

**Washington v Vil. of Sleepy Hollow**

2014 NY Slip Op 32899(U)

April 30, 2014

Supreme Court, Westchester County

Docket Number: 55209/11

Judge: Linda S. Jamieson

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.

This opinion is uncorrected and not selected for official publication.

RECEIVED NYSCEF: 05/05/2014  
To commence the statutory time period for appeals as of right (CPLR § 5513 [a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

Disp \_\_\_\_\_ Dec x Seq. No. 2 Type renew/reargue

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

**PRESENT: HON. LINDA S. JAMIESON**

-----X  
DOLORES L. WASHINGTON,

Plaintiff,

-against-

Index No. 55209/11

DECISION AND ORDER

THE VILLAGE OF SLEEPY HOLLOW, SLEEPY  
HOLLOW FIRE DISTRICT and SLEEPY  
HOLLOW UNION HOSE ENGINE COMPANY NO. 2,

Defendants.

-----X

The following papers numbered 1 to 3 were read on this motion:

<u>Paper</u>	<u>Number</u>
Notice of Motion, Affirmation and Exhibits	1
Affirmation and Exhibits in Opposition	2
Reply Affirmation	3

Defendant the Village of Sleepy Hollow (the "Village") brings this motion seeking to reargue and renew this Court's Decision and Order dated January 13, 2014 (the "prior Decision").

The CPLR provisions concerning motions to renew and reargue are set forth in CPLR § 2221. CPLR § 2221(d)(2) provides that a motion 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." CPLR § 2221(e) governs motions to renew. "A motion for leave to renew must be based upon new facts not offered on the prior motion that would change the prior determination and the movant must state a reasonable justification for the failure to present such facts on the prior motion." *George Vieyra v. Penn Toyota, Ltd.*, --- N.Y.S.2d ----, 2014 WL 1465579 (2d Dept. April 16, 2014).

Here, the motion to renew is granted. The Court denied the motion, in part, on the basis that it was untimely. The Court believed that the motion was late because defendant misinformed the Court about the deadline for the motion. It turns out that defendant had obtained an extension for summary judgment motions in an Order from Justice Lefkowitz. Defendant should have included that information in its motion but, since it believed that the Order had been uploaded, it could have reasonably believed that the Court knew that the deadline had already been changed. Accordingly, the Court grants the motion to renew to the extent of finding that the motion for summary judgment was not untimely.

Next, the Court addresses plaintiff's argument that the motion should be denied because defendant's expert disclosure was untimely. There is no basis for this proposition. As the Court stated in the prior Decision, CPLR 3101(d)(1)(i) "does not require a party to respond to a demand for expert witness

information at any specific time. Thus, the fact that the disclosure of an expert pursuant to CPLR 3101(d)(1)(i) takes place after the filing of the note of issue and certificate of readiness does not, by itself, render the disclosure untimely." *Begley v. City of New York*, 111 A.D.3d 5, 972 N.Y.S.2d 48 (2d Dept. 2013) (citations and quotations omitted).

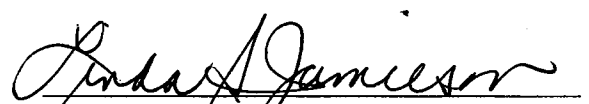
Turning to the remaining issue, in the prior Decision, the Court held that "Even if the motion were timely, however, the Court would have denied it because there are questions of fact about the safety of the site. The sidewalk does slope significantly, and, since the experts clash about the import of this fact, the Court would have to deny the motion anyway. See *Polanco v. Reed*, 105 A.D.3d 438, 963 N.Y.S.2d 57 (1<sup>st</sup> Dept. 2013)." Here, defendant argues that the Court should disregard plaintiff's expert's report because he relies on Building Code provisions that do not apply. A review of the report, and the prior Decision, shows that the expert did not only rely on the Building Code provisions in coming to the conclusion that the "5 percent slope with no warning marking or any other notice was unsafe by design and construction." Nor did the Court even refer to the Codes in rendering its determination on the prior Decision - thus, the fact that the Codes do not apply is irrelevant. The Court concluded that the dispute about the dangerousness of the slope was a question of fact that required the denial of the motion. See *Grayson v. Hall*, 31 A.D.3d 606, 817 N.Y.S.2d 904 (2d

Dept. 2006). Defendant has presented to the Court nothing to warrant the granting of renewal or reargument on this matter.

Accordingly, the motion is denied.

The foregoing constitutes the decision and order of the Court.

Dated: White Plains, New York  
April 30, 2014

  
HON. LINDA S. JAMIESON  
Justice of the Supreme Court

To: Worby Groner Edelman LLP  
Attorneys for Plaintiff  
11 Martine Ave.  
White Plains, NY 10606

Henderson & Brennan  
Attorneys for Defendant  
222 Mamaroneck Ave.  
White Plains, NY 10605