

979 Second Ave. LLC v Yue Wah Chao

2023 NY Slip Op 31721(U)

May 22, 2023

Supreme Court, New York County

Docket Number: Index No. 654145/2021

Judge: Erika M. Edwards

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This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. ERIKA M. EDWARDS

PART 10M

Justice

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979 SECOND AVENUE LLC

Plaintiff,

- v -

YUE WAH CHAO A/K/A WINNIE CHAO,

Defendant.

-----X

INDEX NO. 654145/2021

MOTION DATE 02/10/2023

MOTION SEQ. NO. 003

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 003) 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58

were read on this motion to/for RENEW/REARGUE and CROSS-MTN SANCTIONS

Upon the foregoing documents, the court denies Defendant Yue Wah Chao's a/k/a Winnie Chao's ("Defendant") motion for leave to reargue and renew the court's decision and order, dated January 11, 2023, denying Defendant's motion by order to show cause to vacate the default judgment against Defendant, filed under motion sequence 002. The court also denies Plaintiff 979 Second Avenue's ("Plaintiff") cross-motion for sanctions.

Plaintiff is the owner of a building located at 979 Second Avenue, New York, New York and Plaintiff entered into a commercial lease agreement with a tenant, Wah Win Group Corporation, for a restaurant/food establishment. Plaintiff alleges in substance that Defendant signed a personal guarantee. Plaintiff alleges in substance that the tenant and Defendant defaulted on the terms of the lease by failing to pay the rent, additional rent and other charges due and owing to Plaintiff.

Defendant denies that she signed the personal guarantee and alleged in substance that Plaintiff committed fraud and that her signature was forged. Plaintiff denies that Defendant's signature was forged or that it committed fraud on the court and argued in substance that

Defendant knowingly signed the personal guarantee before a licensed attorney, who notarized Defendant's signature.

In a previous decision and order filed under motion sequence 001, dated December 15, 2021, the court granted Plaintiff's motion for a default judgment against Defendant for Defendant's failure to answer or otherwise appear in the action. Defendant also failed to oppose the motion. On March 18, 2022, a judgment was entered against Defendant in the amount of \$105,732.62, which included \$100,034.79 for unpaid rent, additional rent and charges, reasonable attorney's fees in the amount of \$5,097.83, and costs and disbursements in the amount of \$600.00.

In a decision and order filed under motion sequence 002, dated January 11, 2023, the court denied Defendant's motion by order to show cause to vacate or otherwise set aside the default judgment, for the court to order Plaintiff to provide Defendant with the original documents relied upon to support Plaintiff's claims, for dismissal of the action because of the alleged fraud and for additional relief. The court found that Defendant "failed to demonstrate a reasonable excuse for the default or a meritorious defense to the action."

Defendant now moves under motion sequence 003 for leave to renew and reargue the court's decision denying Defendant's motion to vacate the default judgment, filed under motion sequence 002, based on the alleged fraud. In her motion to renew, Defendant provided additional documents in support of her fraud argument. In her motion to reargue, Defendant argues in substance that the court overlooked or misapprehended matters of fact or law regarding whether the personal guaranty was forged.

Plaintiff opposes the motion and cross-moves for sanctions against Defendant and Defense Counsel for filing a frivolous application and Plaintiff seeks the costs and attorneys'

fees incurred to oppose the motion. Plaintiff argues in substance that the court already rejected Defendant's baseless and false forgery and fraud claims in its previous decision and order and in the court's decision, dated February 17, 2023, in a parallel action before Hon. Lyle Frank. Plaintiff further argues in substance that Defendant failed to meet her burden to renew or reargue her previous motion.

Pursuant to CPLR 2221(d)(2), a motion for leave to reargue is left to the sound discretion of the court and may be granted only where the moving party contends that an issue of law or fact had been overlooked or misapprehended by the court when deciding the original motion (CPLR 2221[d][2]).

Pursuant to CPLR 2221(e)(2), a motion for leave to renew shall be based on new facts not offered in the prior motion that would change the court's prior determination or it shall demonstrate that there has been a change in the law that would change the court's prior determination (CPLR §2221[e][2]).

Neither motion is designed to provide the unsuccessful party successive opportunities to reargue issues previously decided by the court or to present new evidence or different arguments than previously raised (*William P. Pahl Equip. Corp. v Kassis*, 182 AD2d 22, 27 [1st Dept 1992] [internal citations and quotation marks omitted]).

Here, the court denies Defendant's motion to reargue and renew the applicable portions of the court's previous decision. The court finds that Defendant's motion to reargue fails because Defendant failed to demonstrate that the court failed to overlook or misapprehend a question of fact or law in deciding Defendant's motion to vacate the default judgment and dismiss the complaint based on Defendant's fraud allegations. All of Defendant's material arguments were

raised in the previous motion and all were rejected by the court. Here, Defendant failed to demonstrate that the court overlooked or misapprehended any issue of fact or law.

Additionally, the court denies Defendant's motion to renew and finds that the additional documents submitted by Defendant were available and known to Defendant at the time she filed her previous motion. The court also finds that her excuse for failing to provide the documents earlier because she was unable to locate them in storage is insufficient to excuse her failure to provide the documents. Furthermore, even if Defendant had provided the documents with her previous motion, then such documents would not have changed the court's prior determination.

Defendant continues to fail to meet her burden of demonstrating that she has a reasonable excuse for defaulting in this action, or a meritorious defense. The court is not persuaded by Defendant's arguments that the additional documents are new evidence which prove that the personal guaranty was forged and that Plaintiff and its counsel committed fraud on the court. These documents purport to contradict Plaintiff's arguments about the date when Defendant possessed the property and question whether Defendant had a reason to sign the personal guaranty if she already had possession of the property. However, the court finds that the documents have no bearing on whether Defendant's signature was forged, whether Defendant has a reasonable excuse for failing to answer or otherwise appear in this action, or whether Defendant has a meritorious defense for the alleged default on the lease terms.

Additionally, the court denies Plaintiff's motion for sanctions, pursuant to Judiciary Law § 753 and 22 NYCRR 130-1.1(a) for Defendant's alleged frivolous motion. The court finds that Plaintiff failed to demonstrate its entitlement to the relief requested. Although the court is unpersuaded by Defendant's continued and repeated arguments which were previously rejected

by the court, the court finds that their arguments raised in this motion do not yet rise to a level of misconduct warranting sanctions.

Therefore, the court denies Defendant's motion and Plaintiff's cross-motion, without costs to any party.

The court has considered all additional arguments raised by the parties which were not specifically discussed herein and the court denies any additional request for relief, which was not expressly granted herein.

As such, it is hereby

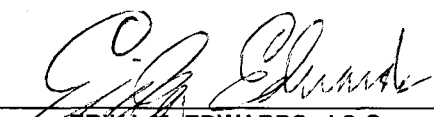
ORDERED that the court denies Defendant Yue Wah Chao's a/k/a Winnie Chao's motion to reargue and renew the court's decision and order, dated January 11, 2023, filed under motion sequence 002, without costs to any party; and it is further

ORDERED that the court denies Plaintiff 979 Second Avenue's cross-motion for sanctions.

This constitutes the decision and order of the court.

5/22/2023

DATE


ERIKA M. EDWARDS, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE