

**Pursuit Credit Special Opportunity Fund, L.P. v
KrunchCash, LLC**

2023 NY Slip Op 34232(U)

November 28, 2023

Supreme Court, New York County

Docket Number: Index No. 651070/2022

Judge: Joel M. Cohen

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 03M

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PURSUIT CREDIT SPECIAL OPPORTUNITY FUND, L.P., <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">- v -</p> KRUNCHCASH, LLC, KC PCRD FUND, LLC, JEFFREY HACKMAN, KC CA FUND, LLC, <p style="text-align: center;">Defendants.</p>	<table border="0"> <tr> <td>INDEX NO.</td> <td><u>651070/2022</u></td> </tr> <tr> <td>MOTION DATE</td> <td><u>N/A, N/A</u></td> </tr> <tr> <td>MOTION SEQ. NO.</td> <td><u>009 010</u></td> </tr> </table> <p style="text-align: center;">DECISION + ORDER ON MOTION</p>	INDEX NO.	<u>651070/2022</u>	MOTION DATE	<u>N/A, N/A</u>	MOTION SEQ. NO.	<u>009 010</u>
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HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 009) 349, 350, 351, 355, 361, 362, 363, 364, 365, 366, 367
were read on this motion to RENEW/REARGUE.

The following e-filed documents, listed by NYSCEF document number (Motion 010) 352, 353, 354, 356, 357, 358, 359, 360, 368
were read on this motion to RENEW/REARGUE.

The parties move to reargue/renew portions of this Court’s October 4, 2023 Decision and Order on Mot. Seq. 004 (the “October 2023 Order”) (NYSCEF 335) pursuant to CPLR § 2221, albeit on different and narrow grounds.

Defendants KrunchCash, LLC, KC PCRD Fund, LLC, Jeffrey Hackman, Sean McGhie PLC (collectively, “KrunchCash” or “Defendants”) move to renew and reargue the amount of legal fees and expenses awarded to Plaintiff and also seek a stay of enforcement of that award pending appeal (Mot. Seq. 009). Plaintiff Pursuit Credit Special Opportunity Fund, L.P. (“Pursuit” or “Plaintiff”) moves to modify the October 2023 Order to correct a factual error regarding the percentage of documents that were produced in discovery from its DropBox files

(Mot. Seq. 010). For the following reasons, Defendants' motion is granted in part, and Plaintiff's motion is granted.

CPLR 2221(a) provides that, within 30 days after notice of entry of the Court's Sanctions Order, "[a] motion for leave to renew or to reargue a prior motion, for leave to appeal from, or to stay, vacate or modify, an order shall be made, on notice, to the judge who signed the order[.]" (*id.*). Under CPLR 2221(d), "[a] motion for leave to reargue ... shall 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." However, "[r]eargument is not designed to afford the unsuccessful party successive opportunities to reargue issues previously decided or to present arguments different from those originally asserted" (*William P. Pahl Equip. Corp. v Kassis*, 182 AD2d 22, 27 [1st Dept 1992]).

A. Defendants' Motion

The branch of Defendants' motion seeking to challenge the amount of attorney's fees awarded in the October 2023 Order is denied. Contrary to Defendants' argument, an evidentiary hearing is not required for the Court to award attorney's fees and costs, rather there only needs to be a reasonable opportunity to be heard (*Martinez v Estate of Carney*, 129 AD3d 607, 609 [1st Dept 2015] ["Rule 130-1.1 does not require a full evidentiary hearing, but states that attorney's fees and costs may be awarded "after a reasonable opportunity to be heard," and that "[t]he form of the hearing shall depend upon the nature of the conduct and the circumstances of the case"]).

Here, in support of its fee application in Mot. Seq. 004, Plaintiff's counsel submitted an affirmation summarizing the fee application, including the hourly rates charged to Pursuit for this action; background of counsel; the number of hours incurred by Slarskey and Weiss as of the date of the submission; and authority to support its claim that the rates charged were reasonable

compared to comparable counsel in the jurisdiction (NYSCEF 216 ¶ 45-50). And while Plaintiff did not submit its contemporaneous billing records, Plaintiff offered to provide them to Court, if required (*id.* at ¶ 51). Defendants did not contest Plaintiff’s fee application, nor did they request a hearing on the application or any additional documents. The time to do so was when the motion was pending, not on a motion to renew or reargue.¹ In sum, Defendants have failed to demonstrate that there are “matters of fact or law” that were “overlooked or misapprehended by the court.” The Court has considered Defendants’ other arguments in support of reargument and finds them unavailing.

However, the branch of Defendants’ motion seeking a stay pursuant to CPLR 5519(c) is granted. Under CPLR §5519(c) this Court “may stay all proceedings to enforce the judgment” pending appeal. As the Court noted in its October 2023 Order, “[t]he parties have not cited (and the Court has not found) any precedent or guidance that directly addresses this vexing and concerning fact pattern” at issue in this case. Although the Court remains confident in its conclusions, the novelty of the issue does present some ground for awaiting appellate review (which Defendant have represented they will seek promptly) before requiring enforcement of the order (*see, e.g.*, 10A Carmody-Wait 2d § 70:269 [factors to be considered when granting a discretionary stay include where “the Appellate Division in the department has never passed

¹ Defendants’ argument that they could not assert their arguments with respect to Plaintiffs’ fees until after reviewing the October 2023 Order – which denied Plaintiffs’ motion in part – is unpersuasive. The Court ordered compensation of Plaintiffs’ fees with knowledge that it did not grant Plaintiff all of the relief it had requested in its motion (the portion that was denied was denied without prejudice). But for the offending conduct, or if Defendants had simply returned the improperly downloaded files without requiring extensive motion practice to do so, Plaintiff would not have had to pursue the underlying motion. In light of that conduct, the Court exercised its discretion to award the costs Plaintiff expended in connection with litigating the motion.

upon the question involved”]; *Pierne v Valentine*, 179 Misc 114, 116 [Sup Ct 1942] [“[S]ince the question here presented is of first impression, a stay is granted to the petitioners pending appeal to the Appellate Division”], *revd on other grounds*, 266 AD 70 [2d Dept 1943], *mod*, 291 NY 333 [1943]). Under the circumstances, the Court exercises its discretion under CPLR 5519(c) to stay enforcement of the sanction award pending appeal, without the requirement of an undertaking, on the condition that Defendants perfect their appeal within 45 days of this decision and order.

B. Plaintiff’s Motion

As to Plaintiff’s motion, it is granted to modify a specific reference in the October 2023 Order to the percentage of documents that were purportedly produced in discovery from Pursuit’s DropBox files. Specifically, the Order states: “Although Plaintiff initially sought a protective order with respect to all documents and information obtained by Defendants through DropBox (NYSCEF 160), since that time Plaintiff confirmed that it has produced 92 percent of those same documents through discovery and the other 8 percent Defendants do not seek to use (NYSCEF 283 [“Tr. May 11, 2023”] at 81–82; 89:3-5)” (NYSCEF 335 at 10-11).

Plaintiff argues that the “92 percent” number is inaccurate and was asserted by Defendants without support in their sur-reply. Although there was some confusion around this issue during oral argument, and the Court believed that Plaintiff’s counsel confirmed that number (NYSCEF 283 at 81-82), Plaintiff has pointed out that its counsel walked back that confirmation later in the hearing (*id.* at 94). Although it does not impact the substance of the Court’s ruling, in

order to avoid any confusion in the record going forward, the bottom paragraph on page 10 of the Order is modified to state:

“Pursuit’s motion for a protective order is granted in part. Although Plaintiff initially sought a protective order with respect to all documents and information obtained by Defendants through DropBox (NYSCEF 160), Plaintiff subsequently produced a subset of those documents – which it concluded were relevant and non-privileged – in the ordinary course of discovery (NYSCEF 283 [“Tr. May 11, 2023”] at 94) and Defendants do not seek to use the remaining documents (*id.* at 89:3-5; 94:6-8; NYSCEF 268 at 15).” The October 2023 Order otherwise remains unchanged.

Accordingly, it is

ORDERED that Defendants’ motion to renew and reargue (Mot. Seq. 009) is **GRANTED IN PART**, and the enforcement of the sanctions award is **STAYED** pending appeal under CPLR 5519(c), on the condition that Defendants perfect their appeal within 45 days of this decision and order; the motion is otherwise **DENIED**; it is further

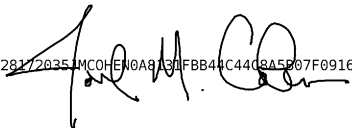
ORDERED that Plaintiff’s motion to renew/reargue (Mot. Seq. 010) is **GRANTED**, and the October 2023 Order (NYSCEF 335) is modified to state as follows (in place of the existing paragraph beginning at the bottom of page 10): “Pursuit’s motion for a protective order is granted in part. Although Plaintiff initially sought a protective order with respect to all documents and information obtained by Defendants through DropBox (NYSCEF 160), since that time Plaintiff produced a subset of those documents – which it concluded were relevant and non-privileged – in the ordinary course of discovery (NYSCEF 283 [“Tr. May 11, 2023”] at 94) and Defendants do not seek to use the remaining documents (*id.* at 89:3-5; 94:6-8; NYSCEF 268 at 15).”; it is further

ORDERED that the parties appear for a status conference on December 12, 2023, at 10:00 am, with the parties circulating dial-in information to chambers at SFC-

Part3@nycourts.gov in advance of the conference; and it is further

ORDERED that the parties upload the oral argument transcript to NYSCEF upon receipt.

This constitutes the Decision and Order of the Court.

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JOEL M. COHEN, J.S.C.

11/28/2023

DATE

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