

To commence the statutory time period for appeals as of right (CPLR 5513 [a]), you are advised to serve a copy of this order, with notice of entry, on all parties.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND

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LANA FRANCO and DANA NAVAN,

Plaintiffs,

-against-

TONI-ANN FARR, individually and as Personal Representative for JONNA GALASSO, deceased, and J-L-T-D INC.,

Defendants.

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Sherri L. Eisenpress, J.S.C.

DECISION & ORDER

Index No.: 031877/2020

(Motion # 4)

The following papers, NYSCEF documents numbered 35-98 were considered in connection with Plaintiff's Notice of Motion for an Order granting leave to reargue the Court's Decision and Order dated November 10, 2022, and upon reargument, granting Plaintiffs' cross-motion in its entirety and denying Defendants' motion for summary judgment and dismissal of the action:

Upon the foregoing papers, the Court now rules as follows:

Background

In May 2020, Plaintiffs, who are sisters, commenced this action alleging that their other sisters, Defendant Toni-Ann Farr (hereinafter "Farr") and Jonna Galasso (hereinafter "Galasso")¹ wrongfully exercised control over Defendant J-L-T-D Inc. (hereinafter "JLTD"), a family real estate business, and misappropriated its assets to enrich themselves at the expense of and to the detriment of Plaintiffs. After completion of discovery, Defendants moved for summary judgment and dismissal of the Complaint and cancellation of the Notice

¹ Galasso passed away on June 13, 2020, and Farr was appointed executor of Galasso's estate on October 28, 2021.

of Pendency, and Plaintiffs cross-moved for various relief including striking an affidavit of corrections relating to Defendant Toni-Ann Farr's deposition testimony and for summary judgment in Plaintiff's favor.

By Decision and Order dated November 10, 2022, this Court granted Defendants' motion finding that Defendants made a prima facie showing of their entitlement to judgment as a matter of law dismissing the complaint by submitting evidence that Plaintiffs have no ownership interests in JLTD. Defendants' submissions demonstrated that Plaintiffs paid no consideration for an ownership interest in JLTD: they did not make any capital contributions toward JLTD or the purchase of 11 Cypress Lane; never contributed funds toward the maintenance or renovations of 11 Cypress Lane; and did not perform any services for JLTD. Furthermore, Defendants' evidence showed that Plaintiffs did not engage in any conduct reflecting their alleged status as shareholders; rather, Plaintiffs admittedly were not involved in the operation of JLTD and never demanded any proceeds from JLTD to be distributed to them or set aside for them. In opposition, Plaintiffs failed to raise a triable issue of fact. More specifically, the Court found that Plaintiffs merely relied upon their conclusory and unsubstantiated allegations that they each invested \$50,000 in JLTD and have 25% ownership interest in JLTD and upon Farr's previously-asserted and admittedly-unfounded belief that Plaintiffs possessed ownership interests.

Plaintiff now moves to reargue the Court's November 10, 2022 Decision and Order. "Motions for reargument are addressed to the sound discretion of the court which decided the original motion and may be granted upon a showing that the court overlooked or misapprehended the fact or law or for some reasons mistakenly arrived at its earlier decision." Ito v. 324 East 9th Street Corp., 49 A.D.3d 816, 857 N.Y.S.2d 578, 579 (2d Dept. 2008); E.W. Howell Co., Inc. V. S.A.F La Sala Corp., 36 A.D.3d 653, 828 N.Y.S.2d 212 (2d Dept. 2007); Barnett v. Smith, 64 A.D.3d 669, 883 N.Y.S.2d 573, 574 (2d Dept. 2009). "It is not designed to provide an unsuccessful party with successive opportunities to reargue issues previously

decided, or to present arguments different from those originally presented." McGill v. Goldman, 261 A.D.2d 593, 261 N.Y.S.2d 75, 76 (2d Dept. 1999). Thus, reargument "is not a second chance freely given to parties who have not exercised due diligence in making their first factual presentation." Rubinstein v. Goldman, 225 A.D.2d 328, 638 N.Y.S.2d 469 (1st Dept. 1996).

The Court denies Plaintiffs' Motion to reargue on the ground that it merely seeks to make the same arguments that the Court rejected in the underlying motion. To the extent it now seeks to assert a new theory- that Plaintiff's parents gifted them their shares in JLTD- this is not permissible on reargument. See Simpson v. Loehmann, 21 N.Y.2d 990, 290 N.Y.S.2d 914 (1968).

Accordingly, it is hereby

ORDERED that Plaintiffs' Notice of Motion to reargue the Court's Decision and Order dated November 10, 2022 (Motion #4) is DENIED in its entirety.

The foregoing constitutes the Decision and Order of this Court on Motion #4.

Dated: New City, New York
March 14, 2023



HON. SHERRI L. EISENPRESS
Justice of the Supreme Court

TO: All counsel via NYSCEF