Barros v Bette & Cring, LLC
2014 NY Slip Op 33598(U)
August 28, 2014
Supreme Court, Saratoga County
Docket Number: 20102767
Judge: Thomas D. Nolan
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ORIGINAL

STATE OF NEW YORK

SUPREME COURT COUNTY OF SARATOGA

PAUL BARROS,

Plaintiff,

-against-

DECISION AND ORDER
RJI No. 45-1-2011-0688
Index No. 20102767

BETTE & CRING, LLC, 38 HIGH ROCK, LLC and STONE BRIDGE IRON AND STEEL, INC.,

Defendants.

BETTE & CRING, LLC and 38 HIGH ROCK, LLC,

Third-Party Plaintiffs,

-against-

STONE BRIDGE IRON AND STEEL, INC.,

Third-Party Defendant.

STONE BRIDGE IRON AND STEEL, INC.,

Fourth-Party Plaintiff,

-against

MID STATE STEEL ERECTORS, INC.,

Fourth-Party Defendant.

PRESENT: HON. THOMAS D. NOLAN, JR.
Supreme Court Justice

APPEARANCES: HORIGAN, HORIGAN & LOMBARDO, P.C.
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Albany, New York 12212-5085

In its decision and order dated January 28, 2014, as now relevant, the court granted summary judgment dismissing plaintiff's amended complaint alleging causes of action in common law negligence and violations of Labor Law § § 200 and 241 (6). Plaintiff moves for reargument contending that the court erroneously made a factual finding that his employer, fourth-party defendant, Mid State Steel Erectors, Inc., was tasked with the job of snow removal and then used that "fact" as the predicate to apply the ruling of the First Department in Gaisor v Gregory Madison Ave, LLC, 13 AD3d 58 (1st Dept 2004) as opposed to what counsel contends is the Fourth Department's conflicting holding of Hecker v State of New York, 92 AD3d 1261(4th Dept 2012), affd 20 NY3d 1087 (2013) as the principal reason in dismissing plaintiff's Labor

Law § 241 (6) cause of action. Next, plaintiff asserts the court incorrectly found that the general contractor, Bette & Cring, LLC, played no role and thus had no responsibility for either snow removal and job site safety and that it also did not exercise or control plaintiff's activities and thus contends his Labor Law § 200 and common law negligence claims were incorrectly dismissed.

Defendants oppose the motion. First, defendants's procedural objection that the reargument motion is factually flawed because plaintiff did not resubmit all the original motion papers is rejected. The motion was an extensive one, so voluminous in fact that the court deemed it appropriate to dispense with the requirement that the original motion papers be filed with the County Clerk. The court is well familiar with the parties' initial submissions, and plaintiff provided as exhibits the deposition transcripts relevant to the arguments he now makes. CPLR 2001 permits the court to disregard non-prejudicial omissions or defects. Here, plaintiff's failure to include all original motion papers in this reargument motion is disregarded since defendants show no prejudice.

Addressing the merits. A motion for leave to reargue is addressed to the court's discretion and should be granted if the court overlooked significant facts or misapplied the law or otherwise mistakenly arrived at its decision. Loris v S&W Realty Corp., 16 AD3d 729 (3rd Dept 2005); Matter of Smith v Town of Plattekill, 274 AD2d 900 (3rd Dept 2000); Peak v Northway Travel Trailers, Inc., 260 AD2d 840 (3rd Dept 1999). "Reargument is not designed to afford the unsuccessful party successive opportunities to reargue issues previously decided." Pahl Equipment Co. v Kassis, 182 AD2d 22, 27 (1st Dept 1992), lv denied and lv dismissed 80 NY2d 1005 (1992).

In its decision, the court analyzed the facts, considered the parties' respective positions

and arguments, and reviewed the law in reaching the conclusion that plaintiff's slip and fall while shoveling snow did not fall under the protections afforded construction workers by Labor Law § 241 (6) and 22 NYCRR § 23-1.7 (d) since, when he fell, plaintiff was in the process of remedying the slipping hazard as a predicate to engaging in the task his company was charged with performing - the erection of steel components. To accept plaintiff's claim that this was a covered event would effectively eliminate construction activity on a snow covered job site, and thus ignore the practical realities of winter weather. As the court noted, plaintiff presented a thoughtful argument advocating a different outcome, but the court found the defendants' position consistent with established precedent.

Regarding the plaintiff's second claim of mistake, the record demonstrates the general contractor did not exercise control over the "means and methods" of the work performed by plaintiff that day. The fact that plaintiff and his co-workers may have used shovels and other equipment owned by other defendants does not equate to the exercise of control over the snow removal work being performed.

Plaintiff's motion is denied, without costs.

This constitutes the decision and order of the court. The original decision and order is returned to the counsel for defendants. All original motion papers are delivered to the Supreme Court Clerk/County Clerk for filing. Counsel for defendants is not relieved from the applicable provisions of CPLR 2220 relating to filing, entry, and notice of entry of the decision and order.

So Ordered.

DATED: August 28, 2014
Saratoga Springs, New York

ENTERED
Craig A. Hayner
Saratoga County Clerk

HON. THOMAS D. NOLAN, JR.
Supreme Court Justice

SARATOGA COUNTY
CLERK'S OFFICE
ALLSTON, NY
2014 SEP -9 AM 11:02

ENTERED