

Martinez v Contreras

2021 NY Slip Op 33947(U)

December 14, 2021

Supreme Court, Bronx County

Docket Number: Index No. 302586/2015E

Judge: Wilma Guzman

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX, PART 07

MARTINEZ, AMERICA

Index No. 302586-2015E

-against-

Hon. WILMA GUZMAN

CONTRERAS, SANDRA MARIA

Justice Supreme Court

The following papers numbered 1 to _____ were read on this motion (Seq. No. E #004)
for REARGUE/RENEW/RESETTLE/RECONSIDER noticed on _____.

Notice of Motion - Order to Show Cause - Exhibits and Affidavits Annexed	No(s).
Answering Affidavit and Exhibits	No(s).
Replying Affidavit and Exhibits	No(s).

Upon the foregoing papers, it is ordered that this motion is *decided upon and in accordance with the decision and order annexed hereto.*

Motion is Respectfully Referred to Justice:

Dated:

Dated: 12/14/21

Hon. _____

WILMA GUZMAN

J.S.C.

- 1. CHECK ONE..... CASE DISPOSED IN ITS ENTIRETY CASE STILL ACTIVE
- 2. MOTION IS..... GRANTED DENIED GRANTED IN PART OTHER
- 3. CHECK IF APPROPRIATE..... SETTLE ORDER SUBMIT ORDER SCHEDULE APPEARANCE
 FIDUCIARY APPOINTMENT REFEREE APPOINTMENT

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF THE BRONX- PART 7

Index No. 302586/2015E
Motion Sequence No. 004
Motion Date: 10/13/21

-----x
AMERICA MARTINEZ,

Plaintiff,

-against-

SANDRA CONTRERAS and DOLLIE ADAMS,

Defendants.

DECISION/ ORDER
Present:
Hon. Wilma Guzman

-----x

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion:

<u>Papers</u>	<u>Numbered</u>
Notice of Motion, Affirmation in Support and Exhibits thereto.....	1
Affirmation in Opposition and Exhibits thereto.....	2
Affirmation in Reply and Exhibits thereto	3

Motion decided as follows: Upon deliberation of the application duly made by Defendant, Sandra Contreras (hereinafter referred to as Defendant "Contreras"), by **NOTICE OF MOTION**, and all papers in connection therewith, for an Order, pursuant to CPLR §2221 1) Granting Re-Argument of this Court's Decision and Order dated April 1, 2021 and entered April 7, 2021; 2) Upon Re-Argument, adhering to the Court's prior Decision but deleting the reference at Page 1 of the Decision which states: "... [P]laintiff tripped and fell on ice on the sidewalk in front of premises known as 1128 Grant Avenue, Bronx, New York" from the Court's Decision and Order; 3) Re-Settling the aforementioned Order to delete the paragraph set forth above; and 4) For summary judgment pursuant to CPLR §3212 dismissing the action, as against Sandra Contreras and dismissing any cross-claims asserted against the Defendant, Sandra Contreras.

Plaintiff sustained serious personal injuries, on February 23, 2015, when she slipped and fell as a result of a dangerous condition on the sidewalk described as "a mountain of ice" located on the in front of the premises located at 1128 Grant Avenue, in the County of Bronx, City, and State of New York. After slipping on the dangerous condition, Plaintiff then came to a final resting place in the street. Defendant Dollie Adams previously moved this Court seeking summary judgment, which was granted, and this Court dismissed the complaint against her. Defendant Contreras now seeks to reargue this Court's prior decision and order, and seeks to delete reference in the decision as to where plaintiff fell. In addition, defendant, also seeks to dismiss all claims against her.

Defendant, Contreras, attempts to re-Argue the underlying motion made by Defendant, Dollie Adams (hereinafter referred to as defendant, "Adams") although defendant, Contreras did not oppose the underlying motion. Defendant, Contreras, argues that this Court misapprehended

where Plaintiff slipped and fell. However, defendant, Contreras, never attempted to argue to the Court on the underlying motion that defendant, Adams had made allegedly incorrect assertions as to those facts in the underlying motion. There was no opposition from the Plaintiff to the underlying motion because it was established that defendant, Adams had no liability with regards to the maintenance of the portion of the sidewalk where Plaintiff's accident had occurred. Clearly, the court decision was based upon the evidence submitted, that plaintiff's accident occurred on the sidewalk and not the street.

A motion seeking leave to reargue is addressed to the Court's sound discretion and can be granted only if it is shown that the court overlooked or misapprehended the facts or the law, or was otherwise mistaken in its earlier decisions; the motion does not allow reargument of issues previously decided or consideration of arguments different from those originally entertained (*see* CPLR §2221 and *William P. Pahl Equipment Corp. v. Kassis*, 182 AD2d 22 (1st Dept. 1992), *leave to appeal dismissed in part and denied in part*, 80 NY2d 1005(1992), *reargument denied*, 81 NY2d 782 (1993). No appeal lies from denial of reargument (*see Henry v. City of New York*, 126 AD3d 648 (1st Dept. 2015). Here, Defendant Contreras has failed to meet this burden and as such defendant's Contreras' motion seeking to re-argue is denied.

CPLR §3212. A party seeking summary judgment must demonstrate, *prima facie*, entitlement to judgment as a matter of law by presenting sufficient evidence to negate any issue of material fact. “[W]hen there is no genuine issue to be resolved at trial, the case should be summarily decided” (*Andre v. Pomeroy*, 35 N.Y.2d 361, 364, 362 N.Y.S.2d 131, 320 N.E.2d 853 [1974]; CPLR 3212 [b] [summary judgment “shall be granted if, upon all papers and proof submitted, the cause of action or defense shall be established sufficiently to warrant the court as a matter of law in directing judgment in favor of any party”]). To be entitled to summary judgment, the moving party “must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact from the case” (*Winegrad v. New York Univ. Med. Ctr.*, 64 N.Y.2d 851, 853, 487 N.Y.S.2d 316, 476 N.E.2d 642 [1985]). If the movement meets this burden, the opponent must rebut the *prima facie* showing by submitting evidence in admissible form demonstrating the existence of factual issues needing to be determined by a trier of fact. *See Zukerman v. City of New York*, 49 NY.2d 557 (1980). The failure to make a prima facie showing requires denial of the motion, regardless of the sufficiency of any opposing papers (*id.*). When deciding a summary judgment motion, the court views the alleged facts in the light most favorable to the non-moving party (*Sosa v. 46th St. Dev. LLC*, 101 A.D.3d 490, 492, 955 N.Y.S.2d 589 [1st Dept. 2012]

While defendant Contreras attempts to place doubt with regards to plaintiff's testimony in particularly as to where plaintiff's accident occurred, said doubt has raised a question of fact which necessitates the denial of defendant's motion for summary judgment. Any questions as to plaintiff's testimony, its credibility and meaning thereof, must be determined by the “triers of the fact” and not on summary judgment motion.

With respect to defendant, Contreras' motion for summary judgment, the plaintiff alleges that the defendant's moving papers are defective as they are not in compliance with 22 NYCRR §§ 202.8-b and 202.8-g and, therefore, should not be considered by this Court.

To the extent that this Court has reviewed and considered defendant's, Contreras, motion for summary judgment, defendant has failed to meet her prima facie entitlement to Summary Judgment and comply with 22 NYCRR §§ 202.8-b and 202.8-g., as such the motion is denied.

Accordingly, it is hereby,

ORDERED AND ADJUDGED that motion by Defendant SANDRA CONTRERAS for an order, pursuant to CPLR § 2221(d)(2), granting leave to reargue the earlier decision is hereby denied in all respects It is further,

ORDERED AND ADJUDGED that motion by Defendant SANDRA CONTRERAS for an order, pursuant to CPLR § 3212, granting summary judgment and dismissing the action and any crossclaims, is hereby denied. It is further,

ORDERED AND ADJUDGED that Defendant shall serve a copy of this Order with the Notice of Entry within thirty (30) days of entry of this Order.

This constitutes the Decision and Order of the Court.

Dated:

12/14/21



HON. WILMA GUZMAN, J.S.C.