

Ramires v AGDG Car Wash Corp.
2021 NY Slip Op 34328(U)
January 4, 2021
Supreme Court, Nassau County
Docket Number: Index No. 616170/19
Judge: Denise L. Sher
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SHORT FORM ORDER**SUPREME COURT OF THE STATE OF NEW YORK**

PRESENT: HON. DENISE L. SHER
Acting Supreme Court Justice

FREDIS RAMIRES, CARLOS ALVAREZ, EVENOR
VELASQUEZ, MANUEL GARCIA, JUAN GARCIA
LORGIO INTERIANO, ROBERTO RAMOS a/k/a
SANTIAGO LOPEZ, LUCIO GAITAN a/k/a
ALEXANDER GAITAN, MELVIN JOEL GARCIA
a/k/a EMERSON GARCIA, OSCAR PAZ CRUZ,
DAVID MOLINA, LEONIDAS GONZALEZ, MARIO
GRIMALDI, HENRY NUNEZ, FREDIS MANCIA a/k/a
JOSE MANCIA, JOSE MARQUEZ, KEVIN
BARRIENTOS, WILFREDO CRUZ and JOSE CRUZ,
on behalf of themselves and others similarly situated,

TRIAL/IAS PART 30
NASSAU COUNTY

Index No.: 616170/19
Motion Seq. No.: 02
Motion Date: 10/26/2020

Plaintiffs,

- against -

AGDG CAR WASH CORP., PM & JP CAR WASH,
LLC, RICHARD GABAY, PETER MAZZA and
JOSEPH PANZA,

Defendants.

The following papers have been read on this motion:

	Papers Numbered
Notice of Motion, Affirmation and Exhibits and	
Memorandum of Law	1
Memorandum of Law in Opposition	2
Reply Memorandum of Law	3

Upon the foregoing papers, it is ordered that the motion is decided as follows:

Plaintiffs move, pursuant to CPLR §§ 2221(d) and (e), for leave to re-argue and renew
the branch of their prior motion (Seq. No. 01) for an order approving the Class Notice
designating February 15, 2012 as the date plaintiffs' claims (for statute of limitations purposes),

upon which the Court rendered its Decision and Order on October 1, 2020, and, upon re-argument and renewal, for the Court to hold that plaintiffs' claims begin on February 15, 2012, and approving the Class Notice to reflect that claim start date. Defendants oppose the motion.

It is settled that "[m]otions for re-argument are addressed to the sound discretion of the court which decided the prior motion and may be granted upon showing that the court overlooked or misapprehended the facts or law for some [other] reason mistakenly arrived at earlier." *See Carrillo v. PM Realty Group*, 16 A.D.3d 611, 793 N.Y.S.2d 69 (2d Dept. 2005). *See also* CPLR § 2221(d)(2); *Barnett v. Smith*, 64 A.D.3d 669, 883 N.Y.S.2d 573 (2d Dept. 2009); *Frisenda v. X Large Enterprises Inc.*, 280 A.D.2d 514, 720 N.Y.S.2d 187 (2d Dept. 2001); *William P. Pahl Equipment Corp. v. Kassis*, 182 A.D.2d 22, 588 N.Y.S.2d 8 (1st Dept. 1992); *Foley v. Roche*, 68 A.D.2d 558, 418 N.Y.S.2d 588 (1st Dept. 1979), *appeal after remand*, 86 A.D.2d 887, *app den.* 56 N.Y.2d 507.

Notably, the remedy "is not designed to provide an unsuccessful party with successive opportunities" to make repetitious applications, "rehash questions already decided" or "present arguments different from those originally presented." *See McGill v. Goldman*, 261 A.D.2d 593, 691 N.Y.S.2d 75 (2d Dept. 1999); *William P. Pahl Equipment Corp. v. Kassis*, *supra*. *See also* *Gellert & Rodner v. Gem Community Management Inc.*, 20 A.D.3d 388, 797 N.Y.S.2d 316 (2d Dept. 2005); *Pryor v. Commonwealth Land Title Ins. Co.*, 17 A.D.3d 434, 793 N.Y.S.2d 452 (2d Dept. 2005); *Amato v. Lord & Taylor, Inc.*, 10 A.D.3d 374, 781 N.Y.S.2d 125 (2d Dept. 2004).

Plaintiffs have not demonstrated that the Court overlooked or misapprehended the facts (and viable issues thereto) or law relative to its analysis and subsequent denial to hold that

plaintiffs' claims begin on February 15, 2012, and approving the Class Notice to reflect that claim start date.

Having reviewed its prior determination and the papers submitted herein, this Court concludes that it has not overlooked or misapplied any controlling principles of law. *See William P. Pahl Equipment Corp. v. Kassis, supra; Foley v. Roche, supra*. Nor can the Court glean from the record herein where it had, for some other reason, mistakenly arrived at its earlier decision. *See Long v. Long*, 251 A.D.2d 631, 675 N.Y.S.2d 557 (2d Dept. 1998).

Re-argument is therefore **DENIED** as plaintiffs have failed to demonstrate that the Court misapprehended the facts or misapplied the law. *See* CPLR § 2221(d)(2).

CPLR § 2221(e) states, "[a] motion for leave to renew: 1. shall be identified specifically as such; 2. shall be based upon new facts not offered on the prior motion that would change the prior determination or shall demonstrate that there has been a change in the law that would change the prior determination; and 3. shall contain reasonable justification for the failure to present such facts on the prior motion." "A motion for leave to renew is not a second chance freely given to parties who have not exercised due diligence in making their first factual presentation." *See Rowe v. NYCPD*, 85 A.D.3d 1001, 926 N.Y.S.2d 121 (2d Dept. 2011) *quoting Elder v. Elder*, 21 A.D.3d 1055, 802 N.Y.S.2d 457 (2d, Dept 2005).

The Court finds that plaintiffs' instant motion fails to contain "new facts not offered on the prior motion that would change the prior determination or shall demonstrate that there has been a change in the law that would change the prior determination." The instant motion also does not "contain reasonable justification for the failure to present such facts on the prior motion."

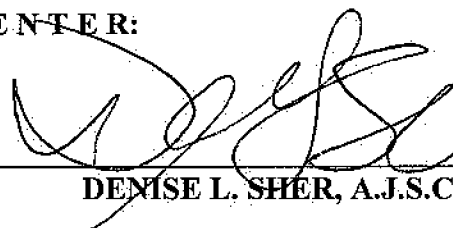
Therefore, the branch of plaintiffs' motion based upon renewal is also hereby **DENIED**.

Accordingly, the Court adheres to its original determination and decision and plaintiffs' instant motion is hereby **DENIED in its entirety**.

All parties shall appear for a Certification Conference in IAS Part 30, Nassau County Supreme Court, 100 Supreme Court Drive, Mineola, New York, on January 13, 2021.

This constitutes the Decision and Order of this Court.

ENTER:



DENISE L. SHER, A.J.S.C.

ENTERED

Jan 15 2021

NASSAU COUNTY
COUNTY CLERK'S OFFICE

Dated: Mineola, New York
January 4, 2021