

Laureano v Rand

2019 NY Slip Op 33440(U)

November 21, 2019

Supreme Court, New York County

Docket Number: 155793/2018

Judge: Adam Silvera

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ADAM SILVERA PART IAS MOTION 22

Justice

-----X

PEDRO LAUREANO,

Plaintiff,

- v -

MIMI RAND,

Defendant.

INDEX NO. 155793/2018

MOTION DATE N/A

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 14, 15, 16, 17, 18, 19, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31

were read on this motion to/for RENEW/REARGUE/RESETTLE/RECONSIDER

Upon the foregoing documents, it is ordered that the order to show cause of Evette Rolack, plaintiff in a related action which was originally commenced in the Supreme Court of Bronx County, to reargue pursuant to CPLR 2221(d)(2) and to renew pursuant to CPLR 2221 is granted.

CPLR 2221(d)(2) permits a party to move for leave to reargue a decision upon a showing that the court misapprehended the law or facts in rendering its initial decision. "A motion for leave to reargue pursuant to CPLR 2221 is addressed to the sound discretion of the court and may be granted only upon a showing that the court overlooked or misapprehended the facts or the law or for some reason mistakenly arrived at its earlier decision." William P. Pahl Equip. Corp. v Kassis, 182 AD2d 22, 27 (1st Dep't 1992), appeal denied in part, dismissed in part 80 NY2d 1005 (1992) (internal quotations omitted). CPLR§2221(e) permits a party to move for leave to renew a decision to assert "new facts not offered on the prior motion that would change

the prior determination or...demonstrate that there has been a change in the law that would change the prior determination”.

Here, movant seeks to re-argue this Court’s January 14, 2019 decision (hereinafter referred to as the “Prior Decision”) on a motion to consolidate, arguing that this Court overlooked the facts, or alternatively that the new facts reveals that the action originally commenced in Bronx County was filed first in time. Movant further argues that she was not served with the prior motion to consolidate, and, thus, was unable to oppose it. Defendant opposes, and movant replies.

Here, defendant states that while there is no affidavit of service, the original motion to consolidate indicates that movant was served. However, defendant concedes that movant was not served with the notice of entry of the Court’s Prior Decision. Defendant further concedes that the action commenced in Bronx County was filed first in time.

While the information regarding which action was commenced first in time does not affect the portion of the Prior Decision regarding consolidation, in that it remains undisputed that the two actions in question arise out of the same motor vehicle accident and involve many of the same parties, such information does affect the venue in which the consolidated action is heard. Movant is correct in arguing that this Court overlooked which action was commenced first in time. The Appellate Division, First Department, has held that “[w]here two actions involving identical issues are pending in separate counties, the actions should be consolidated pursuant to CPLR 602 in the county where the first action was commenced absent special circumstances”. *Harrison v Harrison*, 16 AD3d 206, 207 (1st Dep’t 2005). Here, no special circumstances have been established, and it is now undisputed that the Bronx County action was filed first in time. Thus, movant’s instant motion to renew and to reargue is granted, and, upon

reargument/renewal, the instant motion is granted to the extent that the consolidated action is transferred to the Supreme Court, Bronx County, to be heard as the Bronx County action (Evette Rolack v Mimi Rand, DJ Ambulette Service, Inc., and Pedro Laureano Jr., index no. 22333/18) was filed first in time.

Accordingly, it is

ORDERED that Evette Rolack's order to show cause to renew and reargue is granted and, upon reargument, the Court amends the prior decision, dated January 14, 2019 to transfer the instant action to the Supreme Court, Bronx County, to join the Bronx County action, index no. 22333/18, for joint discovery and trial; and it is further

ORDERED that the venue of this action is changed from this Court to the Supreme Court, County of Bronx, and upon service by plaintiff Evette Rolack of this order with notice of entry and payment of appropriate fees, if any, the Clerk of this Court is directed to transfer the papers on file in this action under Index No. 155793/18 to the Clerk of the Supreme Court, County of Bronx; and it is further

ORDERED that the pleadings in the actions hereby consolidated shall stand as the pleadings in the consolidated action; and it is further

ORDERED that plaintiff Evette Rolack is directed to serve a copy of this order with notice of entry on the County Clerk of the Supreme Court, Bronx County, who shall consolidate the papers in the actions hereby consolidated and shall mark his records to reflect the consolidation; and it is further

ORDERED that plaintiff Evette Rolack is directed to serve a copy of this order with notice of entry upon the Clerk of the Trial Support Office of the Supreme Court, Bronx County,

who is directed to mark the court's records to reflect the consolidation.

This constitutes the Decision/Order of the Court.

11/21/19
DATE


ADAM SILVERA, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED DENIED

GRANTED IN PART OTHER

APPLICATION: SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE: INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT REFERENCE