Sands Bros. Venture Capital II, LLC v Park Ave. Bank
2021 NY Slip Op 30346(U)
February 2, 2021
Supreme Court, New York County
Docket Number: 652969/2014
Judge: Andrew Borrok
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. ANDREW BORROK** **PART** **IAS MOTION 53EFM**

Justice

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SANDS BROTHERS VENTURE CAPITAL II, LLC,SANDS BROTHERS VENTURE CAPITAL III, LLC,SANDS BROTHERS VENTURE CAPITAL IV, LLC,GENESIS MERCHANT PARTNERS, LP,

Plaintiff,

- v -

PARK AVENUE BANK, MATTHEW MORRIS, CHARLES ANTONUCCI, GENERAL EMPLOYMENT ENTERPRISES INC.,OPPENHEIMER & CO., INC.,PROVIDENCE PROPERTY AND CASUALTY INSURANCE COMPANY, WTS CORP., WTS ACQUISITION CORP., DMCC STAFFING, LLC,RFFG, LLC,RFFG OF CLEVELAND, LLC,THOMAS BEAN, BIG RED INVESTMENTS PARTNERSHIP, LTD., ON-SITE SERVICES, INC.,AMERITEMPS, INC.,ALLEN REICHMAN, WILBUR HUFF, O2HR, LLC,OXYGEN UNLIMITED, LLC,RIVER FALLS INVESTMENTS, LLC,RIVER FALLS FINANCIAL SERVICES, LLC,RIVER FALLS HOLDINGS, LLC,W.A. HUFF, LLC,SDH REALTY, LLC,

Defendant.

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INDEX NO. 652969/2014

MOTION DATE 06/25/2020

MOTION SEQ. NO. 018

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 018) 549, 550, 551, 552, 553, 554

were read on this motion to/for REARGUMENT/RECONSIDERATION.

Upon the foregoing documents, Oppenheimer & Co. Inc.'s (**Oppenheimer**) motion for leave to reargue the decision and order dated May 2, 2020 (the **Prior Decision**; NYSCEF Doc. No. 544) is denied. The relevant facts of this matter are set forth in the Prior Decision. Familiarity is presumed.

To succeed on a motion for reargument, a party must demonstrate that the court either (1) overlooked or misapprehended the relevant facts, or (2) misapplied a controlling principle of law (*William P. Paul Equip. Corn. v Kassis*, 182 AD2d 22, 27 [1st Dept 1992]). Reargument is not intended "to afford the unsuccessful party successive opportunities to reargue issues previously decided or to present arguments different from those originally asserted" (*Foley v Roche*, 68 AD2d 558 [1st Dept 1979]; *Haque v Daddazio*, 84 AD3d 940, 242 [2d Dept 2011]).

Oppenheimer argues that reargument of the Prior Decision denying their motion for summary judgment is warranted because three witnesses were mislabeled as Oppenheimer employees rather than plaintiffs' employees and that the court should not have considered bank statements produced by Oppenheimer during discovery. Both arguments fail.

In the Prior Decision, the court denied Oppenheimer's motion for summary judgment to dismiss the second cause of action for aiding and abetting a fraudulent conveyance and the third cause of action for conspiracy to commit a fraudulent conveyance because there was a material issue of fact based on a conflict between the testimony of Mr. Lancaster and Mr. Antonucci over the source of a $7,500,000 cash infusion to PPAC:

> Although Oppenheimer's adduced evidence to corroborate its theory of the case – i.e. that the seller of PPAC, Mr. Lancaster, liquidated specific PPAC assets to provide a cash infusion of $12,096,656 to PPAC on the day of closing – Mr. Lancaster wholly denies that this version of events occurred when confronted with the Antonucci Affidavit. In other words, there is a conflict between the testimony of the buyer and the seller with respect to the transaction at issue. Further, while Mr. Antonucci attested that the full $37,500,000 purchase price was not comprised of any money from O2HR or another Huff-Controlled Entity, Mr. Lancaster stated that he did not know whether any O2HR funds were used in the transaction. As a result, Oppenheimer has simply not met its burden in showing that no O2HR funds were involved in the $7,500,000 transfer and there remain material issues of fact concerning same.

(NYSCEF Doc. No. 544 at 16).

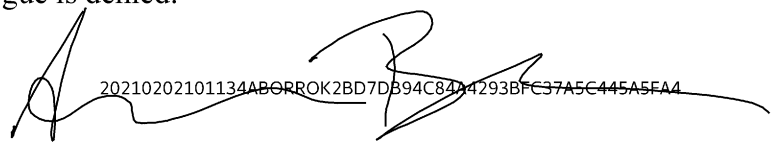
As a result, the court held that Oppenheimer failed to meet its burden in showing that the $7,500,000 was not comprised of any O2HR funds so as to be entitled to summary judgment. Stated differently, the mislabelling of the individuals identified as Oppenheimer's employees rather than the plaintiffs' employees was immaterial to the Prior Decision. For the avoidance of doubt, to the extent that Oppenheimer again disputes whether it was a beneficiary of the $7,500,000 conveyance, a motion to reargue is not a vehicle for the unsuccessful party to rehash the same arguments that the court has considered and rejected (*see Foley, supra*).

Oppenheimer's argument as to the admissibility of a certain bank statement also fails. The bank statement was produced by Oppenheimer in the course of discovery and adduced by the plaintiffs in opposition to Oppenheimer's summary judgment motion (NYSCEF 485). As such, it is presumed authentic and admissible against that party (e.g., *People v Myers,* 87 AD3d 826, 828 [4th Dept 2011] ["circumstantial evidence may satisfy the requirement that a writing be authenticated before it may be introduced"]; *see also Arbour v Commercial Life Ins. Co.*, 240 AD2d 1001, 1002 [3d Dept 1997] [a party may rely on unsworn reports of opposing party's physician in a motion for summary judgment]; *Bieda v JC Penney Communications, Inc.*, 1995 US Dist LEXIS 10309, at *3, n 2 [SD NY July 24, 1995] [documents admissible where defendants merely challenged plaintiff's ability to authenticate documents and the fact that defendants produced most documents was "circumstantial, if not conclusive, evidence of authenticity"]). Oppenheimer did not dispute that it produced the bank statement in its reply papers. Nor did Oppenheimer otherwise rebut the bank statement's reliability. Oppenheimer's

production was circumstantial evidence of the bank statement's authenticity and it therefore is admissible (*id.*; NYSCEF Doc. No. 498 at 8). In any event, the bank statement was not the sole basis for the court's Prior Decision and any question concerning the authenticity of the bank statement only raises further issues of fact for trial.

Accordingly, it is

ORDERED that Oppenheimer's motion to reargue is denied.



2/2/2021
DATE

ANDREW BORROK, J.S.C.

CHECK ONE:		CASE DISPOSED			X	NON-FINAL DISPOSITION	
		GRANTED	X	DENIED		GRANTED IN PART	OTHER
APPLICATION:		SETTLE ORDER				SUBMIT ORDER	
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN				FIDUCIARY APPOINTMENT	REFERENCE