

St. Paul's Sch. of Nursing, Inc. v Papaspiridakos

2014 NY Slip Op 33451(U)

May 27, 2014

Supreme Court, Queens County

Docket Number: 989/12

Judge: Bernice D. Siegal

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ORIGINAL

Short Form Order

NEW YORK STATE SUPREME COURT – QUEENS COUNTY
Present: HONORABLE BERNICE D. SIEGAL IAS TERM, PART 19
Justice

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St. Paul’s School of Nursing, Inc. doing business
as St. Paul’s School of Nursing, individually, and on
behalf of the students, faculty, and administration of
St Paul’s School of Nursing,

Index No.: 989/12

Motion Date: 3/25/14

Plaintiff,

Motion Seq. No.: 5

-against-

Nick Papaspiridakos,

Defendant.

-----X

The following papers numbered 1 to 9 read on this motion for an order to reconsider and leave to reargue this court’s decision of January 23, 2014, pursuant to CPLR 2221, motion to seeking change in decision based on previously overlooked, misapprehended or not offered facts or evidence. CPLR 2221, 2221(a)(1), (a)(7), (e)(2), F. Request motion to vacate and dismiss judgment and order of January 23, 2014. Pursuant to CPLR 3211, 3211(a) and motion to dismiss 989/12 it its entirely based on documentary evidence submitted and since no trial for 2 years constant adjournments by plaintiff.

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	PAPERS NUMBERED
Order to Show Cause - Affidavits-Exhibits.....	1 - 4
Affirmation in Opposition.....	5 - 9

Upon the foregoing papers, it is hereby ordered that the motion is resolved as follows:

Defendant, Nick Papaspiridakos (“Defendant” or “Papaspiridakos”) moves by order to show cause for an Order pursuant to CPLR §2221 for reargument of the decision of this court dated January 23, 2014. In addition, Defendant seeks an order of dismissal pursuant to CPLR

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3211 based on documentary evidence and based on the fact that the matter has not gone to trial for two years.

For the reasons set forth below, Defendant's motion to reargue and to dismiss is denied in its entirety.

Procedural History

On January 17, 2012, plaintiff St. Paul's (St. Paul's) commenced this action by way of an Emergency Order to Show Cause seeking a preliminary injunction barring defendant Nick Paspiridakos, a former student at St. Paul's, from entering St. Paul's campuses or from communicating with the school's faculty members or employees as a result of defendant's threats and harassment to St. Paul's faculty and staff, including his admission that he harbored thoughts about shooting several of those faculty and staff members.

On January 17, 2012, plaintiff and defendant entered into a so-ordered stipulation as a result of defendant's repeated threats and harassment of St. Paul's faculty, staff, and students. Paragraph 1 of the so-ordered stipulation provides that defendant agreed "not to enter the leased premises of Staten Island and Queens campuses of St. Paul's School of Nursing." Paragraph 2 of the so-ordered stipulation provides that defendant agreed "not to enter the floor on which the Queens leased premises are located." Paragraph 3 of the so-ordered stipulation provides that defendant agreed "not to initiate communication with faculty, staff, employees or students of St. Paul's School of Nursing." Paragraph 4 of the so-ordered stipulation provides that defendant agreed "not to harass, annoy or otherwise threaten the security of the faculty, staff, employees or students of St. Paul's School of Nursing." Paragraph 5 of the so-ordered stipulation provides that

“defendant may communicate with faculty, staff, employees or students who initiate contact with him.”

On February 17, 2012, St. Paul’s sent a cease and desist letter to defendant with respect to defendant’s continued harassment and intimidation of St. Paul’s faculty and staff. On March 29, 2012, St. Paul’s sent a second cease and desist letter to defendant to immediately cease and desist from any further conduct in violation of the so-ordered stipulation.

Plaintiff subsequently filed with this court an emergency order to show cause for contempt, pursuant to CPLR §5104 and Judiciary Law §§753(A) and 773, seeking an order finding defendant in contempt for his refusal and/or willful neglect to obey the so-ordered stipulation; imposing a fine upon defendant in the amount of plaintiff’s costs and expenses, including attorney’s fees, in bringing the order to show cause; compelling compliance with the so-ordered stipulation; requiring that defendant not come within 100 yards of St. Paul’s campuses or the homes of current or former St. Paul’s faculty and staff members; and requiring that defendant not initiate communications with any relative, neighbor, friend, associate or acquaintance of any current or former St. Paul’s faculty or staff members.

This court conducted a contempt hearing on the issue of whether the defendant violated the so-ordered stipulation by calling, by emailing, and by writing letters to St. Paul’s faculty and staff, by posting comments on his public Facebook page about St. Paul’s faculty and staff, by sending Facebook friend requests to St. Paul’s faculty and staff, and by protesting and by handing out flyers outside of St. Paul’s campus.

By memorandum decision dated January 23, 2014, this court concluded that St. Paul’s motion was granted to the extent that Papaspiridakos was found in civil contempt of the so-

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ordered stipulation dated January 17, 2012, and a fine of \$250.00 was imposed. St. Paul's was also directed to submit an affidavit, in connection with the settlement of the order, an affidavit of its counsel as to reasonable attorneys' fees. In addition, the so-ordered stipulation of January 17, 2012 was modified to include the following paragraph: Defendant Nick Papaspiridakos agrees to not come within 100 yards of the St. Paul's campuses or homes of current or former St. Paul's faculty and staff members.

Discussion

Reargument

CPLR §2211(d)(2) provides in pertinent part, that: "[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..." "A motion for reargument is addressed to the discretion of the court. (*Frisenda v. X Large Enterprises, Inc.*, 280 A.D.2d 514, 515 [2d Dep't 2001]; *see also V. Veerswamy Realty v. Yenom*, 71 A.D.3d 874, 874 [2d Dep't 2010]; *Barnett v. Smith*, 64 A.D.3d 6669, 670 [2d Dep't 2009]; *E.W. Howell Co., Inc. v. S.A.F. La Sala Corp.*, 36 A.D.3d 653, 654 [2d Dep't 2007].) In essence, the purpose of a motion for leave to reargue is to allow a party to either demonstrate that the court misapplied the law or misapprehended or overlooked the facts in its earlier decision. (*Mazinov v. Rella*, 79 A.D.3d 979, 980 [2d Dep't 2010]; *Barnett*, 64 A.D.3d at 670-71; *Pryor v. Commonwealth Land Title Insurance Co.*, 17 A.D.3d 434, 435-36 [2d Dep't 2005]; *Spatola v. Tarcher*, 293 A.D.2d 523, 524 [2d Dep't 2002]; *Murray v. City of New York*, 283 A.D.3d 560, 560-61 [2d Dep't 2001]; *Frisenda*, 280 A.D.2d at 515; *Diorio v. City of New York*, 202 A.D.2d 625, 626 [2d Dep't 1994].)

Herein, Defendant has failed to establish that the court had overlooked or misapprehended any fact or law. Defendant merely recites the same arguments he presented in the prior application. It is well settled that a motion for leave to reargue “is not designed to provide an unsuccessful party with successive opportunities to reargue issues previously decided, or to present arguments different from those originally presented.” (*Id.*; see also *Ahmed v. Pannone*, 116 A.D.3d 802 [2nd Dept 2014]; *Mazinov v. Rella*, 79 A.D.3d 979, 980 [2d Dep’t 2010].)

In addition, Defendant’s contention that the amount of attorney fees and expenses was “unreasonable and excessive” is not proper grounds for reargument.

Defendant also contends that the Stipulation dated January 17, 2012, was not signed by himself nor the Judge. However a review of the Stipulation indicates that it was signed by Defendant’s attorney and was So-Ordered by Justice Bernice D. Siegal.

Defendant’s remaining contentions are without merit and duplicative of his arguments submitted.

In addition, Defendant failed to properly furnish the required documents with its motion papers by not submitting a copy of the previously denied moving papers. (CPLR §2214(c); see, *Biscone v. JetBlue Airways, Corp.*, 103 AD3d 158 (2nd Dept. 2012); see also, *Sheedy v. Pataki*, 236 AD2d 92 [3rd Dept. 1997] [holding that it is within trial court’s discretion to deny reargument for failure to resubmit papers submitted upon prior motion].) Accordingly, Defendant’s motion to reargue is defective.

Motion to Dismiss

Defendant’s contention that the within action has “been hanging over defendant’s head

for two years now” is not grounds for reargument nor is it grounds for dismissal pursuant to CPLR 3211. “A defendant who seeks dismissal of a complaint pursuant to CPLR§ 3211(a)(5) on the ground that it is barred by the statute of limitations bears the initial burden of proving, prima facie, that the time in which to commence an action has expired. (*see LaRocca v. DeRicco*, 39 A.D.3d 486 [2nd Dept 2007].) Defendant has failed to establish, prima facie, that the time to in which to commence the within action has expired.

Furthermore, “[A] CPLR 3211(a)(1) motion to dismiss a complaint on the ground that a defense is founded on documentary evidence may be appropriately granted where the documentary evidence utterly refutes the plaintiff’s allegations, conclusively establishing a defense as a matter of law.” (*Peter Williams Enterprises, Inc. v. New York State Urban Development Corp.*, 90 A.D.3d 1007, 1008 [2nd Dept 2011].)

In order to be considered documentary evidence within the meaning of CPLR 3211(a)(1), the evidence “must be unambiguous and of undisputed authenticity.” (*Fontanetta v. John Doe 1*, 73 AD3d 78, 86 [2nd Dept 2010].) “In order to be considered documentary evidence within the meaning of CPLR 3211(a)(1), the evidence ‘must be unambiguous and of undisputed authenticity.’” (*Rabos v. R & R Bagels & Bakery, Inc.*, 100 A.D.3d 849, 850 [2nd Dept 2012]; *Fontanetta v. Doe*, 73 A.D.3d 78, 86 [2nd Dept 2010].) “Materials that clearly qualify as “documentary evidence” include “documents reflecting out-of-court transactions such as mortgages, deeds, contracts, and any other papers, the contents of which are ‘essentially undeniable.’” (*Sands Point Partners Private Client Group v. Fidelity Nat. Title Ins. Co.*, 99 A.D.3d 982 [2nd Dept 2012] citing *Fontanetta v. Doe*, 73 A.D.3d 78, 86 [2nd Dept 2010].)

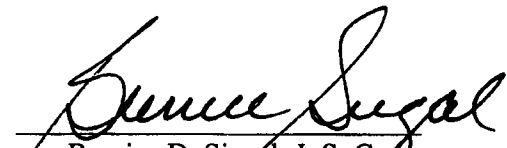
Defendant failed to submit documentary evidence sufficient to “utterly refute” the

plaintiff's allegations, conclusively establishing a defense as a matter of law . (See CPLR §3211(a)(1) see *Rabos v. R & R Bagels & Bakery, Inc.*, 100 A.D.3d 849 [2nd Dept 2012].)

Conclusion

For the reasons set forth above, Defendant's motion is denied in its entirety. The court also notes that all Proposed Orders must be submitted through the Clerk's office.

Dated: *May 27, 2014*


Bernice D. Siegal, J. S. C.

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