

Shouela v Shouela

2024 NY Slip Op 32464(U)

July 11, 2024

Supreme Court, Kings County

Docket Number: Index No. 501280/2021

Judge: Leon Ruchelsman

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS : CIVIL TERM: COMMERCIAL 8

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ELI SHOUELA,

Plaintiff,

Decision and order

- against -

Index No. 501280/2021

ISAAC SHOUELA and 1515 CHURCH AVENUE
REALTY LLC,

Defendants,

July 11, 2024

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PRESENT: HON. LEON RUCHELSMAN

Motion Seq. #4

The plaintiff has moved pursuant to CPLR 2221 seeking to reargue a decision and order dated February 23, 2024. The defendant opposes the motion. Papers were submitted by the parties and arguments held. After reviewing all the arguments this court now makes the following determination.

As recorded in prior orders, the plaintiff Eli and Isaac are brothers. While Eli was involved in a divorce proceeding, his brother Isaac recommended that Eli transfer properties to him to avoid satisfying any divorce judgement and that when such divorce proceeding terminated he would transfer the properties back to Eli. Eli accepted that advice and in October and November 2015 Eli transferred properties to Isaac located at 1797 East 22 Street, 1821 East 22 Street, 1946 East 21 Street and 1721 East 8 Street all located in Kings County. After the conclusion of the divorce proceedings Eli asked Isaac to return the properties and Isaac refused. This lawsuit followed.

On January 9, 2023 the parties entered into a stipulation

canceling the notice of pendency filed concerning 1515 Church Avenue Realty LLC and all claims regarding the Church Avenue Premises, with prejudice. The plaintiff moved seeking to vacate that stipulation on the grounds the stipulation should have only included language the claims were dismissed without prejudice. The plaintiff also sought to amend the complaint to assert causes of action for a constructive trust and other claims regarding that property. The court denied the motions holding that the stipulation was entered with prejudice and any request to vacate the stipulation on the grounds it should have been entered without prejudice was unavailing. Moreover, the court denied the request to amend the complaint.

The plaintiff has now moved seeking to reargue that determination, specifically, the plaintiff seeks to reargue the denial of the request to amend the complaint to add further causes of action. As noted, the motion is opposed.

Conclusions of Law

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 NYS3d 617 [2d Dept., 2019]).

It is well settled that a request to amend a pleading shall

be freely given unless the proposed amendment would unfairly prejudice or surprise the opposing party, or is palpably insufficient or patently devoid of merit (Adduci v. 1829 Park Place LLC, 176 AD3d 658, 107 NYS3d 690 [2d Dept., 2019]). The decision whether to grant such leave is within the court's sound discretion and such determination will not lightly be set aside (Ravnikar v. Skyline Credit-Ride Inc., 79 AD3d 1118, 913 NYS2d 339 [2d Dept., 2010]). Therefore, when exercising that discretion the court should consider whether the party seeking the amendment was aware of the facts upon which the request is based and whether a reasonable excuse for any delay has been presented and whether any prejudice will result (Cohen v. Ho, 38 AD3d 705, 833 NYS2d 542 [2d Dept., 2007]).

The 'Stipulation of partial Discontinuance' provides that "all causes of action against Defendant Isaac Shouela relating to 1515 Church Avenue Realty LLC and the property known and located at 1515 Church Avenue Brooklyn, New York 11226 (Block 5076, Lot 31) are hereby discontinued with prejudice" (see, Stipulation of partial Discontinuance [NYSCEF Doc. No. 61]). Thus, that stipulation dismissed causes of action for a declaratory judgement that Eli was a half owner of Church Avenue Realty, LLC, that such entity should be dissolved, that a breach of duty occurred concerning that entity, that there should be an accounting regarding that entity and that there should be an

injunction upon that property.

The proposed amended complaint filed by the plaintiff seeks a constructive trust upon the same property and essentially seeks "the immediate restoration of his membership interest in Church Realty" (see, Amended Verified Complaint, 42 [NYSCEF Doc. No. 72]). The remaining proposed causes of action sought to be amended include fraudulent misrepresentation, partition, conversion and voidable transfer. These causes of action all concern the same property. However, the inclusion of these additional causes of action would completely undermine the stipulation of discontinuance and permit the plaintiff to make an end-run around the dismissal of all claims regarding the property. These amendments are nothing more than another attempt to vacate the stipulation. Indeed, it is for this very reason the court denied the request to amend in the prior decision. The plaintiff has failed to present any evidence why the prior decision was in error. Thus, there is no basis to grant reargument at all. Moreover, allowing the amendments to be asserted would effectively vacate the stipulation completely vacating the prior decision. As noted, the plaintiff has failed to present any reason why such vacatur of the prior decision is warranted. The plaintiff argues that there is no prejudice to the plaintiff if such causes of action are amended. However, prejudice is not the test, the test is whether the

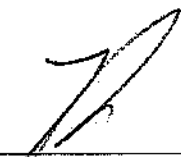
causes of action are viable. Furthermore, of course, the defendant is prejudiced by the additional of claims that, essentially, have already been dismissed. Further, the action pursuant to Debtor Creditor law §275 is no longer viable.

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

So ordered.

ENTER:

DATED: July 11, 2024
Brooklyn N.Y.



Hon. Leon Ruchelsman
JSC.