

Cuevas v Hermes Waste Servs., Corp.
2012 NY Slip Op 32656(U)
October 11, 2012
Supreme Court, New York County
Docket Number: 116822/09
Judge: Louis B. York
Republished from New York State Unified Court System's E-Courts Service. Search E-Courts (http://www.nycourts.gov/ecourts) for any additional information on this case.
This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: Louis B York
Justice

PART 2

Cuevas

INDEX NO. 116 822/09

^{-v-}
Hermes Waste Services

MOTION DATE _____

MOTION SEQ. NO. 006

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 _____

FILED

No(s). _____

No(s). _____

No(s). _____

Upon the foregoing papers, it is ordered that this motion is

OCT 19 2012

NEW YORK
COUNTY CLERK'S OFFICE

**MOTION IS DECIDED IN ACCORDANCE
WITH ACCOMPANYING MEMORANDUM DECISION**

Dated: 10/11/12

Luy, J.S.C.

1. CHECK ONE: ☐ CASE DISPOSED ☒ NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: MOTION IS: ☐ GRANTED ☒ DENIED ☐ GRANTED IN PART ☐ OTHER
3. CHECK IF APPROPRIATE: ☐ SETTLE ORDER ☐ SUBMIT ORDER
- ☐ DO NOT POST ☐ FIDUCIARY APPOINTMENT ☐ REFERENCE

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

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 2

-----X
KENNETH CUEVAS,

Plaintiff,

-against-

Index No. 116822/09

HERMES WASTE SERVICES CORP., THE
DEPARTMENT OF EDUCATION OF THE CITY OF NEW
YORK, and NEW YORK CITY SCHOOL
CONSTRUCTION AUTHORITY,

Defendants.
-----X

FILED

OCT 19 2012

NEW YORK
COUNTY CLERK'S OFFICE

Louis B. York, J.:

In this Labor Law action, plaintiff moves, pursuant to CPLR 2221, for leave to renew and/or reargue this court's December 21, 2011 Amended Order (the prior order) which dismissed the action against Hermes Waste Services Corp. (Hermes) and denied plaintiff's motion for summary judgment as to the Department of Education of the City of New York (DOE) and the New York City School Construction Authority (CA; together, the City). The City cross-moves, pursuant to CPLR 2221, for leave to reargue the prior order which granted Hermes's motion for summary judgment, and to grant the City's cross motion for summary judgment.

The Standards

CPLR 2221 (d) and (e) provide, as relevant:

- (d) A motion for leave to reargue:
 - 1. shall be identified specifically as such;

2. 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; and
3. shall be made within thirty days after service of a copy of the order determining the prior motion and written notice of its entry.

(e) A motion for leave to renew:

1. shall be identified specifically as such;
2. 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; and
3. shall contain reasonable justification for the failure to present such facts on the prior motion.

Plaintiff's Motion for Leave to Renew and/or Reargue

Reargument With Respect to Hermes

Plaintiff's motion for leave to reargue its claim against Hermes is denied. There is no issue of fact or law that the court either overlooked or misapprehended. Plaintiff did not raise or argue his common-law negligence cause of action as against Hermes in the prior motions. Rather, he conceded that his Labor Law §§ 200 (which is the codification of common-law negligence) and 240 (1) claims did not lie as against Hermes.

Reargument With Respect to the City

Leave to reargue this court's prior order with respect to plaintiff's Labor Law § 241 (6) claim against the City is denied. Plaintiff does not allege any facts or law that the court overlooked or misapprehended. Rather, plaintiff reiterates much of his same position as he argued in the prior motions.

Renewal With Respect to Hermes

Leave to renew is granted, and upon renewal, the court adheres to its prior determination. Although plaintiff now submits the deposition testimony of Antonio Carlos Mendez DaSilva, which was not available at the time that the prior order was under consideration, there is nothing in that testimony that would have changed the prior order.

Renewal With Respect to the City

Leave to renew with respect to the City is denied. Plaintiff submits no new evidence, but merely repackages his prior arguments in a slightly new way.

The City's Cross Motion for Leave to Reargue

The City's cross motion for leave to reargue is denied. The court did not overlook or misapprehend any matter of fact or law when it denied the prior cross motion on the basis that it was untimely, and that the City "failed to oppose this contention in any way: it ... offered no showing of good cause for the delay, and no contention that the cross motion is based on the 'nearly identical' grounds set forth in the timely motion" (the

Prior Order, at 13-14). The City now seeks to present issues and arguments that it could have submitted in the prior motions, but did not. "A motion for leave to reargue ... 'shall not include matters of fact not offered on the prior motion' (CPLR 2221 [d] [2]; ...). The motion does not offer an unsuccessful party ... successive opportunities to present arguments not previously advanced" (*Pryor v Commonwealth Land Tit. Ins. Co.*, 17 AD3d 434, 436 [2d Dept 2005]).

Conclusion

Accordingly, it is

ORDERED that plaintiff's motion for leave to renew is granted with respect to defendant Hermes Waste Services Corp., and upon renewal, the court adheres to its prior determination; and it is further

ORDERED that the plaintiff's motion for leave to renew is denied with respect to defendants The Department of Education of the City of New York and the New York City School Construction Authority; and it is further

ORDERED that the cross motion of The Department of Education of the City of New York and the New York City School Construction Authority for leave to reargue is denied.

Dated: October 11, 2012

Enter: _____

OCT 19 2012

NEW YORK

COUNTY CLERK'S OFFICE

LOUIS B. YORK
J.S.C.

LOUIS B. YORK, ⁴JUSTICE
SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY