

Mou v Alamo Fin. LP

2007 NY Slip Op 31858(U)

June 20, 2007

Supreme Court, New York County

Docket Number: 0102961/2006

Judge: Judith J. Gische

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

PRESENT: JUDITH J. GISCHE, J.S.C. PART _____

Index Number : 102961/2006

MOU, MINNIE

vs

ALAMO FINANCING LP

Sequence Number : 002

REARGUMENT/RECONSIDERATION

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

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 ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

Cross-Motion: Yes No

Upon the foregoing papers, It is ordered that this motion

FILED
JUN 28 2007

NEW YORK
COUNTY CLERK

**motion (s) and cross-motion(s)
decided in accordance with
the annexed decision/order
of even date.**

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

Dated: 6/20/07

JUDITH J. GISCHE, J.S.C. J.S.C.

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: PART 10

-----x

MINNIE MOU,

Plaintiff,

-against-

ALAMO FINANCING LP and RICHARD C. LANCER,

Defendants.

Decision/Order

Index No.: 102961/06

Seq. No. : 002

Present:

Hon. Judith J. Gische

J.S.C.

-----x

Recitation, as required by CPLR § 2219 [a], of the papers considered in the review of this (these) motion(s):

Papers

Pltf's motion [RR] w/PRM affirm in support, exhs	1
Def's MEP affirm in opp	2

FILED
JUN 28 2007
NEW YORK
COUNTY CLERK'S OFFICE

Upon the foregoing papers, the decision and order of the court is as follows:

Plaintiff brought this action against defendant-driver Richard C. Lancer ("Lancer") and defendant-vehicle owner, Alamo Financing LP ("Alamo") to recover for personal injuries resulting from a motor vehicle accident. Plaintiff seeks to: (1) amend her complaint to assert a cause of action against Alamo for negligent entrustment; and (2) reargue this court's decision and order dated March 23, 2007, entered April 2, 2007, that granted Alamo's motion for summary judgment and dismissed the complaint as to Alamo.

Although leave to amend pleadings in New York is freely given, there must nonetheless be a showing of merit in order for the court to grant a motion to amend.

Plaintiff has failed to provide an affidavit of merit and other evidentiary proof in support of its motion. Marinelli v. Shifrin, 260 A.D.2d 227 (1st Dept. 1999). Plaintiff's argument, that it needs discovery to set out a claim, is unavailing and is tantamount to the proverbial prohibited fishing expedition, where the plaintiff has failed to show any facts establishing that the proposed cause of action is the least bit plausible. Accordingly, plaintiff's motion to amend the complaint is hereby denied in all respects.

A motion to reargue is addressed to the discretion of the court and it is intended to afford a party an opportunity to establish that the court overlooked or misapprehended the relevant facts, or misapplied any principle of law. CPLR § 2221 [d] [2]. Its purpose is not, however, to enable the unsuccessful party to argue once again the very questions decided against him or her. Foley v. Roche, 68 A.D.2d 558, 567 (1st Dept. 1979).

To prevail on a motion to reargue, the movant must show additional facts that were not before the court on the original application, which existed at that time, but were then unknown to the movant. See Foley v. Roche, *supra*; James v. Nester, 120 A.D.2d 442 (1st Dept. 1986).

In deciding whether to grant reargument, the court first examined plaintiff's submissions, including the affirmation of Patrick J. Mullaney in support, to see if it overlooked any relevant facts, or misapplied any principle of law. The arguments being proposed, however, are virtually indistinguishable from those he offered in opposition to the prior motion.

Permission to reargue the court's decision/order dated March 23, 2007 is,

therefore, DENIED in all respects. The court adheres to its decision/order in its entirety.

Any relief not expressly addressed herein has nonetheless been considered by the Court and is denied.

This shall constitute the decision and order of the Court.

Dated: New York, New York
June 20, 2007

So Ordered:



HON. JUDITH J. GISCHE, J.S.C.

FILED
JUN 28 2007
NEW YORK
COUNTY CLERK'S OFFICE