

Shanklin v Wilhelmina Models, Inc.
2018 NY Slip Op 33850(U)
January 16, 2018
Supreme Court, New York County
Docket Number: 653702/2013
Judge: O. Peter Sherwood
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SUPREME COURT OF THE STATE OF NEW YORK — New York COUNTY
PRESENT: O. PETER SHERWOOD Justice PART 49

ALEX SHANKLIN, et al.,
Plaintiffs,
-against-
WILHELMINA MODELS, INC., et al.,
Defendants.

INDEX NO. 653702/2013
MOTION DATE Nov. 6, 2017
MOTION SEQ. NO. 025
MOTION CAL. NO.

The following papers, numbered 1 to ___ were read on this motion for reargument/reconsideration.

Table with 2 columns: Description of papers and PAPERS NUMBERED. Rows include Notice of Motion/ Order to Show Cause, Answering Affidavits, and Replying Affidavits.

Cross-Motion: [] Yes [] No

Under motion sequence 025, defendant Major Model Management Inc. ("Major") moves for leave to reargue this court's Decision and Order dated May 25, 2017 and dismiss the final remaining cause of action against it - a claim for breach of contract.

The standards for reargument are well settled. "A motion for leave to reargue pursuant to CPLR 2221 is addressed to the sound discretion of the court and 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"

Major requests leave to reargue on the basis that plaintiff Louisa Raske's ("Raske") claim for breach of contract failed to meet the particularity requirements of CPLR 3013 and that the affidavit of Katia M. Sherman conclusively refuted Raske's claims of breach.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

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arguments were previously advanced since its notice of motion stated that Major was requesting dismissal of “plaintiffs’ Second Amended Class Action Complaint in its entirety, with prejudice” and since Sherman’s affidavit was offered as part of Major’s moving papers. However, neither of these documents can be read as raising either of the two arguments Major now advances. Although Sherman’s affidavit contends broadly that “plaintiffs’ Second Amended Class Action Complaint lacks any basis in fact as to Major” and posits that Major made all necessary payments to Raske (NYSCEF Doc. No. 593), it does not argue, as Major does now, that plaintiffs’ claims fail under the standards of a motion to dismiss due to the statements made in that affidavit and the exhibits offered with it.

Severance is governed by CPLR 603 which provides, in relevant part, that “[i]n furtherance of convenience or to avoid prejudice the court may order a severance of claims, or may order a separate trial of any claim, or of any separate issue.” Determination to grant or deny a request for severance is within the sound discretion of the trial court (*see Herskovitz v Klein*, 91 AD3d 598, 599 [2d Dept 2012]), which discretion should be exercised sparingly (*see Curreri v Heritage Property Inv. Trust, Inc.*, 48 AD3d 505 [2d Dept 2008]). In determining whether to exercise their discretion, courts focus on whether there are common legal and factual issues, with the granting of severance generally depending on the absence of such commonality (*see Herskovitz*, 91 AD3d at 599). Severance may be inappropriate where there are common legal and factual issues involved in two or more causes of action unless the party seeking such severance demonstrates that severance is necessary to prevent prejudice to a substantial right or significant delay in the absence of severance (*see Vecciarelli v King Pharms., Inc.*, 71 AD3d 595, 596 [1st Dept 2010]; *Williams v Property Servs., LLC*, 6 AD3d 255 [1st Dept 2004]; *Sichel v Community Synagogue*, 256 AD2d 276 [1st Dept 1998]).

There are few, if any, remaining legal and factual issues involved in the claim against Major that are shared by the rest of this action. Moreover, as argued in its papers, if Major’s motion to sever is denied, Major will be drawn into the remaining defendants’ discovery, which will likely be far more extensive than the discovery needed to address the claim against Major. Thus, Major will be prejudiced by increased litigation costs and delay in the resolution of the claim against it. Accordingly, Major’s motion to sever will be granted. However, before ruling on class certification, Major’s argument regarding the amount in controversy on the claim against it is premature. Accordingly, Major’s request to have this case transferred to Civil Court is denied without prejudice to its later renewal following a ruling on class certification.

Accordingly, for the forgoing reasons, it is hereby **ORDERED** that the motion for leave to reargue is **DENIED** and the motion to sever is **GRANTED** in part.

Dated: January 16, 2018


O. PETER SHERWOOD, J.S.C.

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 Check if appropriate: DO NOT POST
 SUBMIT ORDER/ JUDG.

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