

**KLG Jewelry LLC/KLG Jewelry N.Y. LLC v
706 Madison LLC**

2023 NY Slip Op 33323(U)

September 26, 2023

Supreme Court, New York County

Docket Number: Index No. 160854/2017

Judge: W. Franc Perry

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. WILLIAM FRANC PERRY PART

Justice

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KLJ JEWELRY LLC/KLJ JEWELRY NEW YORK LLC
D/B/A DE GRISOGONO USA, INC.,

Plaintiff,

INDEX NO. 160854/2017

MOTION DATE 12/02/2022

MOTION SEQ. NO. 002

- v -

706 MADISON LLC,FRIEDLAND PROPERTIES,
INC.,TRANSPARENT CONSTRUCTION LLC,JRM
CONSTRUCTION MANAGEMENT, LLC,SCALPEL
CONSTRUCTION INC.,SCALPEL CONTRACTING,
INC.,JOHN DOE CONTRACTOR CORPORATIONS 1-10,
JOHN DOE SUBCONTRACTOR CORPORATIONS 1-10,
VALERIE TRESNOWSKE, RICHARD TRESSAN, ALICE
HUBRECHT WALKER, ARTICLE 2 TRUST UNDER
RICHARD TRESSAN FAMILY TRUST U/A 4/3/17,
CHARLES TRESSAN, ALICE HUBRECHT WALKER,
ARTICLE 2 TRUST UNDER CHARLES TRESSAN FAMILY
TRUST U/A 4/3/17, 700 MADISON PARTNERS
LLC,UNITED DRILLING, INC.,

Defendant.

-----X

SCALPEL CONSTRUCTION INC., SCALPEL CONTRACTING,
INC.

Plaintiff,

-against-

UNITED DRILLING, INC.

Defendant.

-----X

DECISION + ORDER ON MOTION

Third-Party
Index No. 595391/2018

The following e-filed documents, listed by NYSCEF document number (Motion 002) 139, 140, 141, 142,
143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 162, 166, 167, 168,
169, 170, 171, 172, 173, 174, 176

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

Upon the foregoing documents, it is

On November 9, 2022 Defendant, 706 MADISON PARTNERS LLC, FRIEDLAND PROPERTIES, INC., TRANSPARENT CONSTRUCTION LLC and JRM CONSTRUCTION MANAGEMENT, LLC moved for an order pursuant to CPLR §2221(d) and (e) for leave to reargue and renew the Court's decision dated October 3, 2022 and filed with notice of entry on October 11, 2022. On January 3, 2023, the Defendants, Scapel Construction, Inc. and Scapel Contracting, Inc. ("Scapel") filed an affirmation in support of the November 9, 2022 CPLR §2221(d) and (e) motion for leave to reargue and renew.

The Court's October 3, 2022 order granted the Plaintiff's motion to amend the caption and pleadings in this matter from "KLG Jewelry LLC" to "KLG Jewelry LLC/KLG New York LLC d/b/a De Grisogono". In opposition to such motion, Defendants argued that they would be prejudiced by the amendment because KLG New York LLC and De Grisogono are separate, distinct corporations, De Grisogono is bankrupt, and that the testimony of David Klein was insufficient to establish Plaintiff's entitlement to amend its own name. (Scapel Opp. at 1-3; 706 Madison Opp. at 1-6).

Pursuant to CPLR §2221(d), a motion for leave to reargue must be based upon matters of fact or law allegedly overlooked or misapprehended by the Court in determining the prior motion that would change the prior determination. *See Sheridan v. Very, Ltd.*, 56 A.D.3d 305 (1st Dept. 2008). Absent mistake on the Court's part, the Court must adhere to its original decision. *William P. Pahl Equip. Corp. v. Kassiss*, 182 AD2d 22, 27, 588 N.Y.S.2d 8 [1st Dept. 1992], lv dismissed in part and denied in part 80 NY2d 1005, 592 N.Y.S.2d 665 [1992]). "Re-argument is not designed to afford the unsuccessful party successive opportunities to once again argue issues previously decided . . . or to present arguments different from those originally asserted" (*William*

P. Pahl Equip. Corp. v. Kassis, id.; Matter of Setters v. AI Props. & Devs. (USA) Corp., 139 A.D.3d 492, 32 N.Y.S.3d 87 (1st Dept. 2016).

A CPLR § 2221(e) motion for leave to renew is based on new facts not included in the underlying motion and such motion must include reasonable justification for not including such facts in the underlying motion. *See* CPLR § 2221(e). Renewal is granted sparingly, “it is not a second chance freely given to parties who have not exercised due diligence in making their first factual presentation” *See Beiny v. Wynyard (In re Beiny)*, 132 A.D.2d 190 (1987).

In the instant motion, the Defendants seek to have the Court reverse its October 3, 2022 order and deny the Plaintiff’s original motion to amend the caption in this matter and request the Court to now find that there was failure on the part of De Grisogono to disclose this action in its Chapter 7 Bankruptcy petition thus requiring dismissal of the entire complaint with prejudice pursuant to CPLR §3212.

Upon receipt and review of the CPLR §2221(d) and (e) motion for leave to reargue and renew and consideration of all arguments submitted in support of such motion and submitted in opposition to such, the Court affirms its October 9, 2022 order allowing the Plaintiff to amend the caption and pleadings from KLG Jewelry LLC” to “KLG Jewelry LLC/KLG New York LLC d/b/a De Grisogono”. This Court granted the motion finding that “[i]n general, leave to amend should be freely granted in the absence of prejudice or surprise, upon showing that the proposed amendment has merit.” *Centrifugal Assocs., Inc. v. Highland Metal Indus., Inc.*, 193 AD2d 385, 385 [1st Dept 1993].) The Court also noted that pursuant to CPLR 2001, “[a]t any stage of an action, a court may permit a mistake, omission, defect or irregularity to be corrected upon such terms as may be just.” (*Pinto v House*, 79 AD2d 361, 365 [1st Dept 1981].) The Court found that

Defendants had failed to adequately allege specific prejudice that they would suffer as a result. *Chambers v Prug*, 162 AD3d 974, 975 [2d Dept 2018].

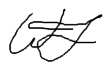
In the instant CPLR § 2221(d) and (e) motions, the Defendants have not pointed to any facts that were overlooked here. Instead, they reiterate De Grisogono's bankruptcy filing and cite newly obtained documents from the bankruptcy filing that were available to the Defendants but not sought out or obtained by them during the pendency of the underlying motion.

The Defendants are now arguing for outright dismissal of this action on these newly obtained documents from the bankruptcy action of De Grisogono. The Defendants were able to obtain these documents at the time of the underlying motion and do not provide any facts of why they neglected to do such. Based on these newly obtained documents from the bankruptcy action, the Defendants argue that the case must be dismissed as De Grisogono did not list this lawsuit in its bankruptcy proceeding which was filed on February 10, 2020 and concluded in April 2022. It must be noted that the instant matter was filed in 2017 and the motion to amend the caption was made on March 7, 2022 and decided on October 9, 2022. The Defendants also argue for dismissal because the Plaintiff's motion to amend did not disclose that De Grisogono's bankruptcy filing did not list the instant matter.

A CPLR §2221(d) and (e) motion for leave to reargue and renew is not the proper vehicle to now argue for the first time for outright dismissal of the instant proceeding due to new documentation of what was not disclosed in a bankruptcy proceeding of an entity that was added as a d/b/a of the Plaintiff, KLG, in the caption and pleadings. Whether De Grisogno should have known of the current litigation and should have listed it in its bankruptcy petition and whether not doing so must result in dismissal of this entire matter with prejudice, is a new issue that

cannot be decided in a CPLR §2221(d) and (e) motion to reargue and renew the Court’s October 3, 2022 order amending the caption and pleadings in this matter.

Thus, the Defendants CPLR §2221(d) and (e) motion for leave to reargue and renew must be denied. This constitutes the decision and order of this Court.

<u>09/26/2023</u> DATE		 WILLIAM FRANC PERRY, J.S.C.
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
	<input type="checkbox"/> GRANTED <input checked="" type="checkbox"/> DENIED	<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