

Joseph v Rassi

2023 NY Slip Op 31261(U)

April 17, 2023

Supreme Court, Kings County

Docket Number: Index No. 510914/2016

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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ADAM JOSEPH, individually and as Member of
Legs Media, LLC and Milk Agency, LLC,
Plaintiff,

Decision and order

- against -

Index No. 510914/216

MAZDACK RASSI, individually and as
Member of Legs Media, LLC and
Milk Agency, LLC; MOISHE MANA, individually
and as Member of Legs Media, LLC and
Milk Agency, LLC; EREZ SHTERNLICHT,
individually and as Member of Legs Media, LLC
and Milk Agency, LLC; MILK STUDIOS, LLC;
LEGS MEDIA, LLC; MILK AGENCY, LLC;
MILK MAKEUP, LLC; MILK MAKEUP HOLDINGS,
LLC; MILK MAKEUP MANAGEMENT, LLC; and
SCOTT SASSA,

Defendants,

April 17, 2023

-----x
PRESENT: HON. LEON RUCHELSMAN

Motion Seq. #17

The plaintiff has moved seeking to reargue a decision and order dated December 7, 2022 which denied plaintiff's motion seeking disqualification of defendant's counsel. The defendants oppose the motion. Papers were submitted by the parties and after reviewing all the arguments this court now makes the following determination.

First, factual inaccuracies, if any, that do not have any bearing on the legal conclusions reached is not grounds to reargue a determination. Moreover, any facts the court recited in its earlier decision are not law of the case and do not bind any party to them.

Thus, a motion to reargue must be based upon the fact the

court overlooked or misapprehended fact or law or for some other reason mistakenly arrived at in its earlier decision (Deutsche Bank National Trust Co., v. Russo, 170 AD3d 952, 96 NYS2d 617 [2d Dept., 2019]).

The New York Rules of Professional Conduct, Rule 1.7(a)(1) (22 NYCRR §1200.0 et. seq.) states that "a lawyer shall not represent a client if a reasonable lawyer would conclude that ... the representation will involve the lawyer in representing differing interests" (id). The plaintiff argues that Mr. Schulman as counsel for various defendants maintains a conflict due to the fact the plaintiff is also a member of these entities. Further, the mere fact Mr. Schulman is not counsel of record does not alter this reality. The crux of plaintiff's motion is that "Schulman, the entities' In-House Counsel is favoring both the Controlling Members and those entities - all at Joseph's expense because it is profitable for him to do so" (see, Affirmation in Support of Motion ¶24 [NYSCEF Doc. No. 353]). However, as noted in the prior decision, there is no evidence presented that Mr. Schulman represents any party in this litigation. Indeed, Mr. Schulman has provided an affidavit which states that "as in-house counsel, I do not "represent" the Milk Companies in this action. I have not filed a notice of appearance with the Court and I do not intend to do so. I am not trial counsel and I will not advocate before the Court trial or at any other time" (see,

Affidavit of Daniel Schulman, ¶¶35, 36 [NYSCEF Doc. No. 368]).

The plaintiff argues that notwithstanding Ms. Schulman's concession he must still be disqualified because "he is nonetheless presently actively engaged as legal counsel "for the Milk Companies" (including Legs Media and Milk Agency), presently provides "legal advice to [all of] the Milk Companies in connection with all aspects of their businesses", including "serve[ing] as a liaison with outside counsel" in this case" (see, Affirmation in Support, ¶33 [NYSCEF Doc. No. 405]). Those representations, also quoted from Mr. Schulman's affidavit do not contradict his further assertion he is not involved in this litigation at all. There can be no disqualification of counsel that does not represent the party in the litigation at stake. There can be further no disqualification of in-house counsel merely because such counsel may be disqualified if they were litigation counsel. Indeed, the court does not anticipatorily disqualify lawyers that really have no connection to the actual litigation facing the court. The mere fact Mr. Schulman is in-house counsel for the Milk entities cannot be a basis upon which he can be disqualified. To be sure, the court has no authority to "disqualify" an attorney in matters not subject to its jurisdiction. There is thus no dispute that Mr. Schulman has no legal role to play in this litigation and thus the court has no authority to disqualify him at all. The fact that he continues

to represent the Milk entities in matters not affecting this litigation cannot be a basis for disqualification. As noted, the court does have the power or authority to so disqualify such counsel.

Therefore, based on the foregoing, the motion seeking reargument is denied.


Concerning the motion seeking to reargue the court's determination regarding the privilege log the plaintiff does not provide any new arguments not already presented and does not provide any basis why the court's decision should be altered other than unhappiness with the result. That is an improper basis upon which to seek reargument. The court noted that categorical designation are preferred and that the plaintiff failed to present evidence why a document by document production should be employed. Upon reargument the plaintiff has failed to present any new argument not considered by the court.

Therefore, the motion seeking to reargue that determination is denied as well.

So ordered.

ENTER:

DATED: April 17, 2023
Brooklyn NY



Hon. Leon Ruchelsman
JSC