

Sedgwick CMS v Bratton

2025 NY Slip Op 33599(U)

September 24, 2025

Supreme Court, New York County

Docket Number: Index No. 659096/2024

Judge: Emily Morales-Minerva

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. EMILY MORALES-MINERVA PART 42M

Justice

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SEDGWICK CMS, AVIS BUDGET GROUP, INC.,

Petitioner,

- v -

INDEX NO. 659096/2024

MOTION DATE 08/02/2025

MOTION SEQ. NO. 002

JABERRI BRATTON

Respondent,

EBONY DIXON, STATE FARM INSURANCE COMPANY

Proposed Respondents.

DECISION + ORDER ON MOTION

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 8, 9, 10, 11, 12, 13, 14

were read on this motion to/for RENEW/REARGUE/RESETTLE/RECONSIDER

APPEARANCES:

Pillinger Miller & Tarallo, Elmsford, New York (Young Min Lee, Esq., of counsel) for petitioners.

HON. EMILY MORALES-MINERVA:

Petitioners AVIS BUDGET GROUP, INC. and SEDGWICK CMS commenced this special proceeding, by notice of petition (motion sequence number 01), seeking to stay arbitration. This court dismissed the petition for lack of proper service in a decision and order, dated March 27, 2025 (see New York State Courts Electronic Filing System [NYSCEF] Doc. No. 07).

Petitioner's now move, by notice of motion (seq. no. 02), pursuant to CPLR § 2221,¹ for leave to renew and reargue its previous motion (seq. no. 01), contending that the court (1) overlooked the underlying demand for arbitration, and (2) misapplied the law when it deemed service of the petition upon non-party Andrew Park, PC insufficient to confer jurisdiction over defendant JABERRI BRATTON.² Defendant JABERRI BRATTON does not appear or oppose the motion.

For the reasons set forth below, the Court denies the motion entirely.

A motion 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" (CPLR § 2221 [d] [2] [emphasis added]). "Reargument is not designed to afford the

¹ CPLR § 2221 states, as relevant here: "(d) A motion for leave to reargue: (1) shall be identified specifically as such; (2) 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; and (3) shall be made within thirty days after service of a copy of the order determining the prior motion and written notice of entry.

"(e) A motion for leave to renew: (1) shall be identified specifically as such; (2) shall be based upon new facts not offered on the prior motion that would change the prior determination or shall demonstrate that there has been a change in the law that would change the prior determination; and (3) shall contain reasonable justification for the failure to present such facts on the prior motion.

"(f) A combined motion for leave to reargue and leave to renew shall identify separately and support separately each item of relief sought. The court, in determining a combined motion for leave to reargue and leave to renew, shall decide each part of the motion as if it were separately made. If a motion for leave to reargue or leave to renew is granted, the court may adhere to the determination on the original motion or may alter that determination."

² Though petitioner moves for leave to reargue and leave to renew, petitioner does not "identify separately and support separately each item of relief sought" in its motion (CPLR § 2221 [f]). Nonetheless, the court will decide the motion as if the arguments were separately made.

unsuccessful party successive opportunities to reargue issues previously decided . . . or to present arguments different from those originally asserted" (Setters v AI Properties and Developments (USA) Corp., 139 AD3d 492, 492 [1st Dept 2016]; see also Pro Brokerage, Inc. v Home Ins. Co., 99 AD2d 971, 971 [1st Dept 1984]).

The purpose of reargument is to afford a party an opportunity to establish that the court overlooked or misapprehended the relevant facts or misapplied any controlling principle of law (see generally Pro Brokerage, Inc., 99 AD2d at 971). Further, the granting of a motion to reargue is left to the sound discretion of the Court, whose decision the moving party seeks to reargue (id.; see also Tyagi v Gadella, 202 AD3d 561 [1st Dept 2022]).

Here, petitioner has failed to establish that the court misapprehended or overlooked any law or fact. Petitioner submits the demand for arbitration (New York State Courts Electronic Filing System [NYSCEF] Doc. No. 13) in support of its motion, and argues that the court "overlooked respondent JABERRI BRATTON's demand for arbitration that prominently features his attorneys' name and thus misapplied the law when it deemed service of the petition upon counsel for BRATTON insufficient

pursuant to CPLR § 7503 (c)³" (NYSCEF Doc. No. 009, Affirmation in Support). However, the demand for arbitration had not previously been submitted to the court and thus, petitioner fails to demonstrate that the court overlooked the same (see Independent Chemical Corp. v Puthanpurayil, 165 AD3d 578 [1st Dept 2018] [holding that new facts or arguments not previously asserted in the underlying motion, but now submitted, may not be considered]).

"A motion for leave to renew shall be based upon new facts not offered on the prior motion that would change the prior determination and shall contain reasonable justification for the failure to present such facts on the prior motion" (Borek v Seidman, 231 AD3d 465, 468 [1st Dept 2024] [internal quotation marks omitted]). However, "reasonable justification does not exist where the new evidence consists of documents which the [moving party] knew existed, and were in fact in his own possession at the time the initial motion was made" (Countrywide Home Loans, Inc. v Ward, 167 AD3d 842, 844 [2d Dept 2018] [emphasis added]). "Renewal is granted sparingly and should not be used as a second chance freely given to parties who have failed to exercise due diligence in making their first

³ CPLR § 7503 (c) provides that the petition and notice of petition to stay arbitration "shall be served in the same manner as a summons or by registered or certified mail, return receipt requested. Service of the application may be made upon the adverse party, or upon his attorney if the attorney's name appears on the demand for arbitration or notice of intention to arbitrate."

factual presentation" (Perretta v New York City Transit Authority, 230 AD3d 428, 432 [1st Dept 2024], quoting Wade v Giacobbe, 176 AD3d 641 [1st Dept 2019]).

Here, the arbitration demand (NYSCEF Doc. No. 13) submitted by petitioner in support of its motion to renew, which pre-dates petitioner's original application, was reasonably available to petitioner at the time it filed its original application, and no reasonable justification was offered for petitioner's failure to submit the arbitration demand in the first instance (see Queens Unit Venture, LLC v Tyson Ct. Owners Corp., 111 AD3d 552, 552 [1st Dept 2013] [finding that the purported new facts set forth in defendant's motion to renew were presented in affidavits which were executed approximately four weeks before the original motion was submitted, and defendant failed to demonstrate a reasonable justification for failing to submit them at that time]; see also KLG Jewelry LLC v 706 Madison LLC, 228 AD3d 462 [1st Dept 2024] [applying the same principle]).

Accordingly, it is

ORDERED that petitioner's motion (seq. no. 02) for leave to reargue is denied; it is further

ORDERED that petitioner's motion for leave to renew (seq. no. 02) is denied; and it is further

ORDERED that the Clerk of Court shall mark the file accordingly.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

9/24/2025
DATE

Emily Morales-Minerva
EMILY MORALES-MINERVA, J.S.C.

CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION

APPLICATION: GRANTED DENIED GRANTED IN PART OTHER

CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER

INCLUDES TRANSFER/REASSIGN FIDUCIARY APPOINTMENT REFERENCE