

Gillece v Sean Cab Corp.
2020 NY Slip Op 30731(U)
March 9, 2020
Supreme Court, New York County
Docket Number: 152364/2018
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

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ROSA GILLECE

Plaintiff,

- v -

SEAN CAB CORP

Defendants.

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INDEX NO. 152364/2018

MOTION DATE 12/05/2019

MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 29, 30, 31, 32, 33, 34, 35, 36, 37, 39, 40, 41, 42, 43, 44

were read on this motion to/for REARGUMENT/RECONSIDERATION.

Upon the foregoing documents, it is ORDERED that plaintiff's motion to renew and reargue is denied in part and granted in part for the reasons set forth below. Before the court is plaintiff's Motion Sequence 002 to reargue and renew the court's decision of November 21, 2019. Plaintiff seeks to reargue the part of plaintiff's previous motion seeking to amend the caption in that the Court incorrectly spelled the name of the proposed defendant David Boateng in the order and to renew the plaintiff's motion on the issue of whether plaintiff suffered a fracture and a serious injury as defined by Insurance Law 5102. Defendants partially oppose the motion.

The suit at bar stems from an incident which occurred on February 1, 2018, at or near East 98th Street at the intersection of Lexington Avenue, in the County, City, and State of New York, and allegedly injured plaintiff Rosa Gillece. On November 21, 2019 this Court issued a Decision/Order granting the branch of plaintiff's motion to amend the caption to reflect the addition of defendant David Boateng, granting the branch of plaintiff's motion for summary judgment on the issue of liability, and denying the branch of plaintiff's motion for summary judgment for an order granting summary judgment based on Insurance Law 5201(d) finding that

plaintiff had suffered a fractured bone. Here, plaintiff argues that the court erred in finding that plaintiff did not suffer a fracture and claims that the Court misspelled defendant David Boateng's name in the caption.

CPLR 2221(d)(2) permits a party to move for leave to reargue a decision upon a showing that the court misapprehended the law 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). A motion to renew under CPLR 2221(e), is intended to draw the Court's attention to new or additional facts that were unavailable at the time the parties filed the original motion and the moving party must offer a valid excuse of unavailability for not submitting the additional facts upon original application (*Lee v Ogden Allied Maintenance Corp.*, 226 AD2d 226 [1st Dep't 1996]).

Here, in the original motion, the Court did mistakenly misspell David Boateng when it amended the caption adding Davod Boateng instead. Therefore, the caption should be amended to reflect the correct name David Boateng.

As to the branch of plaintiff's motion which seeks an order granting summary judgment finding that plaintiff suffered a fracture, the Court finds that it did not overlook or misapprehend the facts or law or mistakenly arrive to its decision. The accident at issue occurred on February 1, 2018, and plaintiff's initial motion contained an affidavit from Dr. Hostin which noted that plaintiff sustained a fracture on February 28th, 2018 (Mot, Exh E). However, in the interest of justice and upon review of the revised affirmation of Dr. Emmanuel Hostin which notes that he

corrected his report which recorded the wrong date the x-rays were taken, plaintiff has demonstrated that she suffered a fracture to the right shoulder (Mot, Exh G). Plaintiff's motion is granted.

Accordingly, it is

ORDERED that plaintiffs' Motion Sequence 002 to reargue and renew the court's Decision and Order of November 25, 2019, for an order finding that plaintiff suffered a fracture and to correctly amend the caption is granted; and it is further

ORDERED that the branch of plaintiff's motion to amend is granted and the caption read as follows:

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ROSA GILLECE,

Plaintiff,

-against-

Index No. 152364/2018

SEAN CAB CORP and DAVID BOATENG

Defendants

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And it is further;

ORDERED that the branch of plaintiff's motion granting summary judgment to plaintiff on the issue of threshold in that plaintiff suffered a fractured bone is granted; and it is further

ORDERED that within 30 days of entry of this order plaintiffs shall serve a copy, with notice of entry, upon all parties, the County Clerk (Basement of 60 Centre) and the Clerk of Trial

Support (Room 148 of 60 Centre), who shall mark their records to reflect the amendment to the caption; and it is further

ORDERED that within 30 days of entry, defendants shall serve a copy of this decision/order upon plaintiffs with notice of entry.

This constitutes the Decision/Order of the Court.

3/9/2020
DATE


ADAM SILVERA, J.S.C.

CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
APPLICATION:	<input checked="" type="checkbox"/> GRANTED <input type="checkbox"/> DENIED	<input type="checkbox"/> GRANTED IN PART <input type="checkbox"/> OTHER
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