

Wiley v Marjam Supply Co., Inc.

2017 NY Slip Op 33190(U)

June 28, 2017

Supreme Court, Ulster County

Docket Number: 13-1727

Judge: Christopher E. Cahill

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This opinion is uncorrected and not selected for official publication.

STATE OF NEW YORK
SUPREME COURT
NICHOLAS WILEY,

ULSTER COUNTY

Plaintiff,

-against-

Decision & Order
Index No.: 13-1727

MARJAM SUPPLY CO., INC., MARJAM SUPPLY OF BAYSHORE, INC., MARJAM SUPPLY OF REWE STREET, LLC., PLAYHOUSE AND ELWYNN LIMITED PARTNERSHIP, WOODSTOCK COMMONS HOUSING DEVELOPMENT FUNDING COMPANY, INC., RURAL ULSTER PRESERVATION COMPANY, INC., LIBOLT & SONS, INC., d/b/a AFFORDABLE HOUSING CONCEPTS, THE ROCKER II DRYWALL SERVICES, LLC., CHICKETA WATSON, JUMPSTART REALTY, LLC, HTR CONSTRUCTION LTD., TRI-CON CONSTRUCTION, LTD., MOMBASHA ELECTRIC CONTRACTING, INC., and DYNAMIC PLUMBING, HEATING & AIR CONDITIONING COMPANY, INC.,

Defendants.

FILED
4H 16M
JUN 30 2017

NINA POSTUPACK
ULSTER COUNTY CLERK

Supreme Court, Ulster County
Motion Return Date: May 19, 2017
RJI No. 55-13-02129
Present: Christopher E. Cahill, JSC

Appearances: MAINETTI, MAINETTI & O'CONNOR, PC
Attorneys for Plaintiff
130 North Front Street
Kingston, New York 12401
By: Michael Kolb, Esq.

CARTAFALSA, SLATTERY, TURPIN & LENOFF
Attorneys for Defendants Marjam Supply Co., Inc., Marjam Supply of Bayshore, Inc., and Marjam Supply of Rewe Street, LLC
660 White Plains Road Suite 400
Tarrytown, New York 10591
By: Christopher J. Turpin, Esq.

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UC Supreme Ct

SHANTZ & BELKIN
Attorneys for Defendants Playhouse and Elwynn Limited
Partnership, Woodstock Commons Housing Development
Funding Company, Inc., Libolt & Sons, Inc., d/b/a Affordable
Housing Concepts
26 Century Hill Drive Suite 202
Latham, New York 12110
By: M. Randolph Belkin, Esq.

THE LAW OFFICES OF CRAIG P. CURCIO
Attorneys for Defendant The Rocker II Drywall Services, LLC
384 Crystal Run Road Suite 202
Middletown, new York 10941
By: Ryan Bannon, Esq.

Cahill, J.:

Plaintiff moves to reargue this court's prior order dated January 26, 2017 in which all defendants were awarded summary judgment. By this motion, plaintiff seeks reinstatement of his Labor Law § 241 (6) cause of action against defendants Libolt & Sons, Inc., d/b/a/ Affordable Housing Concepts, Playhouse and Elwyn Limited Partnership, and Woodstock Commons Housing Development Funding Company, Inc., by contending that the court improperly concluded that 12 NYCRR 23-2.1 was not sufficiently specific to support a cause of action predicated upon a violation thereof.

A motion to reargue seeks to convince the court that it overlooked or misapprehended relevant facts or misapplied relevant law (see CPLR § 2221 [d] [2]; Adderley v State, 35 AD3d 1043, 1044 [2006]). Its purpose is not to permit a party to reargue, once again, the very questions the court has already decided (see Foley v Roche,

68 AD2d 558 (1st Dept 1979). In the present case, to the extent that the decision was read in that manner, it was in error.

This court was responding to the argument advanced by plaintiff that there are two separate means to invoke 12 NYCRR 23-2.1 (a) (1) in that “[a]ll building materials shall be stored in a safe and orderly manner” or “[m]aterial piles shall be stable under all conditions and so located that they do not obstruct any passageway, walkway, stairway or other thoroughfare.” Following such contention, the court noted that had such regulation been meant to be interpreted in the manner argued, i.e. - to store building materials in a “safe and orderly manner,” the regulation would be deemed too general to supply a directive sufficiently specific to support a cause of action under Labor Law § 241 (6). While the court did cite to Ginter for such principle, it was meant to demonstrate, in a general manner, how a regulation which is not “sufficiently specific” cannot be the foundation of such a claim under the Labor Law. In no way was this court concluding that 12 NYCRR 23-2.1 (a) (1) cannot be the basis of a viable claim if the material piles were found to be either unstable or obstructing passageways or other thoroughfares.

As noted by defendants in opposition to this motion, this court found the regulation to be inapplicable not because it was unspecific, but because there was no viable challenge to defendant’s prima facie proof establishing that the sheetrock at issue was stored in a stable manner and not obstructing and passageway or thoroughfare at the time of the accident.

For these reasons, this court grants plaintiff's motion for reargument to the extent that it could be interpreted as misapprehending relevant facts or misapplying relevant law. However, upon reconsideration, this court will adhere to its original determination that no triable issue had been raised.

All matters not decided herein are hereby denied.

This shall constitute the decision and order of the court. The original decision and order and all other papers are being delivered to the Supreme Court Clerk for transmission to the Ulster County Clerk for filing. The signing of this decision and order shall not constitute entry or filing under CPLR § 2220. Counsel is not relieved from the applicable provisions of that rule regarding notice of entry.

SO ORDERED.

Dated: Kingston, New York
June 28, 2017

FILED
4 H 16 M
JUN 30 2017

NINA POSTUPACK
ULSTER COUNTY CLERK

ENTER.


CHRISTOPHER E. CAHILL, JSC

Papers considered: Motion dated March 13, 2017 with affirmation in support by Joseph E. O'Connor, Esq., with exhibits; affirmation in opposition by M. Randolph Belkin, Esq., dated April 26, 2017.