SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS : CIVIL TERM: PART 16

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PETER LINDQUIST,

Plaintiff, Decision and order

- against - Index No. 16067/11

ANTHONY SCARFOGLIERO & RALPH SCARFOGLIERO,

Defendants, March 23, 2015

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PRESENT: HON. LEON RUCHELSMAN

The plaintiff has moved pursuant to CPLR §2221 seeking to reargue a decision and order dated May 6, 2014 which granted the defendant's summary judgement dismissing the complaint filed by plaintiff. The defendant has opposes the motion and papers were submitted by all parties. After reviewing the arguments of all parties this court now makes the following determination.

As recorded in the prior order this lawsuit concerns an accident that occurred on February 11, 2010. On that date the plaintiff slipped and fell while walking in front of defendant's premises located at 509 Henry Street in Kings County. The plaintiff alleged he slipped upon a some ice on the sidewalk that had been shoveled earlier that morning. The court granted the defendant's motion seeking summary judgement holding that there was no evidence the shoveling done by the defendant made the sidewalk more dangerous.

The plaintiff now seeks to reargue that determination arguing the court failed to consider the height of the piles of snow shoveled by the defendant and whether the existence of such

piles contributed to the accident. In addition, the plaintiff further argues the court misapprehended the report of the meteorologist, which plaintiff argues did not conclude there were no issues of fact. The defendant has opposed the motion arguing the court's determination was correct.

Conclusions of Law

A motion to reargue which is not based upon new proof or evidence may be granted upon the showing that the court overlooked or misapprehended the facts or law or for some other reason mistakenly arrived at its earlier decision (Delcrete Corp. v. Kling, 67 AD2d 1099, 415 NYS2d 148 [4th Dept., 1979]). Thus, the party must demonstrate that the judge must have overlooked some point of law or fact and consequently made a decision in error. Its purpose is designed to afford an opportunity to establish that the court overlooked or misapprehended relevant facts or misapplied a controlling principle of law. The motion cannot be made after the time for appealing the prior order has expired (Millson v. Arnot Reality Corp., 266 AD2d 918, 697 NYS2d 435 [4th Dept., 1999]).

Thus, where a party fails to demonstrate that the Court misapprehended any of the relevant facts or misapplied any controlling principle of law, a motion to reargue must be denied Matter of Mattie M. v. Administration for Children's Services, 48

AD3d 392, 851 NYS2d 236 [2d Dept., 2008], McNamara v. Rockland County Patrolmen's Benevolent Association, Inc., 302 AD2d 435, 754 NYS2d 900 [2d Dept., 2003]).

There is no merit to the contention that questions of fact were raised concerning defendant's snow removal activities because the defendant failed to present evidence about the size of the piles shoveled. Indeed, the plaintiff himself testified that the piles of snow on both sides of the path were only "two or three" inches high on both sides (see, Deposition of Peter Lindquist, page 50). Thus, no question of fact has been raised the defendant piled the snow in a negligent manner.

Likewise, although it is true the expert Mr. Bria did not opine about the snow removal efforts of the defendant, as noted, the defendant presented evidence no negligence was committed concerning that snow removal. The expert affidavit concerned another issue, namely the cause of any ice on the sidewalk and the expert opined it was not caused by the defendant in any manner.

The plaintiff argues in reply that the are questions of fact where the snow that was shoveled was placed and whether snow in the garbage area caused the ice upon which the plaintiff fell. First, this is speculation insufficient to raise a question of fact. There is no evidence as stated in reply that "the ice on the sidewalk in the morning of the date of the accident where PETER LINDQUIST fell, near the wrought-iron gate of the building,.

came from the snow that melted inside the wrought-iron area and from the top of the garbage pails" (Amended Reply, ¶ 6). Moreover, the affidavit of the expert stated that "any melt water from snow and ice on the sidewalk from neighboring properties and the fire escapes in front of 509 Henry Street, Brooklyn and the garbage area would have frozen or refrozen, forming ice, between 3:30 a.m. and 8:20 a.m. on February 11, 2010" (see, Affidavit of James Bria III, ¶ 10). The expert did not conclude the ice was caused from the garbage area or any other area, merely that it was not caused by the shoveling that had occurred in the sidewalk. Thus, no questions of fact have been raised whether the defendants committed any negligence.

Consequently, the motion seeking reargument is denied.

So ordered.

ENTER:

DATED: March 23, 2015
Brooklyn N.Y.

Hon. Leon Ruchelsman
JSC

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KINGS COUNTY CLERK
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