

Mudrick v City of New York

2020 NY Slip Op 33536(U)

October 27, 2020

Supreme Court, New York County

Docket Number: 155756/2019

Judge: Carol R. Edmead

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. CAROL R. EDMEAD **PART** **IAS MOTION 35EFM**

Justice

-----X

JASON MUDRICK,

Plaintiff,

- v -

THE CITY OF NEW YORK, JAMES O'NEILL, THE NEW
YORK CITY POLICE DEPARTMENT

Defendant.

-----X

INDEX NO. 155756/2019

MOTION DATE 12/07/2020

MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 37, 38, 39, 40, 41, 42, 43, 44

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

Upon the foregoing documents, it is

ORDERED that the motion, pursuant to CPLR 2221, of petitioner Jason Mudrick (motion sequence number 002) is denied; and it is further

ORDERED that the Clerk of the Court shall enter judgment accordingly; and it is further

ORDERED that counsel for respondents shall serve a copy of this order along with notice of entry on all parties within twenty (20) days.

MEMORANDUM DECISION

In this Article 78 proceeding, petitioner Jason Mudrick (Mudrick) moves for leave to reargue a portion of the court's earlier decision dismissing his petition (motion sequence number 002). For the following reasons, the motion is denied.

BACKGROUND FACTS

On August 10, 2020, this court issued a decision denying the Article 78 petition that Mudrick had filed to challenge respondents' decision denying his 2015 application for a handgun license (motion sequence number 001). *See* notice of motion, Adler affirmation, exhibit A. Mudrick then submitted this motion to reargue the court's decision on September 2, 2020 (motion sequence number 002). All parties have submitted responsive papers, and this matter is now ready for disposition.

DISCUSSION

Pursuant to CPLR 2221, a motion for leave to reargue 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 Dept 1992), quoting *Schneider v Solowey*, 141 AD2d 813 (2d Dept 1988). “Reargument is not designed to afford the unsuccessful party successive opportunities to reargue issues previously decided.” *Id.* at 27, citing *Pro Brokerage v Home Ins. Co.*, 99 AD2d 971 (1st Dept 1984). Nor does a reargument motion provide a party “an opportunity to advance arguments different from those tendered on the original application.” *Rubinstein v Goldman*, 225 AD2d 328, 328 (1st Dept 1996), quoting *Foley v Roche*, 68 AD2d 558, 568 (1st Dept 1979). Here, Mudrick raises five points of argument in his motion, all of which the court addressed in its August 10, 2020 decision.

The first section of Mudrick’s brief, entitled “the law,” argues that the court improperly cited the decisions by the Appellate Division, First Department, in *Matter of Klenosky v New York City Police Dept.* (75 AD2d 793 [1st Dept 1980], *affd* 53 NY2d 685 [1981]) and *Matter of Kaplan v Bratton* (249 AD2d 199 [1st Dept 1998]) as authority for the proposition that his gun license application was subject to a “special need” justification which several federal courts have held to be unconstitutional. *See* notice of motion, Adler affirmation, ¶¶ 7-17. However, it is plain that the court’s August 10, 2020 decision did not discuss or even mention such a “special needs” requirement. *See* notice of motion, Adler affirmation, exhibit A. Instead, the court cited the two First Department decisions when discussing the “proper cause” requirement that New York State law imposes as a condition to issuing Special Carry Business Licenses. *Id.* Mudrick produced no federal precedent indicating that that requirement is constitutionally infirm, nor could the court’s own research discovery any of the same. Therefore, the court rejects Mudrick’s first argument.

The second section of Mudrick’s brief, entitled “pre-emption” [sic], asserts that “[t]he City’s attempt to encroach upon state licensing standards and legislate locally is, we submit, preempted by state law.” *See* notice of motion, Adler affirmation, ¶¶ 18-22. The City responds that Mudrick “repeats and restates the same arguments that he made throughout his [original] verified petition [and] memorandum of law;” i.e., that “the applicable sections of the RCNY are preempted by Penal Law § 400.00 and that [he] was denied equal protection of the law.” *See* Cairra affirmation in opposition, ¶¶ 12-13. Review of the submissions that Mudrick’s counsel made in connection with motion sequence number 001 shows that the City’s observation is correct, and that Mudrick’s current “preemption” argument is the same as his original one. As

previously noted, this is not permissible in a motion to reargue. *William P. Pahl Equip. Corp. v Kassis*, 182 AD2d at 27. Therefore, the court rejects Mudrick's second argument.

The third section of Mudrick's brief attacks the constitutionality of 38 RCNY § 5 on the ground that it is "void for vagueness." See notice of motion, Adler affirmation, ¶¶ 23-26. The City again responds that Mudrick raised this same argument in his memorandum of law in support of motion sequence number 001. See Caira affirmation in opposition, ¶¶ 14-19. As Mudrick's previous submissions disclose that the City's assertion is accurate, it is clear that Mudrick's attempt to repeat his "void for vagueness" argument now is improper. Therefore, the court rejects Mudrick's third argument for the reasons discussed in the last paragraph.

The fourth section of Mudrick's brief, entitled "equal protection," asserts that the City utilized an improper "two-tiered approach" for gun licensing applications which is more lenient towards retired police officers than it is to private citizens like himself. See notice of motion, Adler affirmation, ¶¶ 27-28. Again, the City responds that Mudrick raised this same argument in his memorandum of law in support of motion sequence number 001. See Caira affirmation in opposition, ¶¶ 12-13. As the court's file demonstrates that the City's assertion is accurate, the court rejects Mudrick's fourth argument, too, as improper in a motion pursuant to CPLR 2221. *William P. Pahl Equip. Corp. v Kassis*, 182 AD2d at 27.

The final section of Mudrick's brief, entitled "the court's decision," argues that the court misapplied the Court of Appeals' holding in *Ulster Home Care v Vacco* (96 NY2d 505 [2001]). See notice of motion, Adler affirmation, ¶¶ 29-37. The City responds that the court's August 10, 2020 decision did not analyze or apply the holding *Ulster Home Care*, but merely cited it to state the standard for "void for vagueness" analysis which the Court of Appeals has promulgated. See Caira affirmation in opposition, ¶¶ 14-19. The City's assertion is, again, accurate because it is

clear that the court’s decision did not construe the *Ulster Home Care* holding. As a result, there was no “misapprehension of the law” in that decision. *William P. Pahl Equip. Corp. v Kassis*, 182 AD2d at 27. Therefore, the court rejects Mudrick’s final argument as unsupported. Accordingly, the court finds that Mudrick’s reargument motion should be denied as meritless.

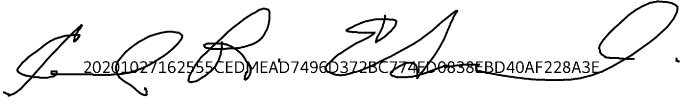
CONCLUSION

ACCORDINGLY, for the foregoing reasons, it is hereby

ORDERED that the motion, pursuant to CPLR 2221, of petitioner Jason Mudrick (motion sequence number 002) is denied; and it is further

ORDERED that the Clerk of the Court shall enter judgment accordingly; and it is further

ORDERED that counsel for respondents shall serve a copy of this order along with notice of entry on all parities within twenty (20) days.



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10/27/2020
DATE

CAROL R. EDMED, J.S.C.

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