

26th LS Series Ltd v Brooks

2021 NY Slip Op 30388(U)

February 9, 2021

Supreme Court, New York County

Docket Number: 651566/2012

Judge: Andrea Masley

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SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF NEW YORK: COMMERCIAL DIVISION PART IAS MOTION 48EFM

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26TH LS SERIES LTD,	INDEX NO. <u>651566/2012</u>
Plaintiff,	MOTION DATE <u>N/A</u>
- v -	MOTION SEQ. NO. <u>032</u>
AUDRIE BROOKS, IRWIN BROOKS, GARY SICKLER, THE AUDRIE BROOKS LIT, THE AUDRIE BROOKS ILIT, BEDIS ZORMATI, EDGAR MARIN, JAFFA GROUP LLC, and ABDELRAHMAN FARAJ,	DECISION + ORDER ON MOTION
Defendants.	

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JAFFA GROUP LLC	Third-Party Index No. 595237/2014
Plaintiff,	
-against-	
ALAN SPIEGEL, STEVEN SPIEGEL, and HERMAN SEGAL	
Defendants.	

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THE AUDRIE BROOKS ILIT	Second Third-Party Index No. 595250/2014
Plaintiff,	
-against-	
ALAN RUBENSTEIN, ALAN SPIEGEL, STEVEN SPIEGEL, and DAVID GREENSPAN	
Defendants.	

HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 032) 765, 766, 767, 768, 769, 770, 771, 772, 774, 775, 776

were read on this motion to/for

REARGUMENT/RECONSIDERATION

Upon the foregoing documents, it is

Leroy Brooks (LB) moves, pursuant to CPLR 2221(d), for leave to reargue motion sequence number 031 in which LB sought the following relief: (1) an Order declaring the September 20, 2018 Stipulation of Settlement null and void; (2) an Order vacating the Hon. Charles E. Ramos' (ret.) Order dated October 18, 2018; (3) an Order vacating the Amendments to the Audrie Brooks ILIT and the Audrie Brooks LIT (collectively, Trusts), both dated January 16, 2015; (4) an Order directing the 26 LS Parties, Jack Wolcowitz, as Trustee of the Trusts, Single Spring LLLC, and Joel Wertzberger to return \$7,000,000.00 to the Audrie Brooks LIT and \$7,000,000.00 to the Audrie Brooks ILIT or deposit the proceeds with the court; (5) an Order restraining plaintiff, Jack Wolcowitz, as Trustee of the Audrie Brooks ILIT and the Audrie Brooks LIT, Single Spring LLC, and Joel Wertzberger from transferring and or disbursing any of the insurance proceeds received from ReliaStar Life Insurance Company policy number 2069731B and insurance proceeds received from Union Central Life Insurance Company policy number U000043174; (6) an Order directing plaintiff, Jack Wolcowitz, as Trustee of the Audrie Brooks ILIT and the Audrie Brooks LIT, Single Spring LLC and Joel Wertzberger to account for the insurance proceeds received from ReliaStar Life Insurance Company policy number 2069731B and insurance proceeds received from Union Central Life Insurance Company policy number U000043174; (7) an order vacating the award to Bonnie Brooks Gould, the Guardian Ad Litem (GAL) for Irwin Brooks; and (8) an attorneys' fees compensating Leroy Brooks for bringing this motion (NYSCEF 749, Order to Show Cause [Seq. 031] at 2-3).

Background

As stated in the prior decision (motion sequence number 031), the complex and lengthy procedural history of this case is set forth in this court's (Ramos, J.) previous decision (NYSCEF Doc. No. [NYSCEF] 677, Decision and Order Motion Seq. No. 028) and the GAL's Report (NYSCEF 727, January 15, 2018 Report of the GAL). Accordingly, it will not be repeated in detail here.

LB is the son of Irwin Brooks (IB) and Audrie Brooks (AB). AB passed away on September 13, 2019 and IB passed away on December 30, 2019 (NYSCEF 767, Decision and Order [Seq. 031] at 3). In NYSCEF, LB is listed as a nonparty to this action, but a "party to the stipulation of settlement and previously attorney in fact for [IB]" (*id.*; see also NYSCEF Case Detail).

On June 30, 2020, this court denied motion sequence number 031, holding that (1) LB's power of attorney for IB expired upon IB's death, and thus, LB has no standing in this action; (2) this is the incorrect proceeding for LB to assert his right to payment under the Stipulation of Settlement as this action terminated with the Stipulation of Discontinuance; (3) even if LB had standing and his motion correctly brought, LB did not assert any legal basis to vacate the Stipulation of Settlement or grant the other relief sought (NYSCEF 767, Decision and Order [Seq. 031] at 3-4).

Analysis

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" (CPLR 2211[d][2]). However, "[r]eargument is not designed to afford the unsuccessful party

successive opportunities to reargue issues previously decided or to present arguments different from those originally asserted” (*William P. Pahl Equip. Corp. v Kassis*, 182 AD2d 22, 27 [1st Dept 1992] [citations omitted]). The movant bears the initial burden on a motion to reargue a prior decision pursuant to CPLR 2221 (*id.*).

LB has failed to show that this court overlooked or misapprehended the facts and law in determining the prior motion. The majority of LB’s arguments stem from the alleged nullity of the Stipulation of Settlement due to nonsatisfaction of certain conditions precedent, including nonpayment of \$100,000 owed to LB. As a result, LB claims that the Stipulation of Discontinuance, dated August 16, 2018, (NYSCEF 737) is void and that the action should be restored. In addition, LB asserts that the Trusts’ amendments should be declared null and void because they were signed by IB who had advanced dementia and were not signed by all beneficiaries to the Trusts. Finally, LB asserts that the GAL did not act in IB’s best interest and never met with IB. LB argues that the court overlooked these facts, amongst others, in deciding the underlying motion. However, these facts were considered by the court in the prior motion and have neither been overlooked or misapprehended, nor has the law applicable here.

Even if a condition precedent under the Settlement Agreement was not satisfied, it does not alter the fact that the parties to this action entered into a valid Stipulation of Discontinuance¹. The filing of the Stipulation of Discontinuance terminated this action with prejudice. As this court held in motion sequence number 031, this court lacks jurisdiction to entertain LB’s motion as this action has been “unequivocally terminated”

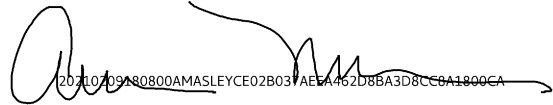
¹ The parties to the Stipulation of Discontinuance do not raise any challenges to its validity.

by the parties' execution of an "express, unconditional stipulation of discontinuance" (*Teitelbaum Holdings v Gold*, 48 NY2d 51, 56 [1979]; see *Yonkers Fur Dressing Co. v Royal Ins. Co.*, 247 NY 435, 444 [1928]).

All remaining arguments have been considered and do not yield a different result.

Accordingly, it is

ORDERED that the motion for leave to reargue motion sequence number 031 is denied.



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2/9/2021
DATE

ANDREA MASLEY, J.S.C.

CHECK ONE:

CASE DISPOSED
GRANTED

DENIED

APPLICATION:

SETTLE ORDER

NON-FINAL DISPOSITION
GRANTED IN PART
SUBMIT ORDER

OTHER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE