

Vignoli v Dienst

2016 NY Slip Op 33042(U)

February 6, 2016

Supreme Court, Westchester County

Docket Number: 51551/14

Judge: Mary H. Smith

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This opinion is uncorrected and not selected for official publication.

DECISION AND ORDER

To commence the statutory period of appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this Order, with notice of entry, upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK
IAS PART, WESTCHESTER COUNTY

Present: HON. MARY H. SMITH
Supreme Court Justice

-----X
JOHN D. VIGNOLI (by WESCO INSURANCE) and
JOHN D. VIGNOLI, individually,

Plaintiffs,

MOTION DATE: 2/5/16
INDEX NO.: 51551/14

-against-

GARY DIENST and MICHELE DIENST,

Defendants.
-----X

The following papers numbered 1 to 5 were read on this motion by defendants for an Order pursuant to CPLR 2221 granting reargument, etc.

Papers Numbered

Notice of Motion - Affirmation (Brayer) - Exhs. (A-C)¹ 1-3
Answering Affirmation (Cerbone) - Exhs. (Collectively)² 4-5

Upon the foregoing papers, it is hereby Ordered that defendants' motion for an

¹The Court notes that defendants improperly annex as Exhibit "A" the first page of this Court's Decision and Order, entered March 28, 2014, granting admission of counsel pro hac vice, and not the correct first page of the Decision and Order, filed November 19, 2015, which is the subject of this reargument motion.

²This Part's published Rules require separately tabbed motion exhibits.

Order pursuant to CPLR 2221 granting reargument of this Court's Decision and Order, dated November 19, 2015, wherein this Court had granted both plaintiffs' separate cross-motions for partial summary judgment on the issue of liability and further had denied defendants' motion for summary judgment dismissing the complaint, and upon reargument for entry of an Order denying plaintiffs' cross-motion, is denied as untimely.³ The record at bar establishes that this Court's November 19, 2015, Decision and Order had been served with notice of entry upon defendants, on November 20, 2015. Defendants filed their instant Notice of Motion seeking reargument on December 30, 2015, outside the thirty (30) day statutory time period for the making of such motion. See CPLR 2221, subd. (d), para. 3.


Moreover, defendants have failed to include a complete copy of all of the papers filed on the original motion. See Biscone v. JetBlue Airways Corp., 103 A.D.3d 158 (2nd Dept. 2012); Lower Main Street LLC v. Thomas Re & Partners, (Alpert, J.), N.Y.L.J., April 5, 2005, p. 19, col. 3, citing generally Gerhardt v. New York City Transit Authority, 8 A.D.3d 427 (2nd Dept. 2004); Sheedy v. Pataki, 236 A.D.2d 92, 97 (3rd Dept. 1997), lv. to app. den. 91 N.Y.2d 805 (1998); Bellofato v. Bellofato, 8 Misc.3d 1019(A) (Sup. Ct. Put. Co. 2005).

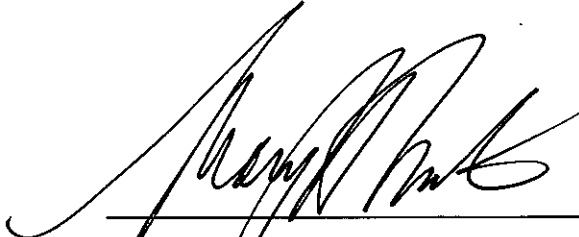
In any event, a motion for leave to reargue "shall be based upon matters of fact or

³The Court parenthetically observes that, while defendants' Notice of Motion expressly states that they seek, inter alia, reargument of this Court's prior Decision and Order denying defendants' "motion to dismiss" (more accurately a summary judgment motion), not only have no substantive arguments supporting that relief been proffered, but defense counsel, in her supporting affirmation's Wherefore Clause, requests only "that the Court issue an order denying Plaintiff's (sic) cross-motion and for such other and further relief as to this Court may seem just and proper."

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, subd. (d), para. 2. 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. See Haque v. Daddazio, 84 A.D.3d 940, 942 (2nd Dept. 2011); Mazinov v. Rella, 79 A.D.3d 979, 980 (2nd Dept. 2010). Moving defendants have not demonstrated that this Court had overlooked or misapprehended any argued facts or law in determining the prior motion, and defendants’ belated attempt herein to raise an alleged issue of plaintiff’s comparative negligence as precluding liability judgment in their favor, which argument never had been initially argued, will not be countenanced.

The parties shall appear in the Trial Ready Part, room 1200, at 9:30 a.m., on March 28, 2016.


Dated: ~~November~~ February 8, 2016
White Plains, New York



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J.S.C.

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Trial Readiness Part; Elizabeth Saraccino