SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

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ALYSON SANDLER VENEZIA and MARISSA SANDLER FRANK,

Index No.: 613817/2019

Plaintiffs,

AFFIRMATION IN OPPOSITION TO MOTION TO REARGUE

- against –

PAMELA GREENBAUM, ADAM SANDLER and ELISA SHAFRAN,

Defendants.

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STATE OF NEW YORK)
) ss.:
COUNTY OF NASSAU)

GREGORY J. POND, an attorney duly licensed to practice law in the courts of the State of New York, hereby affirms the following to be true under the penalties of perjury.

1. I am a member of the law firm Certilman Balin Adler & Hyman, LLP, attorneys for defendant, Pamela Greenbaum ("Pamela"), and as such am fully familiar with the facts and circumstances herein.

2. This affirmation is submitted in opposition to Plaintiffs' motion seeking (a) leave to reargue this Court's Decision and Order dated March 26, 2021; (b) leave to renew Plaintiffs' opposition to Defendant's motion for summary judgment; and (c) a stay of enforcement of the Decision and Order and/or the Judgment entered based upon it.

HISTORY AND BACKGROUND

3. Plaintiffs filed a Summons and Complaint with this Court dated October 3, 2019. In the Complaint, Plaintiffs claimed that Pamela improperly made payments from a trust (The AWS Trust) to or for the benefit of Adam Sandler ("Adam"). Plaintiffs sought damages in an

amount not less than $250,000.00, or in the alternative, the imposition of a constructive trust upon Adam or Pamela and the repayment to The AWS Trust the entirety of funds paid from the The AWS Trust to Adam, plus interest, and an award of punitive damages.

4. Pamela filed her Answer dated November 15, 2019, with affirmative defenses, and a Counterclaim pursuant to CPLR 3001 for judgment rescinding The AWS Trust and declaring it to be null and void ab initio.

5. Subsequently, on January 10, 2020, Pamela filed a motion to dismiss Plaintiffs' Complaint against her in its entirety and sought a declaratory judgment rescinding The AWS Trust and declaring it null and void.

6. This Court rendered a Decision and Order dated March 26, 2021, duly entered in the Office of the Nassau County Clerk on March 30, 2021, dismissing Plaintiffs' Complaint and rescinding The AWS Trust, finding it to be null and void ab initio.

7. Plaintiffs filed a notice of appeal and have filed the instant motion seeking (a) leave to reargue this Court's Decision; (b) leave to renew their opposition to Defendant's motion for summary judgment; and (c) a stay of enforcement of the Judgment.

SUMMARY OF ARGUMENT

8. Plaintiffs request to reargue and for leave to renew should be denied in the entirety. Plaintiffs have not demonstrated that this Court overlooked or misapprehended the facts or the law, nor have they set forth any **new** facts not offered on the prior motion that would change the prior determination nor a change in the law that would change the prior determination. CPLR 2221.

9. Plaintiffs claim entitlement to *reargue* this Court's Decision, based on Plaintiffs' belief that this Court misapprehended certain facts and the law. Plaintiffs frivolously assert that

this Court:

(1) misapprehended that the question of settlor's intent in signing The AWS Trust can not be decided on a motion for summary judgment and prior to the completion of discovery;

(2) misapprehended Adam's income, and that such misapprehension undermined Adam's claim that he did not intend to make a gift;

(3) misapprehended the law by incorrectly identifying the "donee" of the purported gift;

(4) misapprehended Pamela's and/or Adam's actions to stand for the proposition that Adam did not intend to create an irrevocable trust; and

(5) overlooked the fact that The AWS Trust was allegedly a vehicle to shelter assets from creditors.

10. Plaintiffs request for leave to *renew* is based solely on their irrelevant contention that they were unable to complete non-party discovery.

11. Plaintiffs fail to meet the standard set forth in CPLR 2221(d)(2) which sets forth the parameters allowing reargument, and do not even come close to meeting the standard for leave to renew under CPLR 2221(e).

POINT ONE

Plaintiffs' Motion For Leave to Reargue Should be Denied

12. Pursuant to CPLR 2221(d)(2), 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."

"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." *See Ahmed v. Pannone*, 116 A.D.3d 802, 805, 984 N.Y.S.2d

104, 107 (2d Dept. 2014) *quoting Anthony J. Carter, DDS, P.C. v. Carter*, 81 A.D.3d 819, 820, 916 N.Y.S.2d 821 (2d Dept. 2011).

13. Plaintiffs must establish that this Court overlooked or misapprehended a matter of fact or law in its decision to warrant the granting of a motion to reargue, without introducing new arguments not previously presented. *See Ahmed v. Pannone*, 116 A.D.3d 802, 805, 984 N.Y.S.2d 104, 107 (2d Dept. 2014). As demonstrated below, Plaintiffs' motion fails to meet this standard to warrant leave to reargue.

14. In their motion to reargue, Plaintiffs are simply attempting to have a second bite at the apple. Plaintiffs do not set forth any misapprehension by the Court of the law or facts which would impact the Court's Decision. An analysis of each of Plaintiffs' baseless claims are discussed herein.

(1) Plaintiffs allege that this Court should not have declared The AWS Trust void ab initio prior to the completion of third-party discovery.

15. Plaintiffs raise, for the first time, an argument that seems to assert that summary judgment should not have been granted because Defendants (and the third-party witness) had not yet responded to discovery demands. This contention, that Plaintiffs missed the opportunity for discovery, is, at best, a new argument, and must be rejected. It is not a "new fact" that would justify reargument. *People v. D'Alessandro*, 13 N.Y.3d 216, 219 (2009)("Necessarily, where a new argument is presented on the motion, that argument could not have been 'overlooked or misapprehended'…in the first instance."); *Levi v Utica First Ins. Co.*, 12 A.D.3d 256, 258 (1st Dept 2004)(a motion to reargue is not the appropriate vehicle for raising new issues); *Cross v Welcome*, 52 Misc. 3d 1221(A), *2 (Sup Ct 2016)("Reargument is not designed to afford the unsuccessful party successive opportunities to reargue issues previously decided or to present

arguments different from those originally asserted."); *Aetna Cas. and Sur. Co. v. Certain Underwriters at Lloyd's, London*, 176 Misc. 2d 598, 600 (Sup Ct 1998), *affd sub nom. Aetna Cas. and Sur. Co. v Certain Underwriters at Lloyd's*, 263 A.D.2d 367 (1st Dept 1999) ("Reargument does not provide a party with an opportunity to advance new arguments…Nor may a party seek reargument to address issues previously decided"). Plaintiffs are precluded from making novel arguments in a motion to reargue. *See Ahmed v. Pannone*, 116 A.D.3d 802, 805, 984 N.Y.S.2d 104, 107 (2d Dept. 2014) (holding no grounds for reargument were stated where movant included new arguments not offered on the prior motion); *see also Foley v. Roche*, 68 A.D.2d 558, 567–568, 418 N.Y.S.2d 588 (1st Dept. 1979); *Blair v. Allstate Indem. Co.*, 124 A.D.3d 1224, 1225, 998 N.Y.S.2d 754, 755 (4th Dept. 2015).

16. Further, Plaintiffs do not indicate with any specificity what facts Plaintiffs missed out on by failing to complete discovery. Nor do Plaintiffs explain how ongoing discovery would have had any bearing on the summary judgment motion. Here, both parties had an opportunity to set forth evidence to support or contradict a motion for summary judgment. Plaintiffs had the opportunity to substantiate Plaintiffs' claims and avoid summary judgment, which Plaintiffs could not and did not do. *See Fleet Credit Corp. v. Harvey Hutter & Co.*, 207 A.D.2d 380, 381, 615 N.Y.S.2d 702, 703 (2d Dept. 1994) (finding that defendant's unsubstantiated claims were insufficient to avoid summary judgment.) Simply put, Plaintiffs never had evidence to support Plaintiffs' untenable claims and does not have any new evidence now.

17. Plaintiffs cite the case, *Piro v. Piro, 819 N.Y.S.2d 850, 2006 N.Y. Slip Op. 50680* in support of their contention that this Court prematurely rescinded The AWS Trust. However, it is Plaintiffs, not this Court, who misapprehended the law. *Piro* does not require discovery to be completed before a Court can declare a trust void ab initio. *Piro* simply supports the theory

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