

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ANDREW BORROK PART IAS MOTION 53EFM

Justice

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STELLA STOLPER

Plaintiff,

- v -

ZARINA BURBACKI,

Defendant.

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INDEX NO. 652352/2018

MOTION DATE 07/24/2020

MOTION SEQ. NO. 008

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 008) 102, 103, 105 were read on this motion to/for REARGUMENT/RECONSIDERATION.

Upon the foregoing documents, Zarina Burbacki’s motion to reargue the court’s prior decision dated July 20, 2020 (the **Prior Decision**) pursuant to CPLR § 2221(d) is denied.

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” (CPLR § 2221[d]). A motion for leave to reargue is not intended to provide an unsuccessful party with successive opportunities to present arguments different from those originally presented (*Setters v Al Prop. and Dev. (USA) Corp.*, 139 AD3d 492, [1st Dept 2016], *Foley v Roche*, 68 AD2d 558 [1st Dept 1979]). Nor can a motion to reargue serve as a basis “to advance arguments different from those tendered on the original application” (*Foley*, 68 AD2d at 568-69).

The facts of this matter are set forth in the court's Prior Decision (NYSCEF Doc. No. 100). Familiarity with the facts is presumed. As relevant, in its Prior Decision, the court denied Ms. Burbacki's motion to dismiss based on a prior Settlement Agreement and Mutual Release, between Stella Bulochnikov and Wicked Entertainment, Inc. and Mariah Carey and Mirage Entertainment, Inc. (the **Mutual Release**) because "Ms. Stolper ... never released her own attorney, Ms. Burbacki, pursuant to such Mutual Release."

Now, Ms. Burbacki argues that the court "misapprehended" the Mutual Release because it covered not just lawyers, but also Ms. Carey's "agents," "representatives" and/or "others taking an interest in the matter," which Ms. Burbacki claims are categories that would apply to her. Ms. Burbacki is incorrect.

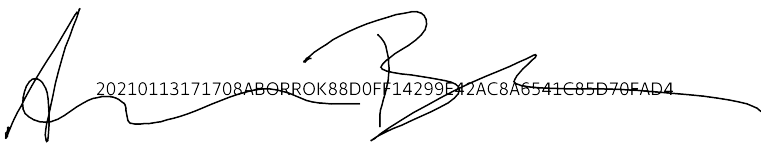
The court did not misapprehend the relevant language of the Mutual Release. Ms. Burbacki raised exactly this same argument on the prior motion (NYSCEF Doc. Nos. 85 at 2, 96 at 3-4). The court rejected this argument because this action concerns Ms. Burbacki's alleged wrongdoing in her role *as Ms. Stolper's attorney*, not Ms. Carey's attorney, agent or representative. The "Mutual Release does not bar Ms. Stolper's claims in this action because she never released *her own* attorney, agents, or representatives pursuant to such Mutual Release" (NYSCEF Doc. No. 88).

As noted, a motion for reargument is not a vehicle for the unsuccessful party to continue rehashing the same arguments already considered and rejected. Here, Ms. Burbacki fails to

demonstrate that the court overlooked or misapprehended any actual issues of fact or law in reaching its Prior Decision.

Accordingly, it is

ORDERED that the motion to reargue is denied.



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1/13/2021
DATE

ANDREW BORROK, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: