

Knizeski v Settebres Limousine, Inc.

2007 NY Slip Op 33843(U)

November 15, 2007

Supreme Court, Richmond County

Docket Number: 0013002/2004

Judge: Joseph J. Maltese

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publication.

RICHARD KNIZESKI, ELIZABETH KNIZESKI,
MICHELLE KNIZESKI-FULOP and DAVID FULOP,

Plaintiffs

against

DECISION & ORDER

SETTEMBRES LIMOUSINE, INC., JOHN M. BELL,
DEBORAH BOHREN, JONATHAN R. BOHREN,
FANNY QUEZADA, and CHRISTOPHER A. ARAUJO,

HON. JOSEPH J. MALTESE

Defendants.

The following items were considered in the review of these motions to reargue and to extend time

<u>Papers</u>	<u>Numbered</u>
Notice of Petition and Affidavits Annexed	1
Answering Affidavits	2
Replying Papers	
Exhibits	Attached to Papers

Upon the foregoing cited papers, the Decision and Order on this Motion to Reargue and to Extend Time is as follows:

The plaintiffs and the defendants, Deborah Bohren and Jonathan Bohren (“Bohrens”), make a motion for an extension of time to file a motion for leave to reargue the motion for summary judgment of defendants, Settebres Limousine (“Settebres”) and John M. Bell (“Bell”), grant reargument, vacate its prior order and reinstate plaintiffs’ complaint. Plaintiffs’ motion and the defendants’ cross motion are granted.

Background

By an order dated May 1, 2007, this court granted the cross motion for summary judgment by defendants, Settebres and Bell, on the ground that defendants established their prima facie entitlement to judgement as a matter of law by demonstrating that defendant, Bohren, who was faced with a stop sign, entered the intersection without yielding the right-of-way. Furthermore, this court held that the opposing parties’ failed to demonstrate by admissible evidence that defendant, Bell, was speeding prior to the accident.

Discussion

A motion to reargue must be so designated and shall be based upon an assertion that the court overlooked or misapprehended matters of law or fact when it decided the prior motion and be made within thirty (30) days of service of the order with notice of entry from which reargument is sought.¹ A motion to reargue is addressed to the discretion of the court and may be granted upon a showing that the court overlooked or misapprehended the facts or law, or misapplied any controlling principle of law.² It is not designed to provide the unsuccessful party with successive opportunities to argue once again the very issues previously decided.³

In support of their motion for reargument, plaintiffs contend that this court overlooked or misapprehended portions of the defendant Bell's testimony with regard to his joint responsibility for the accident. More specifically, plaintiffs allege that Bell's testimony reveals that defendant Bell may have had an opportunity to observe the possible accident and undertake defensive action. In opposition to the plaintiffs' motion, defendants claim that the motion for leave to reargue is untimely and that the court did not overlook or misapprehend any matter of fact or law in granting summary judgment to defendants, Settembres and Bell.

As to the issue of timeliness, although CPLR 2221(d)(3) provides for a thirty days window to make the motion to reargue, "[i]t is well settled that a motion for leave to reargue . . . is addressed to the sound discretion of the court and is properly granted upon a showing that the court overlooked or misapprehended the facts and/or th law or mistakenly arrived at its earlier decision."⁴ Furthermore, even

¹CPLR § 2221(d).

²See, *McGill v Goldman*, 261 AD2d 593 [2d Dept 1999]; *Opton Handler Gottlieb Feiler Landau & Hirsch v Patel*, 203 Ad2d 73 [1st Dept 1994].

³See, *William P. Pahl Equip. Corp. v Kassis*, 182 AD2d [1st Dept 1992]; *Bliss v Jaffin*, 176 AD2d 106 [1st Dept 1991].

⁴*Loris v S & W Realty Corp.*, 16 AD3d 729, 730 [App Div 2005], citing *Peak v Northway Travel Trailers*, 260 AD2d 840, 842 [App Div 1999].

in situations where the criteria for granting a reconsideration motion are not technically met, courts retain flexibility to grant such a motion when it is deemed appropriate.⁵ Here, in the interest of justice, the motion to extend plaintiffs' time to file the motion, is granted.

Upon review of the motion papers submitted, this court overlooked questions of fact which precludes summary judgment and the defendants' motion must be reargued. In review of defendant Bell's testimony, there are questions of fact regarding Bell's speed before the accident, whether it was unsafe under the circumstances, and the possibility of avoiding the accident. Plaintiffs correctly point out that there can be more than one proximate cause of an accident⁶ leaving issues of joint liability which preclude summary judgment. Therefore, plaintiff's motion and defendant's cross motion to vacate its prior order and reinstate plaintiffs' complaint, is granted.

Accordingly, it is hereby:

ORDERED, that the plaintiffs' motion and the Bohren defendants' cross-motion to vacate the court's prior order dated May 1, 2007 and reinstate plaintiffs' complaint, is granted.

ENTER,

DATED: November 15, 2007

Joseph J. Maltese
Justice of the Supreme Court

⁵*See, Hitchcock v Abbott*, 9 AD3d 563 [App Div 2004].

⁶*See, Forte v City of Albany*, 279 NY 416 [1939].

