

Bryant v Citigroup Inc.
2021 NY Slip Op 33067(U)
December 20, 2021
Superme Court, Bronx County
Docket Number: Index No. 34260/2019E
Judge: Doris M. Gonzalez
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

GEORGE BRYANT

Plaintiff,

DECISION and ORDER

Index No. 34260/2019E

- against -

CITIGROUP INC., CITIBANK, 5660 BROADWAY
LLC, SILHOUETTE RESTAURANT LOUNGE
CORP., and BROADWAY ANIMAL HOSPITAL
OF RIVERDALE, PC,

Defendant(s).

HON. DORIS M. GONZALEZ

Upon the foregoing papers, the defendants Citigroup Inc. and Citibank (collectively, “Citi”) move for an order pursuant to CPLR 2221(e)(2), to renew a decision of the Court dated January 25, 2021, regarding Citi’s motion for summary judgment, and upon renewal, granting the motion for summary judgment. The plaintiff George Bryant (“Plaintiff”) opposes the motion.

Background

By order dated January 25, 2021, this Court (Rosado, J.S.C.) *inter alia* denied a motion for summary judgment made by Citi. The Court held that ownership of the subject premises and parking lot where Plaintiff’s accident occurred was not established. The Court also held that Citi failed to carry its initial summary judgment burden, because the lease it submitted in support of the motion was not in admissible form.

Citi now moves for leave to renew its prior summary judgment motion due to a “change in the law.” Citi contends that shortly before the Court issued its decision, Chief Administrative Judge Lawrence K. Marks issued Administrative Order 27/20, effective February 1, 2021

regarding among other things, new rules for summary judgment motions. Citi argues that the new rules now required motions of summary judgment to be supported by a separate statement of material facts. Citi argues that it could have submitted a statement of material facts asserting that there was no material issue as to (1) the genuineness of the lease, and (2) the fact that co-defendant 5660 Broadway LLC owned the property in question. Citi alleges that the Court should now accept these contentions and undisputed and grant Citi summary judgment.

Plaintiff opposes the motion on various grounds, including (1) Citi failed to establish that there has been a change in law that would change the prior determination and (2) even if renewal was granted, Citi still failed to carry its summary judgment burden.

Applicable Law and Analysis

CPLR 2221(a) states that a “motion for leave to renew or to reargue a prior motion ... shall be made, on notice, to the judge who signed the order, unless he or she is for any reason unable to hear it...” In this case, while Justice Llinét M. Rosado issued the prior decision, she is unable to hear these motions because she has since been re-assigned to the Supreme Court Criminal Term. The motion was subsequently transferred to the undersigned due to the unavailability of Justice Mary Ann Brigantti.

CPLR 2221(e)(2) provides, in pertinent part, that a motion for leave to renew “shall demonstrate that there has been a change in the law that would change the prior determination.” A motion to renew on this ground is predicated on changes such as a “new statute taking effect or a definitive ruling on a relevant point of law issued by an appellate court that is entitled to stare decisis” (CPLR Practice Commentaries, by Professor Patrick M. Connors, McKinney's Cons. Laws of NY Annotated, CPLR 2221:9A, Time to Make Renewal Motion; 2020, *citing* Siegel &

Connors, New York Practice § 449 [6th ed. 2018]). Such a motion can also be based on a “clarification of the decisional law” (*id.*, quoting *Dinallo v. DAL Elec.*, 60 A.D.3d 620 [2d Dep’t 2009][internal quotation marks omitted]; *Opalinski v. City of New York*, 164 A.D.3d 1354, 1355 [2d Dep’t 2018]).

In this case, Citi has not established that there has been a change in the law that would change the prior determination. Citi’s motion is based on the newly-enacted procedural rules to be followed when making a motion for summary judgment (Uniform Rules for the Supreme Court and the County Court, 22 NYCRR 202.8-g). 22 NYCRR 202.8-g(a) requires that a summary judgment motion must be accompanied by “a separate, short and concise statement, in numbered paragraphs, of the material facts as to which the moving party contends there is no genuine issue to be tried.” The rule goes on to require the papers opposing a summary judgment motion to similarly provide numbered paragraphs responding to the movant’s statement of facts and if necessary to set forth additional separate material facts (22 NYCRR 202.8-g[b]). Statements of material facts must be followed by a citation to evidence submitted in support of or in opposition to the motion (22 NYCRR 202.8-g[d]). Unless a statement of material fact served by the moving party is specifically controverted, it will be deemed admitted (22 NYCRR 202.8-g[c]).

The above rules, however, did not change the substantive law applicable to summary judgment motions or the requirement that evidence be submitted in admissible form (CPLR 3212[b]). Here, Justice Rosado denied Citi’s prior motion because, among other reasons, the lease that Citi submitted was inadmissible under CPLR 4518(a). Thus, the Court held that Citi failed to establish that it “was only responsible for its leased space and failed to offer any admissible evidence and/or case law for this Court to conclude otherwise.” The Court also concluded that summary judgment in favor of Citi would be premature. On the instant motion, Citi does not

contend that Justice Rosado misapprehended or overlooked any point or law or fact in arriving at this conclusion, nor does it submit any new evidence. The purported “new law” cited by Citi does not justify renewal of its prior summary judgment motion (*see Kolchins v. Evolution Markets, Inc.*, 182 A.D.3d 408, 410 [1st Dept. 2020]).

Conclusion

Accordingly, it is hereby

ORDERED, that Citi’s motion to renew is denied.

This constitutes the Decision and order of this Court.

ENTER

Dated: _____

12/20/2021



Doris M. Gonzalez, J.S.C.