

At an IAS Commercial Part 12 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, located at 360 Adams Street, Borough of Brooklyn, City and State of New York on the 29th day of September 2025.

P R E S E N T:
Honorable Reginald A. Boddie
Justice, Supreme Court

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AKIVA REICH, individually and derivatively in the
right of and on behalf of PURSLANE LLC,

Plaintiffs,

Index No. 506922/2025

-against-

Cal. No. 18 MS 2

PURSLANE LLC,

Decision and Order

Defendant/Nominal Defendant.

-and against-

PURSLANE BOATHOUSE LLC and HENRY RICH,

Defendants.

-----X
The following e-filed papers read herein:
MS 2

NYSCEF Doc Nos.
44-52, 98

Defendants' order to show cause for leave to reargue is decided as follows:

Background

Defendants move for leave to reargue the parties' previous motion resulting in the court's Decision and Order dated June 24, 2025, which granted in part defendants' motion by dismissing plaintiff's second, fourth, fifth, and seventh causes of action. Upon reargument, defendants seek dismissal of the remaining claims in the Amended Complaint in their entirety with prejudice, contending that the Court misapprehended controlling law and overlooked dispositive facts

concerning the effect of the merger of Purslane LLC into Purslane Boathouse LLC under LLC Law §§1002 and 1005, as well as the provisions of the Operating Agreement. A detailed summary of the background of this proceeding is set forth in the court's June 24, 2025 Decision and Order.

Defendants argue that the merger lawfully extinguished plaintiff's membership interest, leaving him only with an appraisal remedy, which he failed to pursue, and that he therefore lacks standing to assert any direct or derivative claims. Defendants further assert that plaintiff admitted to a material breach of the Operating Agreement, which bars his contract-based claims, and that his remaining causes of action are duplicative, improperly amalgamating direct and derivative claims, or otherwise unavailable to a non-member. Defendants also move pursuant to CPLR §3012(d) to extend their time to serve an Answer until after this motion is decided and to stay any attempt by plaintiff to seek a default in the interim.

In opposition, plaintiff argues that the motion should be denied outright because defendants ignored the Court's signed service directive, which required overnight mail. On the merits, plaintiff contends that reargument fails under CPLR 2221(d) because defendants identify no fact or law that the Court overlooked and simply reiterate previously rejected arguments. Plaintiff further asserts that the case law and statute defendants rely upon do not control, and that, instead, Section 8.1 (b) of the Operating Agreement governs when a member "shall cease to be a Member," and that the Court correctly found a triable issue as to the issue of plaintiff's membership. Plaintiff asserts that defendants' new "material breach" theory is impermissible on reargument and meritless, that a CPLR 2201 stay pending appeal is unsupported, particularly when, as here, the appeal has not been perfected, and that any further extension of time to answer should be denied given defendants' pattern of delays.

Discussion

“A motion for leave to reargue shall be based on matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion, but shall not include matters of fact not offered on the prior motion” (*Pryor v Commonwealth Land Tit. Ins. Co.*, 17 AD3d 434, 435-36 [2d Dept 2005] [citation and internal quotation marks omitted]; see CPLR 2221[d][2]). “The motion does not offer an unsuccessful party ... successive opportunities to present arguments not previously advanced” (*id.*). “It is well settled that a motion to reargue is not an appropriate vehicle for raising new questions ... which were not previously advanced” (*People v D'Alessandro*, 13 NY3d 216, 219 [2009] [citation and internal quotation marks omitted]). “Necessarily, where a new argument is presented on the motion, that argument could not have been overlooked or misapprehended ... in the first instance” (*id.*).

In the case before the court, defendants’ submissions merely reiterate the arguments raised in their original motion, namely, that plaintiff lacks standing as a result of the merger and that appraisal was his sole remedy. The Court addressed and rejected those arguments in its June 24, 2025 Decision, relying on the plain text of the Operating Agreement, specifically section 8.1(b), which governs cessation of membership, holding that “[d]efendants fail to establish as a matter of law that Akiva is no longer a member of Purslane given the provision in the Operating Agreement governing removal of a member, in particular section 8. I (b).” To the extent that defendants now advance a “material breach” theory, such contention could have been raised previously and thus cannot be entertained for the first time on reargument.

As to the branch of the motion seeking a stay and an extension of time to answer, those requests are denied as moot in light of the Conference Order dated September 17, 2025.

Conclusion

Based on the foregoing, defendants' motion for leave to reargue is denied. Any arguments not expressly addressed herein were considered and deemed without merit or unnecessary to address given the court's determination.

ENTER:



Honorable Reginald A. Boddie
Justice, Supreme Court

HON. REGINALD A. BODDIE
J.S.C.