

Reches v Sack & Sack, LLP
2018 NY Slip Op 31643(U)
June 28, 2018
Supreme Court, Kings County
Docket Number: 511057/2017
Judge: Dawn M. Jimenez-Salta
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At an IAS Term, Part 88 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on June 28, 2018.

PRESENT:

HON. DAWN JIMENEZ-SALTA,
Justice.

-----X
BENJAMIN RECHES, *Pro Se*,

Index No.: 511057/2017

Plaintiff,

- against -

DECISION AND ORDER

SACK & SACK, LLP,

Defendant(s).

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Recitation, as required by *CPLR 2219(a)*, of the papers considered in the review of:

- 1) Plaintiff Benjamin Reches' ("Plaintiff" or "Reches") Notice of Motion, dated April 12, 2018 to Reargue Defendant Sack & Sack, LLP's ("Defendant" or "Sack") Motion to Dismiss, dated August 4, 2017 along with Plaintiff's Memorandum of Law in Support;
- 2) Defendant Sack's Attorney's Affirmation in Opposition, dated May 4, 2018;
- 3) Plaintiff Reches' Reply Affirmation, May 11, 2018, all of which submitted on May 30, 2018.

Papers	Numbered
Notice of Motion and Affidavits Annexed.....	Plaintiff 1
Notice of Cross-Motion and Affidavits Annexed.....	
Order to Show Cause and Affidavits.....	
Answering Affidavits.....	Defendant 3 [Exh. A- C]
Replying Affidavit.....	Plaintiff 4 [Exh. A-C]
Supplemental Affidavits.....	
Exhibits.....	
Other [Memorandum of Law].....	Plaintiff 2 [Exh. A]

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Upon the foregoing cited papers, the Decision/Order on this Motion is as follows: Plaintiff Benjamin Reches' Motion to Reargue Defendants' Motion to Dismiss Plaintiff's Complaint for Failure to State a Claim Pursuant to *CPLR 3211(a)(7)* and as Barred by Documentary Evidence Pursuant to *CPLR 3211(a)(1)* is denied in its entirety. This Court did not overlook or misapprehend any matters of fact or law or for some reason mistakenly arrived at its earlier Decision/Order, dated February 23, 2018 [Plaintiff 1; Plaintiff 2 Memorandum of Law, Exh.

A; Defendant 3, , Exhs A-C; Plaintiff 4, Exhs. A-C].

PROCEDURAL HISTORY AND BACKGROUND

This action originated from Defendant Sack's representation of Plaintiff Reches in an underlying mediation with Plaintiff's employer, Morgan Stanley ("Morgan Stanley") on June 18, 2014. Pursuant to that process, Plaintiff accepted a \$267,000.00 (Two Hundred Sixty Seven Thousand Dollars) settlement offer in connection with an employment discrimination complaint which he filed against his former employer, Morgan Stanley. Both Plaintiff and a representative from Morgan Stanley executed the Settlement Agreement ("Settlement") and General Release on June 30, 2014 [Plaintiff 1; Plaintiff 2 Memorandum of Law, Exh. A; Defendant 3, , Exhs A-C; Plaintiff 4, Exhs. A-C].

Because he was unhappy with the amount of the Settlement which he accepted, Plaintiff filed a Complaint, dated June 5, 2017 against Defendant Sacks, approximately three years later. Plaintiff alleged eleven (11) causes of action against Defendant Sacks. Ten (10) causes of action were for legal malpractice and one cause of action was for intentional infliction of emotional distress.¹

Defendant moved on August 4, 2017 to dismiss Plaintiff's Complaint in its entirety (the "Motion to Dismiss") pursuant to *CPLR 3211(a)(7)* for failure to state a claim as well as pursuant to *CPLR 3211(a)(1)* because the claim was barred by documentary evidence².

Plaintiff filed a Memorandum of Law in Opposition, dated October 24, 2017³.

Defendant filed a Reply Affirmation, dated November 10, 2017⁴.

When this Court heard oral argument from the parties on the Motion to Dismiss on November 15, 2017, it reserved its decision. In an Order (the "Dismissal Order"), dated February 23, 2018, this Court granted the Motion to Dismiss, having determined that Plaintiff's Complaint "fails to adequately plead specific factual allegations showing that, but for Defendant's alleged negligence, Plaintiff would have obtained a more favorable outcome . . . in the mediation." This Court found that Plaintiff's allegations that he could have obtained a more favorable outcome in the mediation were "conclusory and speculative". This Court noted that

¹ This Court notes that Pro Se Plaintiff Reches' motion for leave to reargue is not in proper form since he did not include all the previous motion papers as well as his Complaint. However, because it is well established that courts may take judicial notice of a record in the same court of either the pending matter or of some other action, this Court will duly do so (*see e.g. Matter of Currier [Woodlawn Cemetery]*, 300 NY 162, 170 [1949]).

² Because Pro Se Plaintiff did not attach a copy of Defendant's motion, this Court will duly take judicial notice. *See Matter of Currier [Woodlawn Cemetery]*, *supra*.

³ Because Pro Se Plaintiff did not attach of copy of his Memorandum of Law In Opposition, this Court will duly take judicial notice. *See Matter of Currier [Woodlawn Cemetery]*, *supra*.

⁴ Because Pro Se Plaintiff did not attach a copy of Defendant's Reply Affirmation, this Court will duly take judicial notice. *See Matter of Currier [Woodlawn Cemetery]*, *supra*.

“Plaintiff was not under economic duress,” that the “mediation was voluntary,” and “that he could have stopped at any time.” [Plaintiff 1; Plaintiff 2 Memorandum of Law, Exh. A; Defendant 3, , Exhs A-C; Plaintiff 4, Exhs. A-C].

In his Motion to Reargue along with a Memorandum of Law, dated April 12, 2018, Plaintiff claims that this Court overlooked or misapprehended matters of fact or law in its determination of its Decision/Order, dated February 23, 2018. In particular, Plaintiff argues that: 1) this Court misapprehended the use of a Term Sheet as enforceable at an EEOC settlement mediation; 2) this Court misapprehended Plaintiff’s familiarity and knowledge about Term Sheets at the time of the mediation; 3) the Court overlooked Plaintiff’s and Defendant Sacks’ e-mail exchange following Plaintiff’s retirement from Morgan Stanley but prior to the signing of the Settlement Agreement; 4) the Court misapprehended Plaintiff’s situation at the time of the signing of the Final Settlement Agreement because it overlooked Defendant Sacks’ e-mails prior to the signing of the Final Settlement Agreement; and 5) the Court misapprehended the “dire situation in which Morgan Stanley would have found itself in” after Plaintiff’s retirement prior to the drafting of the Final Settlement Agreement. See *Maritrans GP, Inc., v. Pepper, Hamilton & Scheetz*, 602 A2d 1277 (PA 1992); *Rudolf v. Shayne, Dachs, Staniscki, Corker & Sauer*, 867 NE2d 385, 835 NYS2d 534 (2007); *CPLR 2221(d)(2)* [Plaintiff 1; Plaintiff 2 Memorandum of Law, Exh. A; Defendant 3, , Exhs A-C; Plaintiff 4, Exhs. A-C].

In its Attorney’s Affirmation in Opposition, dated May 4, 2018, Defendant Sacks maintains that Plaintiff is reiterating his prior arguments in contravention of *CPLR Section 2221*. Because this Court already considered Plaintiff’s arguments before its issuance of its Decision/Order, dated February 23, 2018, Defendant emphasizes that Plaintiff has failed to prove that this Court overlooked or misapprehended any facts or law. See *Diorio v. City of New York*, 202 AD2d 625, 609 NYS2d 304 (2nd Dept., 1994); *Ebasco Construction, Inc., v. AMS Construction Co., Inc.* 195 AD2d 439, 599 NYS2d 866 (2nd Dept., 1993) [Plaintiff 1; Plaintiff 2 Memorandum of Law, Exh. A; Defendant 3, , Exhs A-C; Plaintiff 4, Exhs. A-C].

In his Reply Affirmation, dated May 11, 2018, Plaintiff contends that he has met the standards for reargument of the Motion to Dismiss pursuant to *CPLR Section 2221*. He maintains that he did not freely and voluntarily sign the Final Settlement Agreement. He questions Defendant Sacks’ arguments about *CPLR Section 2221*. He takes issue with the negotiations and resultant Final Settlement Agreement [Plaintiff 1; Plaintiff 2 Memorandum of Law, Exh. A; Defendant 3, , Exhs A-C; Plaintiff 4, Exhs. A-C].

COURT RULINGS

This Court notes that a motion for leave to reargue pursuant to *CPLR Section 2221* may be granted only upon a showing that the Court overlooked or misapprehended the facts or the law, or for some reason mistakenly arrived at its earlier decision. Its purpose is not to serve as a vehicle to permit the unsuccessful party to argue once again the very questions previously decided. See *Diorio v. City of New York, supra*; *Ebasco Construction, Inc., v. AMS Construction Co., Inc., supra*; *Foley v. Roche*, 68 AD2d 558, 418 NYS2d 588 (1st Dept., 1979); *Giovannioello v. Carolina Wholesale Office Mach., Co.*, 29 AD3d 737, 815 NYS2d 248 (2nd Dept., 2006).

In its Order, dated February 23, 2018 (the “Dismissal Order”), this Court granted the Motion to Dismiss, specifically having determined that Plaintiff’s Complaint “fails to adequately plead specific factual allegations showing that, but for Defendant’s alleged negligence, Plaintiff would have obtained a more favorable outcome . . . in the mediation.” This Court found that Plaintiff’s allegations that he could have obtained a more favorable outcome in the mediation were “conclusory and speculative”. This Court noted that “Plaintiff was not under economic duress,” that the “mediation was voluntary,” and “that he could have

stopped at any time.” [Plaintiff 1; Plaintiff 2 Memorandum of Law, Exh. A; Defendant 3, , Exhs A-C; Plaintiff 4, Exhs. A-C].

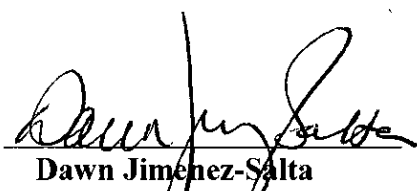
Due to Plaintiff’s failure to show that this Court overlooked or misapprehended any matters of fact or law or for some reason mistakenly arrived at its earlier decision, this Court denies Plaintiff Reches’ motion to reargue Defendant’s motion to dismiss pursuant to CPLR 3211(a)(7) for failure to state a claim and CPLR 3211(a)(1) because the claim is barred by documentary evidence. Plaintiff’s motion is an attempt to reargue his prior positions which were duly considered and previously rejected by this Court. This Court carefully considered Plaintiff’s identical arguments before it issued its comprehensive Dismissal Order. Because it addressed all of Plaintiff’s unchanged concerns, Plaintiff’s arguments remain unavailing. Therefore, this Court adheres to its original rulings in its Decision/Order, dated February 23, 2018. See *Diorio v. City of New York, supra*; *Ebasco Construction, Inc., v. AMS Construction Co., Inc., supra*; *Foley v. Roche, supra*; *Giovannioello v. Carolina Wholesale Office Mach., Co., supra* [Plaintiff 1; Plaintiff 2 Memorandum of Law, Exh. A; Defendant 3, , Exhs A-C; Plaintiff 4, Exhs. A-C].

Based on the foregoing, it is hereby ORDERED as follows:

Plaintiff’s motion to reargue Defendant’s motion to dismiss the Complaint pursuant to CPLR 3211(a)(7) and CPLR 3211(a)(1) is DENIED in its entirety pursuant to CPLR 2221.

This constitutes the Decision and Order of the court.

Date: June 28, 2018
Reches v. Sack & Sack
(Index Number 511057/2017)


Dawn Jimenez-Salta
J.S.C.

Hon. Dawn Jimenez-Salta
Justice of the Supreme Court

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