

<b>Framowitz v Yeshiva &amp; Mesivta Torah Temimah, Inc.</b>
2024 NY Slip Op 33342(U)
September 23, 2024
Supreme Court, Kings County
Docket Number: Index No. 505929/2020
Judge: Joy F. Campanelli
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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS: CVAP4M

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DAVID FRAMOWITZ,

Plaintiff,

-against-

YESHIVA & MESIVTA TORAH TEMIMAH, INC.,  
AGUDATH ISRAEL OF AMERICA INC., CAMP  
AGUDAH, INC., and RABBI LIPA MARGULIES,

Defendants.  
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Index No.: 505929/2020

**DECISION AND ORDER**

Hon. Joy F. Campanelli, J.S.C.

The following e-filed papers read herein:

NYSCEF Nos.:

Notice of Motion/Order to Show Cause/  
Petition/Cross Motion and

Affidavits (Affirmations) Annexed \_\_\_\_\_ 81-88

Opposing Affidavits (Affirmations) \_\_\_\_\_

Affidavits/ Affirmations in Reply \_\_\_\_\_

Other Papers:

Plaintiff DAVID FRAMOWITZ moves by Notice of Motion seq. 007 pursuant to CPLR § 2221, for leave to renew and reargue motion seq. no. 005 to substitute pursuant to CPLR § 1015.

On September 19, 2023, Plaintiff DAVID FRAMOWITZ moved by Notice of Motion seq. no. 005, pursuant to CPLR § 1015, to substitute BENJAMIN MARGULIES as defendant in the present action in the place and stead of RABBI LIPA MARGULIES, upon the ground that he is deceased, and BENJAMIN MARGULIES had assumed the role of voluntary administrator of his estate. In support of their motion, Plaintiff submitted an affidavit of voluntary administration with no accompanying evidence that the affidavit was accepted by Surrogate’s Court. None of Plaintiff’s supporting documentation provided an explanation as to why voluntary administration

was proper in this case. None of Plaintiff's supporting documentation specified the value of the estate in question. For the aforementioned reasons, Plaintiff's motion seq. 005 was denied on May 8, 2024.

A motion for leave to renew must either be "based upon new facts not offered on the prior motion" that would change the prior decision or must "demonstrate that there has been a change in the law that would change the prior determination[.]" The movant must also provide reasonable justification for the failure to present such new facts or law on the prior motion. N.Y. C.P.L.R. 2221(e) (McKinney); *see Elder v. Elder*, 21 A.D.3d 1055, 802 N.Y.S.2d 457; *Matter of Progressive Northeastern Ins. Co. v. Frenkel*, 8 A.D.3d 390, 391, 777 N.Y.S.2d 652; *Matter of Brooklyn Welding Corp. v. Chin*, 236 A.D.2d 392, 653 N.Y.S.2d 631); *Korman v. Bellmore Pub. Schools*, 879 N.Y.S.2d 194, 196–97 (N.Y. App. Div. 2d Dept. 2009).

In support of their motion to renew, Plaintiff filed an affidavit of voluntary administration signed and dated by a clerk of the Surrogate's Court. Additionally, Plaintiff provides Surrogate Court filing records and email correspondences with Surrogate Court personnel. The documentation submitted in support of motion seq. no. 007 was available at the time the underlying motion seq. no. 005 was filed and therefore the facts contained therein cannot be considered new facts for purposes of Plaintiff's motion to renew. Furthermore, Plaintiff does not provide a reasonable justification for their failure to present this evidence from the Surrogate's Court in support of the prior motion. Therefore, Plaintiff's motion for leave to renew, pursuant to CPLR § 2221 is denied.

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[.]" N.Y. C.P.L.R. 2221(d)(2) (McKinney).

Motions for leave to reargue are within the discretion of the court and are “not designed to provide an unsuccessful party with successive opportunities to reargue issues previously decided, or to present arguments different from those originally presented[.]” *McGill v. Goldman*, 261 A.D.2d 593, 594, 691 N.Y.S.2d 75; see *Jaspar Holdings, LLC v. Gotham Trading Partners # 1, LLC*, 186 A.D.3d 582, 584, 130 N.Y.S.3d 19; *Degraw Constr. Group, Inc. v. McGowan Bldrs., Inc.*, 178 A.D.3d at 773, 111 N.Y.S.3d 898; *Woody's Lbr. Co., Inc. v. Jayram Realty Corp.*, 30 A.D.3d 590, 593, 817 N.Y.S.2d 391); *Emigrant Bank v. Kaufman*, 203 N.Y.S.3d 363, 365–66 (N.Y. App. Div. 2d Dept. 2024).

Motion seq. no. 005 was denied because Plaintiff provided unverified documentation to the Court with no explanation as to why a voluntary administrator was required in this case. No matters of fact or law were overlooked or misapprehended by the Court in determining this motion. In support of their motion for leave to reargue, Plaintiff introduces new facts not originally included in their papers supporting motion seq. no. 005, including the value of the underlying estate. A motion for leave to reargue is not intended to provide Plaintiff a second chance to fill in gaps in their prior motion papers. Therefore, Plaintiff’s motion for leave to reargue, pursuant to CPLR § 2221 is denied.

Despite Plaintiff’s ineffective arguments to renew or reargue motion seq. no. 005, and upon proper proof from the Surrogate’s Court having been provided, substituting Benjamin Margulies as defendant in this case best serves the interests of justice and judicial expediency.

Accordingly, it is

**ORDERED** that Plaintiff’s motion seq. no. 007 for leave to reargue and renew motion sequence no. 005, is DENIED; and it is further

**ORDERED** that pursuant to CPLR § 1015, Benjamin Margulies is substituted as the voluntary administrator of the estate of Rabbi Lipa Margulies, and it is further

**ORDERED** that the caption in the above-entitled action shall henceforth read as follows:

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DAVID FRAMOWITZ,

Plaintiff,

-against-

YESHIVA & MESIVTA TORAH TEMIMAH, INC.,  
AGUDATH ISRAEL OF AMERICA INC., CAMP  
AGUDAH, INC., and BENJAMIN MARGULIES as  
voluntary administrator of the estate of RABBI LIPA  
MARGULIES,

Index No.: 505929/2020

Defendants.

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This constitutes the decision and order of the Court.

Dated: September 23, 2024

Brooklyn, NY

  
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Hon. Joy F. Campanelli, J.S.C.