

De La Cruz v Klaracon LLC

2020 NY Slip Op 30052(U)

January 6, 2020

Supreme Court, New York County

Docket Number: 157392/2017

Judge: Margaret A. Chan

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. MARGARET A. CHAN PART IAS MOTION 33EFM

Justice

JUAN DE LA CRUZ,
Plaintiff,

- v -

KLARACON LLC, 259 WEST 10TH LLC,
Defendants.

INDEX NO. 157392/2017
MOTION DATE 10/03/2019, 10/17/2019
MOTION SEQ. NO. (MS) 004; 005

DECISION + ORDER ON MOTION

259 WEST 10TH LLC
Plaintiff,

-against-

AUFIERO PAINTING INDUSTRIES, INC.
Defendant.

Third-Party
Index No. 595954/2017

KLARACON LLC
Plaintiff,

-against-

AUFIERO PAINTING INDUSTRIES, INC.
Defendant.

Second Third-Party
Index No. 596005/2017

The following e-filed documents, listed by NYSCEF document number (Motion 004) 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 124, 125, 126, 127, 128
were read on this motion to/for JUDGMENT - SUMMARY

The following e-filed documents, listed by NYSCEF document number (Motion 005) 119, 120, 121, 122, 123, 129, 130, 131, 132
were read on this motion to/for RENEW/REARGUE/RESETTLE/RECONSIDER

In this Labor Law matter, defendant Klaracon LLC moves in MS 004 for summary judgment pursuant to CPLR 3212 dismissing plaintiff Juan De La Cruz's complaint, which plaintiff opposes. In MS 005, plaintiff moves for: (1) reargument

pursuant to CPLR 2221(d) regarding the portion of this court's Decision and Order dated September 17, 2019, that granted defendant 259 West 10th LLC's motion to amend its answer to assert the affirmative defense of res judicata/ collateral estoppel and for summary judgment based on the new affirmative defense; (2) renewal pursuant to CPLR 2221(e) of the same order that granted defendant 259 West's motion to amend its answer and for summary judgment; and (3) an order denying 259 West 10th LLC's prior motion for summary judgment. Defendants Klaracon LLC and 259 West 10th LLC oppose the motion. The Decision and Order is as follows:

FACTS

Plaintiff alleges that he sustained injuries when he fell off a scaffold-ladder as he was taping, spackling, and touching up an apartment. Plaintiff claims that the ladder did not have rails and was unsecured. Plaintiff attempted to procure workers compensation for his injury. A Workers' Compensation Law Judge (WCLJ), denied plaintiff's claim (NYSCEF #111 – May 9, 2018 Decision). Plaintiff appealed that decision before a Workers Compensation Board (NYSWCB) which determined that plaintiff's accident did not occur and affirmed the WCLJ (NYSCEF #112 – August 23, 2018 NYSWCB Memorandum Decision). Plaintiff attempted to appeal this determination in the Appellate Division, Third Department, but failed to perfect his appeal and his appeal was automatically dismissed. Plaintiff then moved to vacate the dismissal of his appeal and for an extension of time to perfect his appeal, which was granted on September 26, 2019 (NYSCEF #121 – September 26, 2019 Third Dept. Decision and Order).

On July 17, 2019, this court granted Klaracon LLC's (Klaracon) motion to amend its answer to assert the affirmative defenses of res judicata and collateral estoppel based on the NYSWCB determination (NYSCEF #88 – July 17, 2019 Decision and Order). Similarly, on September 17, 2019, this court granted 259 West 10th LLC's (259 West) motion to amend its answer to assert the same defense and for summary judgment based on collateral estoppel (NYSCEF #92 – September 17, 2019 Decision and Order).

DISCUSSION

This Decision and Order will address plaintiff's motion for renewal and reargument first and will then address Klaracon's motion for summary judgment.

Plaintiff's Motion for Reargument and Renewal (MS5)

A motion for CPLR 2221(d) reargument "shall be based upon matters of fact or 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". The movant bears the burden of demonstrating that "the court overlooked or misapprehended the facts or the law or for some reason mistakenly arrived at its earlier decision" (*William P. Pahl Equipment Corp. v Kassis*, 182 AD2d 22, 27 [1st Dept 1992]). "Reargument is not designed to afford the unsuccessful party successive opportunities to reargue issues previously decided or to present argument different from those originally asserted" (*id.*).

A motion for CPLR 2221(e) renewal "shall be based upon new facts not offered on the prior motion that would change the prior determination or shall demonstrate that there has been a change in the law that would change the prior determination". CPLR 2221(e)(3) states that the motion "shall contain reasonable justification for the failure to present such facts on the prior motion". A motion for renewal "is intended to draw the court's attention to new or additional facts which, although in existence at the time of the original motion, were unknown to the party seeking renewal and therefore not brought to the court's attention" (*William P. Pahl*, 182 AD2d at 27).

Plaintiff first argues that renewal is appropriate here because of the Third Department's Order dated September 26, 2019, allowing plaintiff an extension of time to perfect his appeal of the NYSWCB ruling. Plaintiff cites *Schwartz v Public Administrator*, 24 NY2d 65 (1969) for the proposition that the existence of an appeal is a factor for courts to consider when addressing whether a litigant had a full and fair opportunity to contest an issue. Plaintiff argues that due to the pending appeal, this court should renew, and upon renewal, deny 259 West's prior motion for summary judgment.

However, there is no basis for renewal here, and this branch of plaintiff's motion is denied. While the Third Department's Order allows plaintiff additional time to perfect his appeal, plaintiff has not provided this court with any proof that he has in fact perfected his appeal. In any event, there has been no order from the Third Department overturning the NYSWCB determination. As such, there is no new fact or law that changes this court's prior determination.

Turning to the branch of plaintiff's motion concerning reargument, it too is denied. Plaintiff claims that this court overlooked the case *Ridge v Gold*, 26 NY3d 1069 (2015) which, plaintiff argues, stands for the proposition that when a NYSWCB decision is based upon an assessment of plaintiff's credibility, it cannot be used for collateral estoppel purposes. Plaintiff argues that *Ridge* requires this court to reevaluate its prior issue preclusion determination and deny 259 West's motion for summary judgment.

First, this court did not overlook *Ridge* when it decided 259 West's motion for summary judgment. *Ridge* was briefed by the parties, which this court considered but found plaintiff's argument unavailing. Second, *Ridge* does not stand for the

proposition claimed by plaintiff. In *Ridge*, the Court of Appeals stated that the record presented to it was inadequate to determine whether the issue of the occurrence of an accident was correctly addressed and decided by the NYSWCB (see *Ridge*, 26 NY3d at 1069). The *Ridge* decision does not state that NYSWCB credibility determinations are not entitled to collateral estoppel. As such, there is no basis to grant the branch of plaintiff's motion for reargument as this court did not overlook or misapprehend applicable law or fact. Thus, plaintiff's motion for reargument is denied.

Klaracon's Motion for Summary Judgment

A party moving for summary judgment must make a prima facie showing that it is entitled to judgment as a matter of law (see *Alvarez v Prospect Hosp*, 68 NY2d 320 [1986]). Once a showing has been made, the burden shifts to the parties opposing the motion to produce evidentiary proof, in admissible form, sufficient to establish the existence of material issues of fact which require a trial of the action (see *Zuckerman v City of New York*, 49 NY2d 557 [1980]). On a motion for summary judgment, facts must be viewed in the light most favorable to the non-moving party (see *Vega v Restani Constr. Corp*, 18 NY3d 499 [2012]). In the presence of a genuine issue of material fact, a motion for summary judgment must be denied (see *Rotuba Extruders v Ceppos*, 46 NY2d 223, 231 [1978]; *Grossman v Amalgamated Haus. Corp*, 298 AD2d 224, 226 [1st Dept 2002]).

"Collateral estoppel, or issue preclusion, 'precludes a party from relitigating in a subsequent action or proceeding an issue clearly raised in a prior action or proceeding and decided against that party ... , whether or not the tribunals or causes of action are the same'" (*Parker v Blauvelt Volunteer Fire Co.*, 93 NY2d 343, 349 [1999], quoting *Ryan v New York Tel. Co.*, 62 NY2d 494, 500 [1984]). Courts have applied the conclusive effect of collateral estoppel to the quasi-judicial determinations of administrative agencies, including the Workers' Compensation Board (see *Auqui v. Seven Thirty One Ltd. P'ship*, 22 NY3d 246, 255 [2013]; *Vega v Metropolitan Transp. Auth.*, 133 AD3d 518, 519 [1st Dept 2015]). A quasi-judicial determination of an administrative agency is entitled to collateral estoppel effect "where the issue a party seeks to preclude in a subsequent civil action is identical to a material issue that was necessarily decided by the administrative tribunal and where there was a full and fair opportunity to litigate before that tribunal" (*Auqui*, 22 NY3d at 255).

Plaintiff's allegations are identical to those considered and determined by the NYSWCB. Klaracon is entitled to collateral estoppel on the issue of whether plaintiff's accident occurred. As the NYSWCB determined that plaintiff's accident did not occur, Klaracon is entitled to summary judgment and plaintiff's claims are dismissed.

Additionally, the law of the case doctrine requires summary judgment in favor of Klaracon. Under law of the case doctrine, parties are “preclude[d from] relitigating an issue decided in an ongoing action where there previously was a full and fair opportunity to address the issue” (*Town of Massena v Healthcare Underwriters Mut. Ins. Co.*, 40 AD3d 1177, 1179 [3d Dept 2007]; *see also People v Evans*, 94 NY2d 499, 502-504 [2000]). Here, plaintiff was able to fully and fairly litigate the issue of the NYSWCB decision and its preclusive effect in this matter. Klaracon stands in the same positions as 259 West and the preclusive effect of the NYSWCB determination extends to Klaracon. As such, Klaracon’s motion for summary judgment must be granted.

As there is no basis for plaintiff’s complaint, the outstanding cross-claims and third-party actions in this litigation are dismissed in kind.

Accordingly, it is ORDERED that plaintiff’s motion for reargument and renewal (MS 005) is denied; it is further

ORDERED that defendant Klaracon’s motion for summary judgment is granted (MS 004) and the complaint dismissed as to it; it is further

ORDERED that the cross-claims of defendants Klaracon and 259 West are dismissed; it is further

ORDERED that defendants’ Klaracon and 259 West respective third-party actions against third-party defendant Aufiero Painting Industries, Inc. are dismissed; it is further

ORDERED that the Clerk of the Court enter judgment as written.

1/6/2020
DATE


MARGARET A. CHAN, J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> DENIED	<input type="checkbox"/> NON-FINAL DISPOSITION	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> GRANTED		<input type="checkbox"/> GRANTED IN PART	
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> SUBMIT ORDER	
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE