v Home Ins. Co.*, 99 AD2d 971 [1st Dept 19984]); nor is it “designed to

provide an unsuccessful party with successive opportunities to present argument different from those originally presented” (*Amato v Lord & Taylor, Inc.*, 10 AD3d 374, 374 [2d Dept 2004], citations omitted).

Albeit Cooke now argues that the Court misapprehended the language set forth in the Post-Closing Employment Agreement, she continues to argue that Greenhouse Hudson LLC could not assign its interest in the corporation to Green Tree Floral without her permission, which she did not give. Paragraph 13 of the Agreement provides that the Seller, *Cooke*, could not assign any rights under the post-employment agreement without permission of the Company, which is Greenhouse Hudson. Conversely, if Greenhouse Hudson “merged or consolidated into or with any other entity” then “this Agreement may be assigned without consent of the Seller.” To be clear, the Seller is *Cooke*. Basically, the agreement prohibits only the Seller *Cooke* from assigning her rights under the post-closing employment agreement to any one else. The purchasers were expressly preserving their rights to have Cooke run the business until they were able to take over. Cooke had no rights with respect to Greenhouse Hudson’s transfer and assignment of G.G. & G. d/b/a Rosery Flower Shop to Green Street Floral.

With respect to the portions of the motion to reargue which deal with the Court’s failure to dismiss the counterclaims against Erin Goldman Cooke, the Court has reviewed her arguments and finds them to be unavailing — again

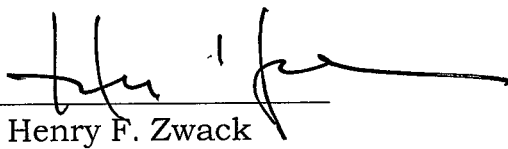
noting that in a pre-disclosure motion to dismiss, the plaintiff must “only demonstrate that facts ‘may exist’.. (and it) need not be demonstrated that they *do exist*” (*Peterson v Spartan Indus.*, 33 NY2d 463, 466 [1974]).

Accordingly, it is hereby

ORDERED, the motion to reargue is denied.

This constitutes the Decision and Order of the Court. This original Decision and Order is filed by the Court with NYSCEF, which does not constitute entry or filing under CPLR 2220. Counsel is not relieved from the applicable provisions of this rule with regard to filing, entry and Notice of Entry.

Dated: October 28, 2022
Troy, New York


Henry F. Zwack
Acting Supreme Court Justice

Papers Considered, as filed with NYSCEF:

1. Documents #35 through #42;
2. Document #45.