

Simon v Granite Bldg. 2, LLC
2012 NY Slip Op 32278(U)
July 30, 2012
Sup Ct, Nassau County
Docket Number: 022101/08
Judge: Randy Sue Marber
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SHORT FORM ORDER

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

Present: **HON. RANDY SUE MARBER**

JUSTICE

TRIAL/IAS PART 14

_____X

CHARLES SIMON and CHARLES SIMON, as
Administrator of the Estate of JULIE SIMON,
deceased,

Plaintiffs,

-against-

Index No.: 022101/08
Motion Sequence...013, 014,
015, 016, 017
Motion Date...06/20/12

GRANITE BUILDING 2, LLC, LALEZARIAN
PROPERTIES, LLC, KULKA CONSTRUCTION
CORP., KULKA CONTRACTING, LLC, FXR
CONSTRUCTION, INC. d/b/a DEV CONSTRUCTION,
CANATAL INDUSTRIES, INC., MCLO
STRUCTURAL STEEL CORP., NDG ARCHITECT,
P.C. and THE OFFICE OF JAMES RUDERMAN, LLP,

Defendants.

_____X

Papers Submitted:

- Notice of Motion (Mot. Seq. 013).....x
- Affirmation in Opposition.....x
- Reply Affirmation.....x
- Notice of Cross-Motion (Mot. Seq. 014).....x
- Affidavit in Opposition.....x
- Affirmation in Opposition.....x
- Reply Affirmation.....x
- Notice of Motion (Mot. Seq. 015).....x
- Affidavit in Opposition.....x
- Reply Affirmation.....x
- Reply Affirmation.....x
- Notice of Cross-Motion (Mot. Seq. 016).....x
- Affidavit in Opposition.....x

Affirmation in Reply.....X
 Notice of Motion (Mot. Seq. 017).....X
 Reply Affirmation.....X
 Reply Affirmation.....X

Upon the foregoing papers, the motion brought by the Defendant, The Office of James Ruderman, LLP, in the above captioned action (Mot. Seq. 013), seeking leave, pursuant to CPLR § 2221 (d), to reargue the movant's prior motion which resulted in an order of this Court dated January 31, 2012, herein and upon reargument of the said motion granting such motion in favor of the Defendant, The Office of James Ruderman, LLP, is **GRANTED**, there being no opposition thereto.

The cross-motion brought by the Defendant, FXR Construction, Inc. d/b/a DEV Construction Corp. (Mot. Seq. 014), seeking leave, pursuant to CPLR § 2221 (d) and (e), to reargue and renew its prior cross-motion and the prior motion of the Defendants, Kulka Construction Corp. and Kulka Contracting, LLC, which resulted in this Court's January 31, 2012 order herein, is **DENIED**.

The motion brought by the Defendant, MCLO Structural Steel Corp. (Mot. Seq. 015), seeking leave, pursuant to CPLR § 2221 (d) and (e), to reargue and review its prior motion and the prior motion of the Defendants, Kulka Construction Corp. and Kulka Contracting, LLC, which resulted in this Court's January 31, 2012 order herein, is **DENIED**.

The cross-motion of the Defendant, Canatal Industries, Inc. (Mot. Seq. 016), seeking leave, pursuant to CPLR § 2221 (d) and (e), to reargue its prior motion, which resulted in this Court's January 31, 2012 order herein, is **DENIED**.

The motion of the Defendants, Kulka Construction Corp. and Kulka Contracting, LLC (Mot. Seq. 017), seeking leave, pursuant to CPLR § 2221 (d) and (e), to reargue the “Plaintiffs” and their prior motions, which resulted in this Court’s January 31, 2012 order herein, is **DENIED**.

Initially, the Court takes notice that the cross-motion of the Defendant, FXR Construction, Inc., d/b/a DEV Construction Corp. (Mot. Seq. 014) and the motion of the Defendant, MCLO Structural Steel Corp. (Mot. Seq. 015) do not comply with the requirements of CPLR § 2221 (f) of the CPLR which provides in pertinent part:

“A combined motion for leave to reargue and leave to renew shall identify separately and support separately each item of relief sought.”

Pursuant to CPLR § 2221 (d) (2), a motion for leave to reargue:

“shall be based upon matters of fact or law allegedly overlooked or misapprehended by the Court in determining the prior motion, but shall not include any matters of fact not offered on the prior motion.”

Pursuant to CPLR § 2221 (e) (2), a motion for leave to renew:

“shall be based upon new facts not offered on the prior motion that would change the prior determination or shall demonstrate that there has been a change in the law that would change the prior determination.”

Furthermore, pursuant to CPLR § 2221 (e) (3), a motion for leave to renew:

“shall contain reasonable justification for the failure to present such facts on the prior motion.”

This Court's review of all the papers submitted for its consideration in support of the cross-motion of the Defendant, FXR Construction, Inc., d/b/a DEV Construction Corp., (Mot. Seq. 014) and the motion of the Defendant, MCLO Structural Steel Corp. (Mot. Seq. 015) characterized as ones to "reargue and renew" finds that the aforesaid motions are actually solely to reargue as the said motions present neither new facts nor a change in the law (*see Elbaz v. New York City Housing Authority*, 90 A.D.3d 986 [2nd Dept. 2011]). Accordingly, the said motions are herewith deemed motions to reargue and are **DENIED** as such.

A motion for leave to reargue is addressed to the sound discretion of the Court and is designed to afford a party the opportunity to establish to the Court that the Court overlooked or misapprehended relevant facts or misapplied any controlling principle of law. Its purpose is not to serve as a vehicle for an unsuccessful party to argue against the very questions previously decided by the Court. (*See Foley v. Roche*, 68 A.D.2d 558 [1st Dept. 1979]).

The cross-motion of the Defendant, FXR Construction, Inc., d/b/a DEV Construction Corp., submits that this Court erroneously held that this moving Defendant did not meet its *prima facie* burden of proof for summary judgment that the Labor Law claims asserted against the Defendant should be dismissed and that there is no valid or legally sufficient basis for the Court to grant the motion of the Defendants, Kulka Construction Corp. and Kulka Contracting, LLC, to serve a Third Amended Answer to include additional

cross-claims for contractual indemnification.

The motion of the Defendant, MCLO Structural Steel Corp., submits that this Court erroneously held that triable issues of fact are present regarding whether this moving Defendant displaced the owner's duty to safely maintain the premises and whether it "launched a force of harm," that the Labor Law causes of action against this Defendant should have been dismissed and that the motion of the Defendants, Kulka Construction Corp. and Kulka Contracting, LLC, to amend its pleading to add cross-claims against this Defendant should have been denied and the cross-claims for contractual indemnification against this Defendant should be dismissed.

The cross-motion of the Defendant, Canatal Industries, Inc., submits that there exists no triable issue of material fact regarding this moving Defendant's lack of liability and this Defendant is not a proper Labor Law Defendant as a matter of law.

The motion of the Defendant, Kulka Construction Corp. and Kulka Contracting, LLC, submits that this Court erroneously granted the Plaintiffs' motion to amend their Bill of Particulars and to add additional New York State Labor Law violations and additional violations of OSHA and that, as a matter of law, Plaintiff's causes of action under the Labor Law should be dismissed.

This Court's review of all the papers submitted in support of the hereinabove described motions and cross-motions finds that there has been no demonstration that this Court overlooked or misapprehended any relevant fact or misapplied any controlling

principle of law in determining the prior motion of the Plaintiffs, the prior cross-motion of the Defendant, FXR Construction, Inc., d/b/a DEV Construction Corp., the prior motion of the Defendant, MCLO Structural Steel Corp., the prior motion of the Defendants, Kulka Construction Corp. and Kulka Contracting, LLC, all of which resulted in this Court's January 31, 2012 order herein.

Accordingly, having granted the motion of the Defendant, The Office of James Ruderman, LLP, the Second Amended Complaint of the Plaintiffs and any and all cross-claims interposed against this Defendant herein are herewith **DISMISSED**.

All applications not specifically addressed herein are **DENIED**.

This decision constitutes the decision and order of the court.

DATED: Mineola, New York
July 30, 2012



Hon. Randy Sue Marber, J.S.C.

ENTERED

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NASSAU COUNTY
COUNTY CLERK'S OFFICE