

DeLaCruz v Webster Hall Entertainment Corp.

2013 NY Slip Op 32785(U)

October 29, 2013

Sup Ct, New York County

Docket Number: 150213/2011

Judge: Anil C. Singh

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: HON. ANIL C. SINGH
SUPREME COURT JUSTICE
Justice

PART 61

Index Number : 150213/2011
DE LA CRUZ, LOREN
vs
WEBSTER HALL ENTERTAINMENT
Sequence Number : 003
REARGUMENT/RECONSIDERATION

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. _____

The following papers, numbered 1 to 3, were read on this motion to/for _____

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ | No(s). 1
Answering Affidavits — Exhibits _____ | No(s). 2
Replying Affidavits _____ | No(s). 3

Upon the foregoing papers, it is ordered that this motion is *decided in accordance with the annexed memorandum opinion.*

**DECIDED IN ACCORDANCE WITH
ACCOMPANYING DECISION / ORDER**

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

Dated: 10/29/13

Rec 2, J.S.C.
HON. ANIL C. SINGH
SUPREME COURT JUSTICE

- 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

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 61

-----X

LOREN DE LA CRUZ,

Plaintiff,

DECISION AND
ORDER

-against-

Index No.
150213/2011

WEBSTER HALL ENTERTAINMENT CORP.,
THREE SIX ZERO GROUP LIMITED, WILLIAM
MORRIS ENDEAVOR ENTERTAINMENT LLC,
NERO, DANIEL STEPHENS and JOE RAY,

Defendants.

-----X

HON. ANIL C. SINGH, J.:

Defendant William Morris Endeavor Entertainment LLC moves pursuant to CPLR 2221(d) for leave to reargue the underlying motion and, upon reargument, an order granting defendant’s cross-motion to dismiss the amended complaint and all cross-claims pursuant to CPLR 3211(a)(7). Plaintiff opposes the motion.

“A motion for reargument, addressed to the discretion of the court, is designed to afford a party an opportunity to establish that the court overlooked or misapprehended the relevant facts, or misapplied any controlling principle of law. Its purpose is not to serve as a vehicle to permit the unsuccessful party to argue once again the very questions previously decided. Nor does reargument serve to provide a party an opportunity to advance arguments different from those tendered

on the original application. It may not be employed as a device for the unsuccessful party to assume a different position inconsistent with that taken on the original motion.” (Foley v. Roche, 68 A.D.2d 558, 567-568 [1st Dept., 1979]).

This Court did indeed overlook defendant’s cross-motion. Accordingly, we will now consider the cross-motion on the merits.

Plaintiff Loren de la Cruz commenced the instant personal injury action alleging that she was in the audience during a concert by the band Nero. A musician in the band allegedly jumped off the stage, landing on the plaintiff and injuring her.

It is undisputed that defendant William Morris Endeavor Entertainment LLC (“William Morris”) is a talent agency engaged in the business of procuring employment for entertainers. Although the amended verified complaint does not on its face explicitly allege such a relationship, the amended complaint infers that William Morris is defendant Nero’s talent agent.

The only specific allegation as to William Morris in the amended complaint is that defendant Webster Hall Entertainment Corp., and defendant William Morris “entered into a contract to provide entertainment for February 18-19, 2011 for the venue Webster Hall” (Amended Complaint, para. 13, p. 3). The Court notes that there are no specific allegations regarding William Morris in the verified bill of

particulars.

“The elements of a cause of action in negligence are (1) the existence of a duty on defendant’s part as to plaintiff; (2) a breach of this duty; and (3) injury to the plaintiff as a result thereof” (Rodriguez v. Budget Rent-A-Car Sys., Inc., 44 A.D.3d 216, 221 [1st Dept., 2007] (internal quotation marks and citation omitted)).

Viewing the facts alleged in the instant action in the light most favorable to plaintiff, the Court finds that the amended complaint and bill of particulars fail to show any basis whatsoever for the existence of a duty on defendant William Morris’ part as to plaintiff based on the contractual relationship between William Morris and defendant Webster Hall Entertainment Corp., or the talent agency relationship between William Morris and defendant Nero.

Accordingly, it is

ORDERED that the motion for reconsideration is granted; and it is further

ORDERED that, upon reconsideration, the cross-motion of defendant

William Morris to dismiss the amended complaint and all cross-claims as against it is granted, and the amended complaint and all cross-claims are dismissed in their entirety as against defendant William Morris, with costs and disbursements to defendant William Morris as taxed by the Clerk, and the Clerk is directed to enter judgment accordingly in favor of defendant William Morris; and it is further

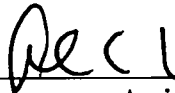
[* 5]
ORDERED that the action is severed and continues against the remaining defendants; and it is further

ORDERED that the caption be amended to reflect the dismissal and that all future papers filed with the Court bear the amended caption; and it is further

ORDERED that counsel for the moving party shall serve a copy of this order with notice of entry upon the County Clerk (Room 141B) and the Clerk of the Trial Support Office (Room 158), who are directed to mark the court's records to reflect the change in the caption.

The foregoing constitutes the decision and order of the court.

Date: 10/29/13
New York, New York



Anil C. Singh

**HON. ANIL C. SINGH
SUPREME COURT JUSTICE**