SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. LYLE E. FRANK** **PART** **11M**

Justice

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FRANCESCA MONARI, 257 GROUP LLC,JOYCE REISS-JANGANA, BRANDO MONARI-BRANDMAN, JACK JANGANA

Plaintiff,

- v -

MING LU, URSULA POHL, CHURCH STREET APARTMENT CORP.,

Defendant.

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INDEX NO. 650705/2024

MOTION DATE 10/08/2024

MOTION SEQ. NO. 004

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 004) 93, 94, 95, 96, 97, 109, 110, 111, 123, 124

were read on this motion to/for REARGUMENT/RECONSIDERATION.

Upon the foregoing documents, plaintiffs' motion is denied.

The underlying case here arises out of an acrimonious dispute over the governance of a cooperative corporation that manages the residential building located at 257 Church Street in Manhattan. The Plaintiffs/Petitioners Francesca Monari, 257 Group LLC, Joyce Reiss-Jangana, Brando Monari-Brandman, and Jack Jangana (collectively, "Plaintiffs") have brought the underlying hybrid suit both as individuals and derivatively on behalf of the Church Street Apartment Corporation, pleading six causes of action against Defendants/Respondents Ming Lu, Ursula Pohl, and the Church Street Apartment Corp (collectively, "Defendants"). There are several contested issues in this case, but central to the dispute is the validity of a purported shareholders' meeting in May of 2023 (the "May Meeting") and the decisions made at that meeting. Crucial to this motion, the First, Fourth and Sixth causes of action in the

petition/complaint relate in large part to this disputed meeting and shareholder actions taken there.

In February of 2024, Plaintiffs moved for summary disposition on the First, Fourth, and Sixth causes of action in the petition/complaint. The Court denied that motion in an order dated September 05, 2024. The Court stated there that "there are issues underlying the shareholders meeting and its validity that prevent a summary determination in petitioners/plaintiffs' favor. The Court is not persuaded that the petitioners/plaintiffs have established entitlement to the relief sought." Plaintiffs bring the present motion seeking to reargue the Court's decision on their motion for summary disposition, or, in the alternative, holding a bench trial to determine these causes of action on the papers alone with no oral testimony.

The Court notes at the outset that requesting a summary disposition is functionally the same request as a bench trial on the papers with no oral testimony. The alternative request is redundant and therefore is denied.

Regarding the request for reargument, the Plaintiffs have failed to satisfy the standard. A motion for leave to reargue must be "based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion." CPLR § 2221(d)(2). A motion to reargue is not meant "to serve as a vehicle to permit the unsuccessful party to argue once again the very questions previously decided." *Pro Brokerage, Inc. v. Home Ins. Co.*, 99 A.D.2d 971, 971 (1st Dept. 1984). Instead, the moving party must show that the "court overlooked or misapprehended the facts or the law or for some reason mistakenly arrived at its earlier decision." *William P. Pahl Equip. Corp. v. Kassis*, 182 A.D.2d 22, 27 (1st Dept. 1992). Here, Plaintiffs contend that there is no dispute of fact regarding the notice for the May Meeting or the ability of shareholders in arrears to vote that would have an impact on the legal validity of the

disputed meeting. Therefore, Plaintiffs argue, the Court erred in failing to grant summary disposition on the three causes of action. The Plaintiffs are essentially arguing the same questions already decided, however, and they have not adequately shown that the Court misapprehended either facts or law.

The Court notes that there are several areas of disputed fact in the three causes of action that do not turn on validity of the notice for the disputed shareholders' meeting. For instance, the first cause of action seeks a declaratory judgment that the May Meeting was valid the transfer of Unit 5 was valid. The Defendants challenge, among other things, the competency of one of the shareholders and the validity of her proxy agreement. They argue that the transfer was invalid for these reasons as well as a failure to conform with the requirements for a transfer set forth in the Bylaws.

The Plaintiffs argue that the law is well-settled that discrepancies in a shareholder meeting do not invalidate the meeting if the outcome would have been the same regardless of failure to conform with the Bylaws or other procedural requirements. But the law on this is somewhat murky. Plaintiffs cite to several trial court decisions that have confirmed shareholder elections despite procedural irregularities. *See, e.g., Green v. Cristancho*, 2018 N.Y.Misc. LEXIS 3298 (Sup. Ct. 2018); *Matter of Schapira v. Grunberg*, 12 Misc. 3d 1195(A) (Sup. Ct. 2006). But the main precedential case on this issue, *Goldfield Corp. v. General Host Corp*, does not provide the legal certainty on this issue that Plaintiffs contend it does.

In *Goldfield*, a shareholder was denied the opportunity to request a proxy and other shareholders were wrongly told that their shares could not be voted. *Goldfield Corp. v. General Host Corp.*, 29 N.Y.2d 264, 267 (1971). The Court of Appeals there held that the annual corporate election was nonetheless valid, reasoning that "(e)lections, however, will not be

overturned for just any misrepresentation. The materiality of the misrepresentation, the completeness of other information from which shareholders could determine the truth, and the likelihood, given the circumstances of the election, that some shareholder might have voted differently as a result of the misrepresentation, without going so far as to show an entirely different result on the tallied vote, should all be considered." *Id.*, at 270. The court there also noted that the general rule is that "failure to give notice in accord with the statute and the corporate by-laws would have rendered the election void, and, if void, a new election would have been required even without a showing that the results of the election would, or might have been different." *Id.*, at 269. Not surprisingly, *Goldfield* has been cited to as support both for declaring an election invalid for failure to properly give notice and for validating an election despite procedural flaws. *See Trustees of Gallilee Pentecostal Church, Inc. v. Williams*, 65 A.D.3d 1221, 1223 (1st Dept. 2009); *Board of Mgrs. Of Park Regent Condominium v. Park Regent Unit Owners Assoc.*, 58 A.D.3d 589, 591 (2nd Dept. 2009); *but see Querioga v. 340 E. 93rd St. Corp.*, 2024 N.Y. Misc. LEXIS 4089, *8 (Sup. Ct. 2024).

Ultimately, the Plaintiffs have failed to show that the Court misapprehended law or fact in determining that the burden for summary disposition had not been met. Nor have they shown that the Court otherwise erred in making this determination. The Court has considered the Plaintiffs' other arguments and found them unavailing. Accordingly, it is hereby

ADJUDGED that the plaintiffs' motion for leave to reargue is denied.

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11/7/2024
DATE

LYLE E. FRANK, J.S.C.

CHECK ONE:		CASE DISPOSED		X	NON-FINAL DISPOSITION		
		GRANTED	X DENIED		GRANTED IN PART		OTHER
APPLICATION:		SETTLE ORDER			SUBMIT ORDER		
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN			FIDUCIARY APPOINTMENT		REFERENCE

650705/2024 MONARI, FRANCESCA ET AL vs. LU, MING ET AL
Motion No. 004