

**Functional Life Achievement, Inc. v Aspiring
Munchkins LLC**

2022 NY Slip Op 33303(U)

September 29, 2022

Supreme Court, New York County

Docket Number: Index No. 655583/2016

Judge: Arlene P. Bluth

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ARLENE P. BLUTH PART 14

Justice

-----X

FUNCTIONAL LIFE ACHIEVEMENT, INC.,
Plaintiff,

INDEX NO. 655583/2016

MOTION DATE 09/28/2022

MOTION SEQ. NO. 004 005

- v -

ASPIRING MUNCHKINS LLC, MEI HAR CHEW, QI GUO,
ELAINE CHING-YEE LO A.K.A. ELAINE CHING-YEE
CHOW, MARIAN SHENG, JILIN YIN, YINSHENG
FLUSHING LLC

**DECISION + ORDER ON
MOTION**

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 004) 109, 110, 111, 112, 113, 114, 123, 125

were read on this motion to/for REARGUE.

The following e-filed documents, listed by NYSCEF document number (Motion 005) 115, 116, 117, 118, 119, 120, 121, 124, 126

were read on this motion to/for RENEW.

Motion Sequence Numbers 004 and 005 are consolidated for review.

Plaintiff’s motion (MS004) to reargue the Court’s decision dated August 18, 2022 is denied. Plaintiff’s motion (MS005) to renew that decision is denied.

Background

As an initial matter, the Court denies the motion to reargue.

With respect to the motion to renew, the Court previously issued a decision denying plaintiff’s motion to compel defendants to produce certain documents on the ground that the demand was from April 21, 2017, that defendants had objected to the demand back in 2017 and

that plaintiff did nothing to compel disclosure of this information over the last five years (NYSCEF Doc. No. 100 at 3).

Counsel for plaintiff explains, in support of the motion for renewal, that the delay was not willful or dilatory, that COVID-19 caused delays, law office failure and an inadvertent oversight resulted in the delay in seeking to compel production of the information at issue. She insists that it was not until June 2022 when she looked for certain of defendants' financial documents that she realized these document requests were outstanding.

In opposition, defendants point out that their opposition to the motion at issue (Motion Sequence 003) specifically addressed delays in moving this case and that plaintiff did not adequately explain it in reply. They claim that the delay cited by plaintiff is from 2019 and does not justify why it took so long for plaintiff to make a motion for the disclosure of the requested information.

In reply, plaintiff emphasizes that it has already filed the note of issue, as directed by the Court, and that it only seeks the limited production of documents at issue here. It insists that case law provides the Court with the flexibility to consider a renewal motion.

Discussion

“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. The requirement that a motion for renewal be based on new facts is a flexible one. The new or additional facts presented either must have not been known to the party seeking renewal or may, in the Supreme Court's discretion, be based on facts known to the party seeking renewal at the time of the original motion” (*Caronia v*

Peluso, 170 AD3d 649, 650, 96 NYS3d 75 [2d Dept 2019] [internal quotations and citations omitted]).

The Court declines the motion to renew. There is no dispute that plaintiff did not present any new facts that were not known to it when it made the prior motion. As defendants point out, they questioned why it took so long for plaintiff to move to compel based on a demand from 2017 and plaintiff did not sufficiently address it in reply.

And the Court sees no reason to exercise its discretion and utilize a flexible standard for the instant motion. Plaintiff's excuse for not pursuing this discovery is unavailing and does not justify changing the Court's initial determination. That the parties were apparently pursuing settlement in 2019 does not explain why nothing was done concerning a demand from *April 2017*. Somehow, many parties are capable of discussing settlement while also doing discovery at the same time. Once it became clear the case was not going to settle, plaintiff should have sought the discovery.

And plaintiff's reliance on the pandemic does not constitute a valid excuse either because while COVID-19 certainly slowed down litigation for much of 2020, this is not a situation where plaintiff made a motion right as cases began to move again. Instead, the moving papers show that plaintiff essentially forgot about this demand until June 2022 and only sought relief after the Court ordered that a note of issue be filed (NYSCEF Doc. No. 87). Plus, the Court held numerous conferences and decided multiple discovery motions in 2020, 2021 and 2022. In other words, this is not a situation where a case lay dormant for years. Rather, the parties engaged in extensive litigation and plaintiff simply forgot about a demand that defendants objected to five years ago.

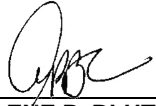
This Court has an obligation to ensure that cases move along. If the information was so important, then plaintiff was obligated to seek to compel disclosure of it or was obligated to bring it up in connection with a discovery conference at some point over the last five years.

And defendants offer arguments as to why they should not have to produce the requested information. To permit plaintiff to seek this information now would likely involve future motion practice about whether the requested discovery, or portions of it, should be disclosed which would only drag out this 2016 case even further. The fact is that plaintiff had ample opportunity to make a motion with respect to this 2017 demand and chose not to until the Court ordered that a note of issue be filed. Plaintiff simply missed its chance.

Accordingly, it is hereby

ORDERED that the motion (MS004) by plaintiff to reargue is denied; and it is further

ORDERED that the motion (MS005) by plaintiff to renew is denied.

<p><u>9/29/2022</u> DATE</p>			 <hr/> ARLENE P. BLUTH, J.S.C.
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
APPLICATION:	<input type="checkbox"/> GRANTED		<input type="checkbox"/> GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> OTHER
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT
			<input type="checkbox"/> REFERENCE