

NYSCEF DOC. NO. 91

To commence the statutory time period for appeals as of right (RECEIVED) NYSCEF to 08/31/2016 copy of this order, with notice of entry, upon all parties.

Disp x Dec Seq. No. 3 Type rearg.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

PRESENT: HON. LINDA S. JAMIESON
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WILLIAM JACOBS,

Petitioner,

-against-

Index No. 62551/2015

DECISION AND ORDER

CHARLES CARTALEMI and WESTCHESTER
INDUSTRIAL COMPLEX, LLC,

Defendants.

-----X

The following papers numbered 1 to 4 were read on this motion:

<u>Paper</u>	<u>Number</u>
Notice of Motion, Affidavits and Exhibits	1
Memorandum of Law	2
Memorandum of Law in Opposition	3
Reply Memorandum of Law	4

Petitioner brings his motion seeking to reargue this Court's Decision and Order dated April 21, 2016 (the "Decision"), which dismissed the petition in its entirety. The petition sought (1) a declaratory judgment declaring that petitioner is entitled to withdraw as the owner of a 20% interest in respondent Westchester Industrial Complex, LLC ("WIC"); and¹ (2) upon his withdrawal, an

¹Petitioner repeatedly refers to the relief he sought as "conjunctive," and argues that the Court misunderstood this. This is incorrect. The Court acknowledged the dual nature of the relief

order finding that he is entitled to be paid, within a reasonable time, the fair value of his interest, plus interest at 9%, without any discount factor.

It is well-settled that "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. While the determination to grant leave to reargue a motion lies within the sound discretion of the court, a motion for leave to reargue 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." *Rodriguez v. Gutierrez*, 138 A.D.3d 964 (2d Dept. 2016).

Petitioner argues that the Court "overlooked the fundamental nature of the relief sought by Jacobs, which sought a judicial declaration that he possessed the statutory right to withdraw as a member of WIC, and upon such withdrawal, the statutory right to be paid 'fair value' for his WIC interest." However, the Court did not overlook the nature of the relief sought by petitioner. Rather, it disagreed with him that he was entitled, upon his withdrawal to obtain "fair market value," in accordance with Limited Liability Company Law § 509. Instead, the Court reviewed

sought in the Decision by using the word "and."

the entirety of the parties' agreement,² and determined that LLC § 509 does not apply here because the agreement itself **does** address this situation. Specifically, the Court determined in the Decision that the section of the parties' agreement entitled "Sale of Membership Interest in Absence of Prior Offer" governs the instant scenario.


Having reviewed the motion papers, the exhibits and the Decision, the Court finds that there is no reason to rehash, re-interpret or re-explain itself and the Decision. *Martin v. Martin*, 109 A.D.3d 518, 519, 970 N.Y.S.2d 581, 583 (2d Dept. 2013) ("the Supreme Court did not overlook or misapprehend any facts or points of law."). The parties' agreement, whether for good or ill, contains a provision that governs the situation in which petitioner presently finds himself. While the situation does not appear to be fair at this juncture - since, as petitioner contends, Cartalemi now has "carte blanche control

²Petitioner argues that the Court did not review the entire agreement, but just limited "its inquiry to Article X of the agreement," overlooking Section 9.07 of Article IX. This section provides that "The rights and remedies provided by this Operating Agreement are cumulative . . . [and that the rights and remedies] are given in addition to any other rights the parties may have by law, statute, ordinance or otherwise." Petitioner argues that this section means that LLC § 509 applies. However, Section 509 of the Limited Liability Company Law only applies in the event that the operating agreement in question is silent. Specifically, Section 509 provides, in relevant part, that "upon withdrawal as a member of the limited liability company, any withdrawing member . . . **if not otherwise provided in the operating agreement** . . . is entitled to receive, within a reasonable time after withdrawal, the fair value of his or her membership interest. . . ." (Emphasis added).

over my economic rights in WIC" - it is entirely of petitioner's making. As petitioner concedes, what he should have done was to commence an action seeking "a declaratory judgment prior to withdrawal confirming his right to be paid fair value upon withdrawal." If he had done so, this Court could have told him, prior to his withdrawal, that it disagreed with his interpretation of the agreement. But since he did not do so, he is caught in this very difficult situation of his own making. For the Court to find otherwise would require it to ignore the plain language of the parties' agreement, which governs situations in which there is no prior offer for a member's membership interest. Accordingly, the motion is denied in its entirety.

The foregoing constitutes the decision and order of the Court.

Dated: White Plains, New York
August 19, 2016


HON. LINDA S. JAMIESON
Justice of the Supreme Court

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