

Ruiz v McClain

2011 NY Slip Op 33953(U)

April 6, 2011

Supreme Court, Bronx County

Docket Number: 20082/2007

Judge: Lucindo Suarez

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PART 19

Case Disposed	<input type="checkbox"/>
Settle Order	<input type="checkbox"/>
Schedule Appearance	<input type="checkbox"/>

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX:

-----X

RUIZ JR., LUIS, et ano

Index N^o. 0020082/2007

- against -

Hon. LUCINDO SUAREZ,

Justice.

MCCLAIN, MELVIN, et al

-----X

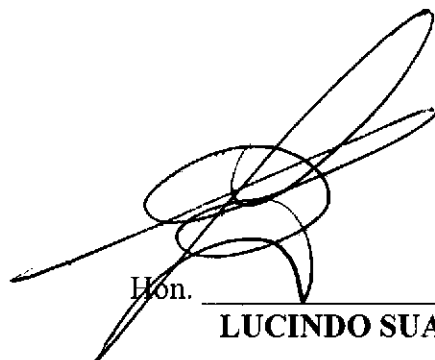
RECEIVED
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The following papers numbered 1 to 6 read on this motion, REARGUE/RENEW/RESETTLE/RECONSIDER
Noticed on February 28, 2011 and duly submitted as No. 59 on the Motion Calendar of March 28, 2011

	PAPERS NUMBERED	
Notice of Motion - Order to Show Cause - Exhibits and Affidavits Annexed	1, 2, 3	
Answering Affidavit and Exhibits	4, 5	
Replying Affidavit and Exhibits	6	
Sur-replying Affidavit and Exhibits		
Pleadings - Exhibit		
Stipulation(s) - Referee's Report - Minutes		
Filed Papers		
Memoranda of Law		

Upon the foregoing papers, defendants' motion to renew and reargue is denied, in accordance with the annexed decision and order.

Dated: 04/06/2011



Hon. _____

LUCINDO SUAREZ, J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: I.A.S. PART 19

-----X
LUIS RUIZ, JR., an infant, by his mother and natural
guardian MIGUELINA RUIZ, and MIGUELINA RUIZ,
individually,

DECISION AND ORDER

Index No. 20082/2007

Plaintiffs,

- against -

MELVIN McCLAIN, MEOGUON HUGGINS, RHIQ
ASSOCIATES, LLC, and JEROME ASSOCIATES,
PLLC,

Defendants.

-----X

PRESENT: Hon. Lucindo Suarez

Upon defendants' notice of motion dated February 1, 2011 and the affirmation and exhibits submitted in support thereof; plaintiffs' affirmation in opposition dated March 15, 2011 and the exhibits annexed thereto; defendants' reply affirmation dated March 24, 2011; and due deliberation; the court finds:

Plaintiff Luis Ruiz, Jr. sustained injuries when he was shot in the chest by Meogun Huggins ("Huggins") while visiting defendant Melvin McClain's ("McClain") apartment. McClain was also the superintendent of the building owned by defendant RHQ Associates, LLC ("RHQ") and managed by defendant Jerome Associates, LLC ("Jerome") (collectively "movants"). Movants now seek leave pursuant to CPLR 2221(d), (e) and (f) to renew and reargue the decision and order of the undersigned dated December 9, 2010 that granted movants summary judgment dismissing a portion of the complaint against them.

A motion for leave to renew is intended to direct the court's attention to new or additional facts which, although in existence at the time the original motion was made, were unknown to the movant

and were, therefore, not brought to the court's attention." *Rancho Santa Fe Assn. v. Dolan-King*, 36 A.D.3d 460, 461, 829 N.Y.S.2d 39, 40 (1st Dep't 2007) (internal citations omitted); *see also* CPLR 2221(e). Movants raise no new or additional facts in support of the instant application.

A motion for leave to reargue is addressed to the court's discretion and may be granted upon a showing that the court overlooked or misapprehended the facts or the law." *William P. Pahl Equip. Corp. v. Kassis*, 182 A.D.2d 22, 27, 588 N.Y.S.2d 8, 6 (1st Dep't), *leave denied and dismissed*, 80 N.Y.2d 1005, 607 N.E.2d 812 (1992). The purpose of a motion to reargue is "not to serve as a vehicle to permit the unsuccessful party to argue once again the very questions previously decided," *Foley v. Roche*, 68 AD2d 558, 567, 418 N.Y.S.2d 588, 593 (1979). The motion should not include new or different arguments from those previously raised. *Pro Brokerage, Inc. v. Home Ins. Co.*, 99 A.D.2d 971, 472 N.Y.S.2d 661 (1st Dep't), *appeal dismissed*, 64 N.Y.2d 646, 474 N.E.2d 261 (1984).

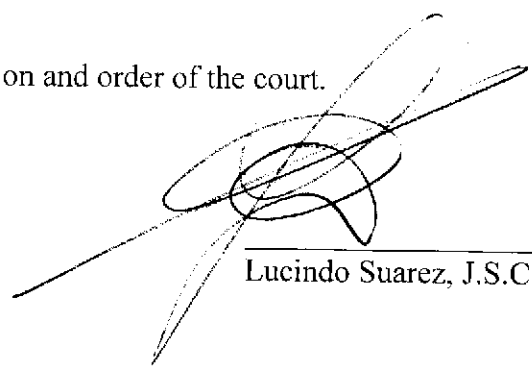
Here, movants fail to demonstrate that the court overlooked or misapprehended relevant facts or law in its earlier decision. Plaintiffs' complaint includes allegations of general negligence that are further detailed in the bill of particulars. The bill of particulars included specific allegations that defendants failed "to provide adequate training to the defendant Melvin McClain in proper security procedures" and "to provide the defendant Melvin McClain training in handgun safety. Other allegations include the negligent hiring and retention of staff and the actual and constructive notice of a "dangerous condition," although the condition is not defined. The prior motion for summary judgment was based solely upon dismissal of plaintiffs' claim for the negligent hiring and retention of McClain, and movants did not address plaintiffs' other claims of negligence.

Accordingly, it is

ORDERED, the motion of defendants RHQ Associates, LLC and Jerome Associates, LLC for leave to renew and reargue the decision and order of the undersigned dated December 9, 2010 is denied.

This constitutes the decision and order of the court.

Dated: April 6, 2011



Lucindo Suarez, J.S.C.