

Persaud v Genovese Drug Stores, Inc.

2022 NY Slip Op 31390(U)

April 29, 2022

Supreme Court, New York County

Docket Number: Index No. 151811/2019

Judge: David B. Cohen

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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. DAVID B. COHEN **PART** **58**

Justice

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INDEX NO. 151811/2019

JANETTE PERSAUD,

MOTION SEQ. NO. 003

Plaintiff,

- v -

GENOVESE DRUG STORES, INC., and RITE AID OF NEW YORK, INC.,

DECISION + ORDER ON MOTION

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 003) 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85

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

In this personal injury action, Genovese Drug Stores, Inc. and Rite Aid of New York, Inc. (“Rite Aid”) (collectively “Defendants”) move for an order, pursuant to CPLR 2221(d), granting them leave to reargue their motion for summary judgment pursuant to CPLR 3212 (Mot. Seq. 002) and, upon reargument, granting them summary judgment dismissing all claims against them. Plaintiff Janette Persaud opposes the motion. After consideration of the parties’ contentions, as well as a review of the relevant statutes and case law, the motion is decided as follows.

I. Factual and Procedural Background

Plaintiff was injured when she allegedly slipped and fell in a drug store located at 47 East Prospect Avenue in Mount Vernon, New York. She sued Defendants, the store owners and/or operators, alleging that the incident was caused by their negligence.

In the underlying motion, Defendants moved, pursuant to CPLR 3212, for summary judgment dismissing the complaint (Docs 40-57), arguing that they did not breach any duty to Plaintiff since they mopped up the liquid on the floor, placed three warning signs in the area where Plaintiff fell, and that the videotape of the incident showed that Plaintiff fell right between two of those signs (Doc 41). This Court denied the motion, reasoning that, although Defendants established their *prima facie* entitlement to summary judgment, Plaintiff raised an issue of fact in opposition regarding whether Defendants should have mopped the area in which plaintiff fell (Doc 66 at 6). This Court further noted that Karis Salmon (“Salmon”), a Rite Aid employee, “admitted that the warning sign he placed in the middle of aisle 5 was not in the same area where plaintiff fell” and that Plaintiff testified “that a store employee told her, while she was still on the ground after she fell, that he had just mopped in that area and that it was still slippery” (*id.*). At his deposition, Salmon testified that he did not mop the area where Plaintiff fell (Salmon EBT at 45:02-12).

II. The Parties’ Contentions

Defendants argue that Plaintiff failed to raise a triable issue of fact in opposition to the underlying motion since she did not argue that Salmon or another store employee “should have mopped the area [where] [she] fell” (Doc 71 ¶ 20). Defendants further argue that “it is unquestionable that the middle of the floor was mopped ... by Salmon” (*id.* ¶ 45).

In opposition, Plaintiff argues that she “did, in fact, raise the argument that [Defendants] did not properly mop the area where [she] fell” (Doc 82 ¶ 9, citing Doc 73 [Plaintiff’s Affirm in Opp in the Prior Motion ¶¶ 34-36]). In her opposition to the underlying motion, Plaintiff argued that “Salmon ... attempted to mop the slippery spot on the morning of the accident, but that ... spot remained slippery after [she] fell” (Doc 73 ¶ 34). Plaintiff further argued that “[w]hether

the store employee's mopping prior to the fall was performed negligently, thus[,] causing or exacerbate[ing] the dangerous condition in question is a material issue of fact" (*id.* ¶ 36).

In further support of their motion, Defendants argue that Plaintiff merely "suggest[ed] that there [was] a question of fact as to whether the mopping in the morning was done negligently" and did not argue that Defendants failed to properly mop the area where she fell (Doc 84 ¶ 3).

III. Legal Conclusions

A motion for leave to reargue pursuant to CPLR 2221 (d) "shall be based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion, but shall not include any matters of fact not offered on the prior motion" (CPLR § 2221 (d) [2]).

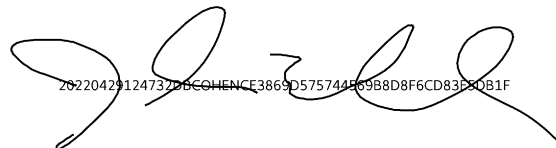
A motion for leave to reargue "is addressed to the sound discretion of the court and may be granted only upon a showing that the court overlooked or misapprehended the facts or the law or for some reason mistakenly arrived at its earlier decision" (*William P. Pahl Equip. Corp. v Kassis*, 182 AD2d 22, 27 [1st Dept 1992] [internal quotation marks and citations omitted], *lv denied in part, dismissed in part*, 80 NY2d 1005 [1992], *rearg. denied*, 81 NY2d 782 [1993]).

Here, Defendants fail to establish that this Court misapprehended and/or overlooked any facts or the law in determining the prior motion (CPLR 2221(d)[2]). In the underlying motion, Plaintiff raised an issue of fact regarding "[w]hether the store employee's mopping prior to the fall was performed negligently ... causing or exacerbate[ing] the dangerous condition in question" (Doc 73 ¶ 36; *see also id.* ¶¶ 34-35). Further, Defendants' argument that "it is unquestionable that the middle of the floor was mopped ... by Salmon[,]'" (*id.* ¶ 45), is contradicted by Salmon himself since he testified, at his deposition, that he did not mop the middle of the floor where Plaintiff fell (Salmon EBT at 45:02-12).

This Court finds the parties' remaining arguments unavailing or moot in light of the above analysis.

Accordingly, it is hereby:

ORDERED that the motion by Genovese Drug Stores, Inc. and Rite Aid of New York, Inc. for an order, pursuant to CPLR 2221(d), granting them leave to reargue their underlying motion (Mot. Seq. 002) is denied.



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4/29/2022

DATE

DAVID B. COHEN, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE