

AL Infinity LLC v Britelite Enters. Inc.

2024 NY Slip Op 31818(U)

May 23, 2024

Supreme Court, New York County

Docket Number: Index No. 654458/2021

Judge: Andrew Borrok

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 53

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AL INFINITY LLC,

Plaintiff,

- v -

BRITELITE ENTERPRISES INC.,SAKAR
INTERNATIONAL, INC.

Defendant.

INDEX NO. 654458/2021

MOTION DATE 02/23/2024,
02/28/2024

MOTION SEQ. NO. 011 012

**DECISION + ORDER ON
MOTION**

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HON. ANDREW BORROK:

The following e-filed documents, listed by NYSCEF document number (Motion 011) 166, 167, 168, 176, 177, 178, 179

were read on this motion to/for STAY.

The following e-filed documents, listed by NYSCEF document number (Motion 012) 173, 174, 175, 180 were read on this motion to/for REARGUMENT/RECONSIDERATION.

Upon the foregoing documents, the defendant Britelite Enterprises, Inc. (**Britelite**)’s motions for a stay pending appeal (Mtn. Seq. No. 011) and for reargument or renewal (Mtn. Seq. No. 012) are denied.

Britelite’s request for a stay pending appeal of this Court’s October 20, 2023, Decision and Order (the **Prior Decision**; NYSCEF Doc. No. 145), which struck Britelite’s Answer with Counterclaims, is denied. The decision to stay a case is left to the sound discretion of the trial court (*Uptown Healthcare Management, Inc. v Rivkin Radler LLP*, 116 AD3d 631, 631 [1st Dept 2014]). CPLR 5519(c) provides for a stay of enforcement of a judgment or order pending appeal (*Tax Equity Now NY LLC v City of New York*, 173 AD3d 464, 465 [1st Dept 2019]). As discussed below, Britelite’s appeal is entirely without merit. Thus, a stay is not warranted (*64 B*

Venture v Am. Realty Co., 179 AD2d 374, 376 [1st Dept 1992]; *Application of Mott*, 123 NYS2d 603, 608 [Sup Ct 1953]). As the Court discussed in the Prior Decision, the record before the Court indicated substantial non-compliance with discovery demands by Britelite. In addition, the Plaintiff indicated it had received over 26,000 documents as part of a document dump, with documents not containing bates stamps, incorrectly formatted, and otherwise containing totally irrelevant information. Multiple opportunities were afforded to the Defendant to fix these production issues and to otherwise comply with its discovery obligations. Faced with the charge that the Defendants had document dumped some 26,000 documents and with none of the documents in the record, the Court issued an Interim Order, dated August 15, 2023 (the **Interim Order**; NYSCEF Doc. No. 140) requiring the Plaintiff to upload 10 examples of what the Plaintiff was referring to, and give Britelite the opportunity to explain how those examples complied with the agreed-upon ESI protocol, and to otherwise fix its production by a given date. The 10 examples reflected exactly what the Plaintiff had described (among other things they simply were irrelevant), and Britelite failed to offer any explanation or to otherwise fix its production. Thus, the Court granted the motion to strike. Britelite fails to demonstrate the merits of its pending appeal and its motion for a stay is denied.

A motion for leave to reargue must be based on matters of fact or law allegedly overlooked or misapprehended by the Court in determining the prior motion but cannot include any matters of fact not offered on the prior motion (CPLR 2221[d]). A motion for leave to renew must be based on new facts not offered on the prior motion that would change the Court's determination on the prior motion or would demonstrate that there has been a change in the law that would change the prior determination and must contain reasonable justification for the failure to present such facts

on the prior motion (CPLR 2221[e]). A combined motion for leave to reargue or renew must identify and support separately each item of relief sought (CPLR 2221[f]).

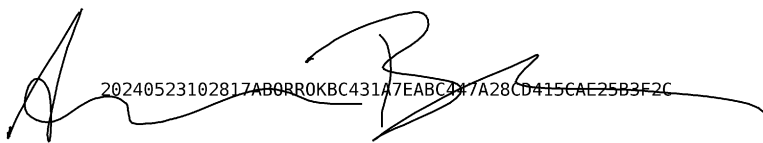
Britelite's motion for leave to reargue or renew the Court's Prior Decision must be denied for a number of reasons. First, CPLR 2221 requires the movant to specify and separately support each item of relief sought, and Britelite has not done so. Second, and equally importantly, Britelite fails to point to any matter of law or fact the Court overlooked or misapprehended, or to any new issues of fact that would change the Court's determination in the Prior Decision. It is simply false that there was a "cherry-picking" of 10 documents. As discussed above, the record before the Court reflected that the Plaintiffs indicated that Britelite produced 26,000 documents as part of a document dump and following multiple other discovery violations by Britelite. When Britelite was confronted with this charge, it failed to offer an adequate explanation or to remedy its production. The Court asked the Plaintiff to provide 10 examples as a sampling of the problem and the 10 examples reflected exactly what the Plaintiffs had indicated. Britelite offers no evidence whatsoever that these documents were in fact "cherry-picked" as they now for the first time claim or offer explanation either then or now as to how this Court misunderstood how the 10 documents that the Court reviewed were in fact relevant; Clearly the court was not required to review all 26,000. Thus, upon the developed record, the Court considered the appropriate remedy and struck the Defendant's pleadings and nothing in Defendant's papers suggests otherwise.

The Court has considered the parties' remaining arguments and finds them unavailing.

Accordingly, it is hereby

ORDERED that Britelite’s motion for a stay (Mtn. Seq. No. 011) is denied; and it is further

ORDERED that Britelite’s motion for leave to reargue or renew (Mtn. Seq. No. 012) is denied.



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5/23/2024
DATE

ANDREW BORROK, J.S.C.

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