Tolston v Action Carting Envtl. Servs., Inc.
2020 NY Slip Op 30910(U)
April 1, 2020
Supreme Court, New York County
Docket Number: 161732/2015
Judge: Adam Silvera
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. ADAM SILVERA** **PART** **IAS MOTION 22**

Justice

----------X

ANDREW TOLSTON,

Plaintiff,

- v -

ACTION CARTING ENVIRONMENTAL SERVICES, INC.,JOSE GIL

Defendant.

----------X

INDEX NO. 161732/2015

MOTION DATE 12/20/2019

MOTION SEQ. NO. 006

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 006) 79, 80, 81, 82, 83, 84

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

Upon the foregoing documents, it is ordered that plaintiff's motion to renew and reargue this Court's prior Decision/Order dated October 23, 2019 (hereinafter referred to as the "Prior Decision") is denied for the reasons set forth below.

Plaintiff commenced this action against defendants, by summons and complaint, seeking monetary damages for personal injuries resulting from a motor vehicle accident. This action has been settled and is currently disposed. Following the conclusion of this action, plaintiff moved to seal certain documents which were electronically filed during the course of the litigation. Such motion was previously denied in the Prior Decision. Plaintiff now moves to renew and reargue the Prior Decision, and seeks, upon reargument and renewal, for an order sealing certain documents. No opposition has been filed.

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). Preliminarily, the Court notes that plaintiff has failed to establish that the Court, in the Prior Decision, misapprehended or overlooked the law or the facts in denying plaintiff's request to seal certain portions of the electronically filed court documents. Specifically, plaintiff argues that the Court overlooked the fact that plaintiff is employed in banking finance which is a highly regulated industry. Plaintiff also argues that the Court overlooked the fact that the documents in question are HIPAA protected documents. Such argument is belied by plaintiff's counsel's own affirmation in support. The Court notes that plaintiff's counsel argues that the Court overlooked the fact that the medical documents are HIPAA protected such that the Court should have granted the prior motion to seal. However, plaintiff's counsel concedes that plaintiff is seeking not only to seal medical records due to HIPAA protection, but to conceal allegedly unproven and prejudicial allegations made against plaintiff. Certain documents in which plaintiff seeks to seal, such as deposition transcripts, a police report, and affirmations in support of motions, are clearly not HIPAA protected and such fact was not overlooked by the Court. Furthermore, the Court did not overlook the fact that plaintiff works in the banking finance industry. In fact, the Prior Decision specifically mentioned that plaintiff was an executive in the financial services industry. In the prior motion, plaintiff's counsel's general and conclusory statements, which was made with no personal knowledge and held no probative value, regarding prejudice was insufficient to meet plaintiff's burden. Here, plaintiff has failed to establish that the Court overlooked or misapprehended the law or facts in the prior motion. Thus, plaintiff's instant motion to reargue is denied.

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". CPLR §2221(e). Here, plaintiff now proffers his own affidavit which states that he is currently seeking new employment and that there are extensive background checks done in the industry. Although a new fact has now been provided by plaintiff, such new fact does not change the prior determination. Although plaintiff is currently seeking new employment in a highly regulated field, plaintiff's affidavit proffers nothing more than conclusory concerns and fears that the allegedly unfounded and embarrassing allegation by defense counsel, that plaintiff was intoxicated at the time of the accident in which he was a pedestrian, would somehow damage his chance to obtain employment with prospective employers. Such allegation is unsupported by any facts or evidence. Although plaintiff and his counsel speculate that plaintiff's chances at obtaining new employment may be harmed, there is no indication as to what the allegedly rigorous background checks in the banking finance industry entail.

Presumably, plaintiff is arguing, without actually stating such arguments, that in the banking finance industry, the background checks include a check to determine if a prospective employee has been involved in any litigation. Moreover, plaintiff would have the Court assume that following obtaining the information that a prospective employee had commenced a personal injury action, the prospective employer would then look up such action on NYSCEF, see that the potential employee was a pedestrian in the street who was struck by a motor vehicle and then proceed to read through all of the documents which have been electronically filed in the case, including a thorough review of the deposition transcripts, in order to determine whether there is any embarrassing information held in such court records. Furthermore, plaintiff, again without

actually stating such, would have the Court believe that in the banking finance industry, prospective employers would not hire any individual who has been alleged to be intoxicated at one point in their lives. As stated in the Prior Decision, the Appellate Division, First Department has been abundantly clear that "[b]ecause confidentiality is the exception and not the rule, the party seeking to seal court records has the burden to demonstrate compelling circumstances to justify restricting public access. … [T]he Appellate Division, First Department has explicitly held that 'neither the potential for embarrassment or damage to reputation, nor the general desire for privacy, constitutes good cause to seal court records'. *Mosallem v Berenson*, 76 AD3d 345, 351 (1st Dep't 2010)." The Prior Decision, p. 2. Here, the new fact that plaintiff is currently seeking employment does not change the Prior Decision as plaintiff has failed to meet his burden to demonstrate that portions of the court records must be sealed. As such, plaintiff's motion to renew is denied.

Accordingly, it is

ORDERED that the plaintiff's motion to renew and reargue is denied in its entirety; and it is further

ORDERED that, within 30 days of entry, plaintiff shall serve upon all parties a copy of this decision and order, together with notice of entry.

This constitutes the Decision and Order of the Court.

4-1-2020
DATE

ADAM SILVERA, J.S.C.

CHECK ONE: [X] CASE DISPOSED [ ] NON-FINAL DISPOSITION
[ ] GRANTED [X] DENIED [ ] GRANTED IN PART [ ] OTHER

APPLICATION: [ ] SETTLE ORDER [ ] SUBMIT ORDER

CHECK IF APPROPRIATE: [ ] INCLUDES TRANSFER/REASSIGN [ ] FIDUCIARY APPOINTMENT [ ] REFERENCE