

Salcedo-Rodriguez v Pichardo

2022 NY Slip Op 34961(U)

November 14, 2022

Supreme Court, Bronx County

Docket Number: Index No. 34594/2018E

Judge: Veronica G. Hummel

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

To commence the statutory time for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX IAS PART 31**

-----X
KENDRA SALCEDO-RODRIGUEZ,
Plaintiff

-against -

**Index No. 34594/2018E
DECISION/ORDER
Motion Seq. 4**

CARLOS J. PICHARDO a/k/a C.J. PICHARDOCEPEDA, SAMADHY PICHARDO, and JULIO E. GONZALEZ,
Defendants.

-----X
JULIO E. GONZALEZ and SAMADHY PICHARDO,
Third-Party Plaintiffs,

-against-

CARLOS J. PICHARDO,
Third-party Defendant.

-----X
HON. VERONICA G. HUMMEL, A.S.C.J.

In accordance with CPLR 2219 (a), the decision herein is made upon consideration of all papers filed by the parties in NYSCEF regarding the motion by defendant/third-party defendant CARLOS J. PICHARDO A/K/A C. J. PICHARDOCEPEDA (movant Pichardo) [Mot. Seq. 4]: made pursuant to CPLR 2221(d), seeking an order granting leave to reargue the decision made on Mot. Seq. 2, issued on May 17, 2022 (the Prior Decision), and upon reargument, vacating the part of the Prior Decision that granted plaintiff KENDRA SALCEDO-RODRIGUEZ’S motion [Mot. Seq. 2], made pursuant to CPLR 3212, seeking partial summary judgment on liability as against movant Pichardo, and upon vacatur, denying plaintiff Rodriguez’s motion as directed against movant Pichardo; and, made pursuant to CPLR 3215(c), seeking an order dismissing plaintiff Rodriguez’s complaint as against movant Pichardo. The motion is unopposed. Movant defaulted on the underlying motion.

The court, in the interests of reaching the merits of the underlying motion [Mot. Seq. 2], will exercise its discretion and grant reargument. *see* CPLR 2221 [d] [2]; *Amato v Lord & Taylor, Inc.*, 10 A.D.3d 374, 375 (2d Dep't 2004). Of note, the motion is unopposed.

Upon reargument the Prior Decision is vacated to the extent that it granted partial summary judgment as against movant Pichardo. Upon vacatur, plaintiff Rodriguez's motion [Mot. Seq. 2], made pursuant to CPLR 3212, is denied as directed against movant only. Plaintiff was not entitled to summary judgment as the issue was not joined. *See*, CPLR 3212[a]; *see*, *City of Rochester v. Chiarella*, 65 N.Y.2d 92 [1985].

The record also reflects that plaintiff failed to move for a default judgment as against movant Pichardo within one year of the movant's default. *see*, CPLR 3215[c]. Moreover, plaintiff offers no explanation for the delay, as this motion is unopposed. Accordingly, the causes of action alleged against movant Pichardo are dismissed as abandoned. *Id.*; *County of Nassau v. Chmela*, 45 A.D.3d 722 [2d Dep't 2007].

Cross-claims:

CPLR 3012(a) provides that if a defendant has not appeared in the action then any subsequent pleading must be served upon it in the same manner as a summons and complaint. Here, the record reflects that movant Pichardo was not served with a copy of the answer with cross-claims in accordance with this provision. In fact, there is no evidence on record that personal service of the answer or amended summons and complaint (in January 2022) on movant was ever completed. Accordingly, the cross-claims as against movant are dismissed. Of note, co-defendants filed a third-party complaint based on principles of indemnification and contribution as a separate pleading with movant and movant has answered the complaint.

The court has considered the additional contentions of the parties not specifically addressed herein. To the extent any relief requested by either party was not addressed by the court, it is hereby denied. Accordingly, it is hereby

ORDERED that the part of the motion of the motion by defendant/third-party defendant CARLOS J. PICHARDO A/K/A C. J. PICHARDOCEPEDA (movant Pichardo) [Mot. Seq. 4],

made pursuant to CPLR 2221(d), that seeks an order granting leave to reargue the decision made on Mot. Seq. 2, issued on May 17, 2022 (the Prior Decision), and upon reargument, vacating that part of the Prior Decision that granted plaintiff KENDRA SALCEDO-RODRIGUEZ partial summary judgment on liability as against movant Pichardo is granted without opposition and the Prior Decision is vacated in part; and it is further

ORDERED that, upon reargument and vacatur of the Prior Decision, the part of the motion by plaintiff KENDRA SALCEDO-RODRIGUEZ [Mot. Seq. 2], made pursuant to CPLR 3212, that seeks partial summary judgment on liability as against movant Pichardo is denied without opposition; and it is further

ORDERED that the part of the motion of movant Pichardo [Mot. seq. 4] that seeks an order granting judgment dismissing the complaint is granted without opposition; and it is further

ORDERED that the cross-claims alleged against movant Pichardo are dismissed; and it is further

ORDERED that the Clerk shall enter judgment dismissing the complaint and all cross-claims alleged against movant Pichardo, and severing the remaining action; and it is further

ORDERED that the caption shall be amended to read as:

-----x
KENDRA SALCEDO-RODRIGUEZ,
Plaintiff,
-against-
SAMADHY PICHARDO and JULIO E. GONZALEZ,
Defendants.
-----x
JULIO E. GONZALEZ and SAMADHY PICHARDO,
Third-Party Plaintiffs,
-against-
CARLOS J. PICHARDO,
Third-Party Defendant.
-----x

; and it is further

ORDERED that the Clerk shall mark motion sequence 4 decided in all court records; and it is further

ORDERED that plaintiff shall upload a NYSCEF form EF22¹ directing the amendment of the caption to NYSCEF within thirty (30) days from upload of this Order.

This is 2018 action is based on an accident that occurred five years ago in September 2017. Discovery in this old case must be concluded. The parties are direct to communicate promptly and to enter into an expediated schedule for the completion of any outstanding discovery.

The foregoing constitutes the Decision/Order of the court.

Dated: Bronx, New York

November 14, 2022

E N T E R,

Hon.  _____

HON. VERONICA G. HUMMEL, A.J.S.C.

1. CHECK ONE.....	CASE DISPOSED IN ITS ENTIRETY	<input type="checkbox"/> CASE STILL ACTIVE
2. MOTION 4, is granted	<input checked="" type="checkbox"/> Granted	<input checked="" type="checkbox"/> AMEND CAPTION

¹ NYSCEF Form EF22 can be found at: <https://iappscontent.courts.state.ny.us/NYSCEF/live/forms/notice.to.county.clerk.pdf>

