

Terrence Law v City of New York

2007 NY Slip Op 30534(U)

March 30, 2007

Supreme Court, New York County

Docket Number: 0103412/2003

Judge: Marilyn Shafer

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

HON. MARILYN SHAFER, JSC

PART 8

Index Number : 103412/2003

LAW, TERENCE R.

vs

INDEX NO. _____

CITY OF NEW YORK

MOTION DATE _____

Sequence Number : 005

MOTION SEQ. NO. _____

SUMMARY JUDGMENT

MOTION CAL. NO. _____

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

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

PAPERS NUMBERED

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion *denied*
pursuant to attached Mem

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

FILED
APR 05 2007
NEW YORK
COUNTY CLERK'S OFFICE

Dated: 3/30/07

[Signature]
HON. MARILYN SHAFER, JSC

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : IAS PART 62

-----x
TERRENCE LAW,

Plaintiff,

- against -

THE CITY OF NEW YORK, THE NEW YORK CITY
TRANSIT AUTHORITY, METROPOLITAN 810
SEVENTH AVENUE, LLC, CENTRAL PARKING
SYSTEM OF NEW YORK, INC., ROCKLEDGE
SCAFFOLD CORP.,

Defendants.

-----x
METROPOLITAN 810 7TH AVENUE,

Third-party Plaintiff,

- against -

TORDALE BUILDING SERVICES and
ARROW RESTORATION, INC.

Third-party Defendants.
-----x

MARILYN SHAFER, J.:

Defendant Rockledge Scaffold Corp. ("Rockledge") moves and third-party defendant Arrow Restoration, Inc. ("Arrow") cross-moves, pursuant to CPLR 2221, to reargue this Court's Order, entered June 12, 2006, which denied their requests for summary judgment dismissing the Complaint against them.

Background

Plaintiff commenced this action seeking to recover damages for personal injuries he allegedly sustained on June 12, 2002, when he tripped and fell on a crack in the public sidewalk in front of the premises located at 1680 Broadway a/k/a 810 Seventh Avenue, between West 52nd and West 53rd Streets in Manhattan (the

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adjacent premises"). The crack was next to one of several grates in the sidewalk. A sidewalk bridge and scaffold, equipped with fluorescent lights, were installed on the sidewalk for a nearby restoration project.

Defendant/third-party plaintiff Metropolitan 810 7th Avenue, LLC ("Metropolitan") owns the adjacent premises and retained Arrow to restore the masonry and building facade. Arrow hired Rockledge to erect the sidewalk bridge and scaffold. Defendant The City of New York owns the public sidewalk on which plaintiff fell, and the City, defendant Consolidated Edison Company of New York, Inc., and defendant New York City Transit Authority own or maintain the sidewalk grate. Defendant Central Parking System, a tenant in the adjacent premises, operates an underground parking garage with an exit ramp on the sidewalk where plaintiff fell. Third-party defendant Tordale Building Services once performed sidewalk repair work for Metropolitan.

Plaintiff claims that the threshold area between the sidewalk and grate was cracked or uneven, causing him to fall and sustain injury. Plaintiff also adds that inadequate lighting due to the existence of the sidewalk bridge and scaffold contributed to the incident.

By Order, entered June 12, 2006, this Court, *inter alia*, denied motions for summary judgment by Rockledge, Arrow, and defendant/third-party defendant Arrow Restoration, Inc. ("Metropolitan"). The Court concluded that questions of fact

exist as to whether Rockledge was negligent in installing adequate lighting on the sidewalk bridge and scaffolding and, if so, whether inadequate lighting was a proximate cause of plaintiff's injuries. The Court further concluded that questions of fact exist as to whether Arrow was responsible for maintaining the lighting. Copies of the June 12, 2006 order, with notice of entry, were served on defendants on June 16, 2006.

On October 23, 2006, Rockledge filed a motion to reargue the Court's June 12, 2006 order, and Arrow filed a cross motion seeking reargument on October 26, 2006.

Discussion

Rockledge asserts that it is providing additional and new information which clearly establishes that it was not responsible for maintaining the lighting. In addition, Rockledge and Arrow both argue, as they did in their previous summary judgment motions, that inadequate lighting under the sidewalk shed was not a proximate cause of the alleged incident since plaintiff testified that he was looking straight ahead and not down at the sidewalk before his fall.

The motion and cross motion for reargument must be dismissed as untimely because they were not made within 30 days after service of a copy of the Court's June 12, 2006 Order with Notice of Entry (see *Neff v Schwartzapfel*, 254 AD2d 137 [1st Dept 1998]).

Furthermore, neither moving defendant has presented a proper motion for reargument. A motion for reargument, addressed to the discretion of the court, is designed to afford a party an opportunity to establish that the court overlooked or misapprehended the relevant facts, or misapplied controlling principles of law (*Foley v Roche*, 68 AD2d 558, 568 [1st Dept 1979]). Its purpose is not to serve as a vehicle to permit the unsuccessful party to argue once again the very questions previously decided (*id.* at 567).

Moreover, a reargument motion does not serve a party the opportunity to advance arguments different from those tendered on the original application (*id.* at 568-569). It may not be used as a device by for an unsuccessful party to assume a different position inconsistent with that taken on the original motion (*id.* at 569). Furthermore, a motion for reargument is not an appropriate vehicle for advancing additional and new information, such as those urged by Rockledge, which were not previously advanced in this Court (*see Simpson v Loehmann*, 21 NY2d 990 [1968]).

Nor is the motion properly one to renew. An application for leave 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, therefore, not made known to the court (*id.* at 568). Renewal should be denied, where, as here, the moving party fails to offer a valid excuse

for not submitting the additional facts upon the original application (*id.*).

Accordingly, it is

ORDERED that the motion and cross motion for reargument are denied.

Dated:

3/30/07

ENTER:

J. S. E.

HON. MARILYN SHAFER, JSC

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