

Hooks v Rockaway/Shore, LLC

2007 NY Slip Op 30106(U)

March 1, 2007

Supreme Court, Queens County

Docket Number: 0029286

Judge: Kevin J. Kerrigan

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Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE KEVIN J. KERRIGAN Part 10
Justice

-----X
SHANNON HOOKS,

Plaintiff,

Index
Number 29286/03

Motion
Date 02/20/07

- against -

Motion
Cal. Number 14

ROCKAWAY/ShORE, LLC., ROSEMILL LLC,
JOSEPH L. BALKAN, INC and RUBIN
MANAGEMENT, INC.,

Motion Seq. No. 5

Defendants.

-----X

The following papers numbered 1 to 9 read on this motion by plaintiff to reargue and renew.

	<u>Papers Numbered</u>
Notice of Motion-Affirmation-Exhibits.....	1-3
Affirmation in Opposition.....	4-5
Affirmation in Opposition.....	6-7
Reply.....	8-9

Upon the foregoing papers it is ordered that the motion is decided as follows:

Plaintiffs' motion to reargue and to renew the order issued by Justice David Elliot on November 27, 2006 awarding summary judgment in favor of defendants Rockaway/Rosemill and Balkan on their respective motions is denied.

The moving papers fail to include either an affidavit of service of the motion or a full record of the underlying motions upon which reargument and renewal is being sought.

Even had the motion been made upon proper papers, the motion is entirely without merit and must be denied substantively.

Plaintiff has failed to demonstrate that the Court

misapprehended any question of law or fact as to merit reargument. Moreover, plaintiff has failed to articulate any new facts so as to merit renewal.

Plaintiff alleges that she sustained injuries as a result of tripping and falling upon the roadway in front of the premises known as 224 Beach 98th Street in Queens County on November 24, 2001. Plaintiff does not dispute that the area five feet from the curb on the even side of Beach 98th Street in front of address number 224 (which is identified as a grocery store) is the location she identified in her complaint, her bill of particulars, her 50-H hearing and her depositions as the spot where she tripped and fell.

Plaintiff alleged that Balkan performed excavation work in front of the premises 224 at the behest of Rockaway/Rosemill, the owner of said premises. These defendants submitted proof that Rockaway/Rosemill did not own 224 and that Balkan only performed work on the odd side of the street. The Court granted summary judgment to Rockaway/Rosemill and Balkan dismissing the complaint as against them, finding that the deposition testimony established that defendants were not responsible for the hole in front of the grocery store on the even numbered side of the street, which plaintiff had identified as the patch of excavation where she tripped.

Now, after the Court has found that defendants were not responsible for work on the even side of the street, plaintiff alleges that she was mistaken as to the location and that she really tripped on the odd side of the street in front of 221 and 223. She explains that her previous attorney was at fault for advising her of an incorrect location of her accident.

Plaintiff's contention that it was not her fault that she had sworn that she fell on the even side of the street in front of 224, because that is where her attorney told her she fell, is patently unmeritorious and borders on the frivolous.

She had maintained in sworn affidavits and deposition testimony during the seven-year course of this litigation that she fell on the even side of the street in front of 224, and she still insisted upon such fact even on the underlying motions for summary judgment wherein defendants showed proof that they were not responsible for any work done at that location.

Plaintiff is being disingenuous when she asserts that she had mistakenly relied upon her former attorney's advice as to where she had fallen. She is not merely alleging that an error in the recitation of the number of an address was made. She would

have this Court believe that she did not know that she really had not fallen in a specific hole in front of a grocery store, but actually had fallen in a different excavation in front of residential homes further down the block on the other side of the street.

The Court rendered its decision on the underlying motions based upon plaintiff's contention that she fell on the even side of the street in front of 224, a grocery store. Since defendants demonstrated that they did no work at that location, the Court properly granted summary judgment in their favor. Inasmuch as plaintiff does not contend that the Court misapplied the law or overlooked any question of fact, but rather that it was plaintiff who had made a factual error, there is no basis for reargument.

In terms of renewal, an application to renew must be based upon additional material facts which existed at the time the prior motion was made, but were not then known to the party seeking leave to renew and, for that reason, were not made known to the court (see, Pahl Equip. Corp. v. Kassis, 182 AD2d 22 [1st Dept 1992] lv to app dismissed in part and denied in part 80 NY2d 1005, reargument denied 81 NY 2d 782 [1993]; Foley v. Roche, 68 AD2d 558 [1st Dept 1979]). Plaintiff fails to articulate any new material facts.

Accordingly, the motion is denied.

Dated: March 1, 2007

KEVIN J. KERRIGAN, J.S.C.