NEW YORK SUPREME COURT – COUNTY OF BRONX

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: PART **25**

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Index №. 33784/2019E

BETTY SEBROW, individually and as a Shareholder of WORBES CORPORATION,

Hon. **MARY ANN BRIGANTTI**
Justice of the Supreme Court

Plaintiff,

- against -

ZVI SEBROW, et al.,

Defendants.

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The following papers numbered 24 to 35 were read on these motions **(Seq. No.** 2) for **REARGUE/RENEW/AMEND** noticed on **April 9, 2021** and duly submitted as **Nos.** on the Motion Calendar of **August 5, 2021**

Sequence No.	NYSCEF Doc. Nos.
Notice of Motion – Exhibits and Affidavits Annexed	24-31
Cross Motion – Exhibits and Affidavits Annexed	
Answering Affidavit and Exhibits, Memorandum of Law	32
Reply Affidavit	33; 35

This motion is decided in accordance with the accompanying memorandum decision.

Dated: May 19, 2022

Hon. _____
Mary Ann Brigantti, J.S.C.

1. CHECK ONE..... ☐ CASE DISPOSED IN ITS ENTIRETY ☒ CASE STILL ACTIVE
2. MOTION IS.....
3. CHECK IF APPROPRIATE..... ☐ GRANTED ☒ DENIED ☐ GRANTED IN PART ☐ OTHER
☐ SETTLE ORDER ☐ SUBMIT ORDER ☐ SCHEDULE APPEARANCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

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BETTY SEBROW, individually and as a Shareholder of WORBES CORPORATION,

Plaintiff,

- against -

ZVI SEBROW, NYCTL 2017-A TRUST and THE BANK OF NEW YORK MELLON as collateral agent and custodian,

Defendants.

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DECISION and ORDER
Index No. 33784/2019E

HON. MARY ANN BRIGANTTI

Upon the foregoing papers, the plaintiff Betty Sebrow ("Betty"), individually and as a Shareholder of Worbres Corporation ("Worbes") (collectively referred to as "Plaintiff"), moves for an order (1) pursuant to CPLR 2221(d), granting Plaintiff leave to reargue this Court's prior decision and order dated and entered October 9, 2020, and upon granting of such leave, reinstating the notice of pendency dated November 20, 2019, and an order denying the motion of the defendant Zvi Sebrow ("Defendant") in its entirety; (2) pursuant to CPLR 2221(e), granting Plaintiff leave to renew, and upon renewal, reinstating the notice of pendency dated November 20, 2019, and an order denying Defendant's motion in its entirety; (3) pursuant to CPLR 3025(b), granting Plaintiff leave to amend the complaint to add "Betty Sebrow as Executor of the Estate of David Sebrow, Deceased," and such other and further relief as this Court deems just and proper. Defendant opposes the motion.

CPLR 2221(a) states that a "motion for leave to renew or to reargue a prior motion ... shall bemade, on notice, to the judge who signed the order, unless he or she is for any reason unable to hear it..." In this case, while Justice Llinét M. Rosado issued the prior decision, she is unable to hear this motion because she has since been re-assigned to the Supreme Court Criminal Term.

A motion for reargument "shall be based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion" (*Neo Universe Inc. v. Ito*, 190 A.D.3d 426 [1st Dept. 2021], citing CPLR 2221[d][2]). Such a motion "is addressed to the sound discretion of the court" and it "is not designed to afford the unsuccessful party successive opportunities to reargue issues

previously decided" (*William P. Pahl Equipment Corp. v. Kassis*, 182 A.D.2d 22, 27 [1st Dept. 1992], *lv.to appeal dismissed in part, denied in part*, 80 N.Y.2d 1005, rearg. denied, 81 N.Y.2d 782 [1993]).

In this case, Plaintiff has failed to demonstrate that the Court overlooked or misapprehended any matter of fact or law in reaching its prior determination, and Plaintiff improperly sets forth new legal arguments in support of this branch of her motion (*see, e.g., Foley v. Roche*, 68 A.D.2d 558, 567-68 [1st Dept. 1979]). The Appellate Division, First Department, has affirmed Justice Rosado's decision (*Sebrow v. Sebrow*, ____ N.Y.S.3d ____ 2022 WL 1572191 [1st Dept. May 19, 2022]). Accordingly, Plaintiff's motion for leave to reargue is denied.

CPLR 2221(e) provides that a motion for leave to renew "shall be based upon new facts not offered on the prior motion that would change the prior determination" (CPLR 2221[e][2]), and "shall contain reasonable justification for the failure to present such facts on the prior motion" (CPLR 2221[e][3]). "Renewal is granted sparingly and it not a second chance freely given to parties who have failed to exercise due diligence in making their first factual presentation" (*Wade v. Giaccobe*, 176 A.D.3d 641 [1st Dept. 2019], citing Henry v. Peguero, 72 A.D.3d 600, 602 [1st Dept. 2010], *appeal dismissed*, 15 N.Y.3d 820 [2010]; *Chelsea Piers Management v. Forest Elec. Corp.*, 281 A.D.2d 252 [1st Dept. 2001]). Still, Courts have the discretion to grant renewal in the interest of justice even upon facts known to the movant at the time the original motion was made, and may be relax the "vigorous requirements for renewal" so as not to defeat substantive fairness (see *Corporan v. Dennis*, 117 A.D.3d 601, 601 [1st Dept. 2014]).

In this case, even if the Court were to consider the new evidence submitted on this motion, the submissions would not change the prior determination which dismissed Plaintiff's complaint pursuant to CPLR 3211(a)(3). Plaintiff's new affidavit fails to raise any issues about the genuineness of the Stockholders' Agreement ("SA"). To raise a fact issue as to the authenticity of a signature, a party must provide "[s]omething more than a bald assertion of forgery" (*Banco Popular N. Am. v. Victory Taxi Mgt.*, 1 N.Y.3d 381, 383-84 [2004]). Here, Plaintiff does not make any factual assertions supporting her claim that the signature appearing on the SA is not that of decedent. Plaintiff does not provide any other examples of decedent's signature showing that it differed from the signature on the SA, and even to the untrained eye, the signature appears materially similar to the one that appears on decedent's Last Will and Testament. Plaintiff's additional allegations concerning decedent's signature thus constitute "conclusory, self-serving, and wholly insufficient...." (*Peyton v. State of Newburgh, Inc.*, 14 A.D.3d 51,

54 [1st Dept. 2004]; *Karma Props. LLC v. Lilok, Inc.*, 184 A.D.3d 515 [1st Dept. 2020]). Plaintiff's further allegations – that there exists a different SA that does not contain the stock transfer restriction – constitute inadmissible hearsay as she purports to describe the contents of an out-of-court document (*see 1591 Second Avenue LLC v. Metropolitan Transportation Authority*, 202 A.D.3d 582, 584 [1st Dept. 2022]), and similar contentions were rejected by the Appellate Division, which held "there is no genuine dispute as to the authenticity of [D]efendant's documentary evidence" (*Sebrow*, 2022 WL 1572191).

Plaintiff alleges that the SA, even if taken at face value, cannot defeat a spousal right of election, citing *In re Estate of Riefberg*, 58 N.Y.2d 134 (1983). Plaintiff, however, advanced this argument in opposition to the prior motion. Justice Rosado rejected that argument and the Appellate Division affirmed that determination. Plaintiff's further contentions that decedent's estate would retain 50% of the shares even if the SA were valid were made in her appellate brief and considered unavailing; the new evidence submitted in support of the instant motion does not warrant a change of that determination (CPLR 2221[e]).

In light of the foregoing, Plaintiff's motion for leave to amend the complaint is denied, as there is no complaint left for the court to amend (*Tanner v. Stack*, 176 A.D.3d 429 [1st Dept. 2019]).

Accordingly, it is hereby

ORDERED, that Plaintiff's motion is denied.

This constitutes the Decision and Order of this Court.

ENTER

Dated: MAY 19, 2022

Mary Ann Brigantti, J.S.C