

SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: Geoffrey Wright
Justice

PART 47

Index Number : 160569/2013
WORMSER, KIELY, GALEF &
vs.
FRUMKIN, JACOB
SEQUENCE NUMBER : 003
REARGUMENT/RECONSIDERATION

INDEX NO. 160569/13
MOTION DATE _____
MOTION SEQ. NO. 3

The following papers, numbered 1 to 3, were read on this motion to/for _____

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ No(s). 1
Answering Affidavits — Exhibits _____ No(s). 2
Replying Affidavits _____ No(s). 3

Upon the foregoing papers, it is ordered that ~~this motion is~~ plaintiff's motion pursuant to CPLR 2221 to reset the Court's order is granted. Attached is the amended court order.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):


GEOFFREY D. WRIGHT
AJSC

Dated: Feb. 26, 2015

_____, J.S.C.

- 1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
- 2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
- 3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER
 DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

At Part 47 of the Supreme Court of the State of New York, held in and for the County of New York, at 111 Centre Street, New York, NY 10013 on Feb. 26, 2015.

PRESENT:

HON. GEOFFREY D.S. WRIGHT
Justice

-----X
WORMSER, KIELY, GALEF & JACOBS LLP,

Plaintiff,

- against -

JACOB FRUMKIN, individually and as Managing Member of Hamilton Heights Partners, LLC, and HAMILTON HEIGHTS PARTNERS, LLC,

Defendants.
-----X

Index No. 160569/13

ORDER

Motion Seq. No. 002

WHEREAS, Plaintiff Wormser, Kiely, Galef & Jacobs, LLP, moved this Court for an Order pursuant to CPLR §§ 3211(a)(1), (6) and (7) dismissing the Counterclaims interposed by Defendants Jacob Frumkin, as Managing Member of Hamilton Heights Partners, LLC, and Hamilton Heights Partners, LLC (collectively, "Defendants") ("Motion"), and Defendants having opposed the Motion, and the Court having received and reviewed Plaintiff's Affirmation, Memorandum of Law, and exhibits in support of the Motion, Defendants' Affirmation, Affidavits, Memorandum of Law and exhibits in opposition to the Motion, and Plaintiff's Reply Affirmation, Reply Memorandum of Law, and exhibits in further support of the Motion, all of which are filed and included in the range of NYSCEF Doc. Nos. 73-116; and

WHEREAS, the Motion having duly come on to be heard and, after due deliberation, the

Court having issued a Decision and Order, dated November 13, 2014, and entered November 14, 2014 (NYSCEF Doc. No. 117), and in which counsel was directed to settle an order,

NOW, IT IS HEREBY ORDERED that the Motion is disposed of as follows:

1. That portion of the Motion that sought to dismiss Defendants' First Counterclaim, entitled "Legal Malpractice Sounding in Negligence and/or Breach of Fiduciary Duty," is DENIED, except that the motion is GRANTED as to Defendants' allegations that Plaintiff committed malpractice by:
 - a. failing to prepare or rehabilitate Frumkin as a witness;
 - b. failing to properly present, draft, research, submit the record for, and argue a legally sufficient cross motion to vacate the underlying arbitration award;
 - c. misrepresenting its legal experience, quality of its attorneys, and the staffing for the matter;
 - d. failing to advise Defendants as to fraud damages;
 - e. failing to advise Defendants properly about witness O'Brien;
 - e. failing to provide an objective assessment of Defendants' case; and
 - f. failing to adequately advise Defendants of the tax consequences of settlement proposals.
2. That portion of the Motion that sought to dismiss Defendants' Second Counterclaim, entitled "Rescission of the May 13, 2010 Retainer Agreement Based Upon Negligent or Fraudulent Misrepresentation," is GRANTED.
3. That portion of the Motion that sought to dismiss Defendants' Third Counterclaim, entitled "Declaratory Judgment Based Upon Violation of the

New York Rules of Professional Conduct and Sounding in 'Money Had and Received,'" is GRANTED.

4. That portion of the Motion that sought to dismiss Defendants' Fourth Counterclaim, entitled "Breach of Contract," is GRANTED.
5. That portion of the Motion, which was raised for the first time on Reply, to convert the Motion to one for summary judgment is DENIED.
6. That portion of the Motion that sought costs, including reasonable attorneys' fees, is DENIED.
7. That portion of the Motion that sought to dismiss those aspects of Defendants' counterclaims seeking the recovery of attorneys' fees is GRANTED.

IT IS FURTHER ORDERED that a copy of this Order with Notice of Entry shall be served upon any party entitled to notice within twenty (20) days of entry; and it is further

ORDERED that unless Plaintiff and Defendants determine otherwise by a written stipulation, pursuant to CPLR § 3211(f), Plaintiff shall have ten (10) days after service of Notice of Entry of this Order to interpose its Reply to Defendants' Verified Amended Answer and Counterclaims.


GEOFFREY D. WRIGHT
AJSC

GEOFFREY D.S. WRIGHT, J.S.C.