

Sandoval v 4 World Trade Ctr. LLC

2024 NY Slip Op 30636(U)

February 29, 2024

Supreme Court, New York County

Docket Number: Index No. 157619/2020

Judge: Sabrina Kraus

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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. SABRINA KRAUS PART 57M

Justice

-----X

RENE SANDOVAL,

Plaintiff,

- v -

4 WORLD TRADE CENTER LLC, WORLD TRADE CENTER
PROPERTIES LLC, SILVERSTEIN WTC PROPERTIES
LLC, SILVERSTEIN WTC LLC, SILVERSTEIN
PROPERTIES, INC., SILVERSTEIN PROPERTIES, LLC,

Defendant.

-----X

4 WORLD TRADE CENTER LLC, WORLD TRADE CENTER
PROPERTIES LLC, SILVERSTEIN WTC PROPERTIES LLC,
SILVERSTEIN WTC LLC, SILVERSTEIN PROPERTIES, INC.,
SILVERSTEIN PROPERTIES, LLC

Plaintiff,

-against-

ABM JANITORIAL SERVICES - NORTHEAST, INC., ABM
JANITORIAL NORTHEAST, INC., ABM JANITORIAL
SERVICES NEAST INC., ABM JANITORIAL SERVICES, INC.,
ABM ONSITE SERVICES, INC.

Defendant.

-----X

ABM JANITORIAL SERVICES - NORTHEAST, INC.

Plaintiff,

-against-

PALLADIUM WINDOW SOLUTIONS, LLC

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 008) 245, 246, 247, 249,
250, 251, 252, 253

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

**DECISION + ORDER ON
MOTION**

Third-Party
Index No. 595206/2021

Second Third-Party
Index No. 595558/2021

BACKGROUND

Pursuant to a decision and order dated August 28, 2023, this Court issued a decision on pending motions sequence numbers 2 through 5. The parties reached out to the Court, via email, after said decision was issued and advised that the Court had inadvertently failed to address relief sought by ABM Janitorial Services-Northeast, Inc. (“ABM”).

The parties requested that the Court issue an amended order, which the Court did on September 6, 2023. After the issuance of the amended order, the parties felt that some points had still not been addressed. As such, the Court directed any parties who felt aggrieved to move for re-argument.

Pursuant to the September 6, 2023, order:

The Court denied Plaintiff’s motion for partial summary judgment as to liability on its claim under Labor Law §241(6) claim and related relief (Motion Seq 2); and

The Court granted the motion by 4 World Trade Center and Silverstein for summary judgment to the extent of dismissing Plaintiff’s Labor Law claims asserted pursuant to §§ 240(1), 241(6), and 200 as well as the common law negligence claims, but denied the motion as to the claim asserted by Plaintiff under Labor Law §202 (Motion Seq No 3); and

The Court granted the motion by ABM as against Plaintiff to the extent provided above, granted the motion by ABM dismissing the Third-Party claims for contractual indemnification and breach of contract, and denied ABM’s request for summary judgment on their contractual claim against Palladium (Motion Seq No 4); and

The Court granted Palladium’s motion for summary judgment on Plaintiff’s claims to the extent provided above but denied Palladium’s motion to dismiss the third-party actions.

PENDING MOTIONS

On November 21, 2023, Plaintiff moved for re-argument of that part of the Court's Decision and Order dated September 6, 2023, which denied his motion for partial summary

judgment on his Labor Law § 241(6) claim and granted defendant's motions dismissing said claim (Motion Sequence No. 6).

On November 27, 2023, Palladium moved for re-argument seeking dismissal of Plaintiff's remaining claim under Labor Law §202 and 4 World Trade center and Silverstein cross-moved for the same relief (Motion Sequence No. 7).

On February 26, 2024, ABM for reargument, renewal and resettlement of various parts of the Court's September 6, 2023, order, as well as for summary judgment dismissing 4 World Trade and Silverstein's common law indemnifications claims against ABM (Motion Sequence No. 8).

As of February 26, 2024, all the motions were submitted, and the Court reserved decision.

The motions are consolidated herein for determination and granted to the extent set forth below.

DISCUSSION

"A motion for leave to reargue 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). The purpose of such a motion is, "to afford a party an opportunity to establish that the court overlooked or misapprehended the relevant facts, or misapplied any controlling principle of law." *Kent v. 534 East 11th Street*, 80 A.D.3d 106, 116 (1st Dep't 2010).

Motion Sequence No. 6

Plaintiff moves for reargument on the grounds that this Court misapprehended material facts and/or misapplied the relevant law in denying the branch of plaintiff's motion (seq. 002)

that sought summary judgment on the issue of liability on his Labor Law §241(6) claim and in granting the branches of the defendants' motions (seqs. 003, 004, and 005) that sought summary judgment dismissing plaintiff's Labor Law §241(6) claim.

Plaintiff argues that the Court misapprehended material facts and misapplied controlling law by holding that plaintiff's work involved routine exterior window washing services, unrelated to any construction, demolition, or excavation at the premises.

The court disagrees there is no evidence in the record that the window washing was related to any ongoing construction. Case law clearly holds that routine¹ window washing is not a protected activity under the statute. *Wowk v Broadway 280 Park Fee, LLC* 94 AD3d 669 (1st Dept., 2012); *Retamal v Miriam Osborne Memorial Home Assn* 256 AD2d 506 (2nd Dept, 1998); *Jamison v GSL Enterprises, Inc* 274 AD2d 356 (2000).

Based on the foregoing, Plaintiff's leave for reargument is denied.

Motion Sequence No. 7

The motion and cross-motion for reargument are granted.

Plaintiff did not oppose dismissal of the Labor Law § 202 claim in the underlying motion papers. It is well established that a party's failure to oppose portions of a motion seeking dismissal of certain claims is deemed to be abandonment of those claims. *See Sancino v Metropolitan Transportation Auth.*, 184 AD3d 534 (1st Dept 2020); *Bonventre v Soho Mews Condominium*, 173 AD3d 411 (1st Dept 2019); *Ng v NYU Langone Medical Center*, 157 AD3d 549 (1st Dept 2018); *Saidin v Negron*, 136 AD3d 458 (1st Dept 2016); *Jospehson LLC v Column Financial, Inc.*, 94 AD3d 479 (1st Dept 2012).

¹ While Plaintiff argues the window washing only takes place once or twice a year, the record also establishes that each time it is undertaken it takes several months to complete.

By failing to offer any legal argument in opposition to that part of the motion seeking dismissal of the Labor Law § 202 claim, plaintiff waived it. *Bosco CZ Credit V Trust Series 2012-1 v. Johnson*, 177 AD3d 561, 115 NYS3d 5 (1st Dep't 2019).

The Court misapplied the facts and law when it held that, "plaintiff argues defendants violated § 202 by failing to ensure adequate safety device devices were in place, given the allegedly wet and slippery condition of the roof platform cover (decision at page 7). In fact, plaintiff never argued that.

Based on the foregoing, the motion and cross-motion for reargument are granted and upon reargument, Plaintiff's sole remaining cause of action asserted pursuant to Labor Law § 202 is dismissed.

Motion Sequence No 8

As there are no remaining causes of action in the underlying complaint, ABM's motion is denied as moot.

CONCLUSION

WHEREFORE it is hereby:

ORDERED that the motion of plaintiff for leave to reargue is denied; and it is further

ORDERED that motion Sequence No 7 and the cross-motion to same are granted, and upon reargument plaintiff's cause of action pursuant to Labor Law § 202 is dismissed; and it is further

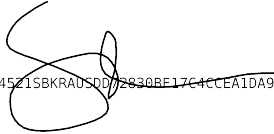
ORDERED that motion Sequence No 8 is denied as moot; and it is further

ORDERED that the complaint is dismissed with costs and disbursements to defendants as taxed by the Clerk upon the submission of an appropriate bill of costs; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly; and it is further

ORDERED that any relief not specifically addressed herein has been considered and is denied.

This constitutes the decision and order of the Court.


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<u>2/29/2024</u> DATE		<u>SABRINA KRAUS, J.S.C.</u>
CHECK ONE:	<input checked="" type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> NON-FINAL DISPOSITION
	<input type="checkbox"/> GRANTED	<input type="checkbox"/> GRANTED IN PART
	<input checked="" type="checkbox"/> DENIED	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT
		<input type="checkbox"/> REFERENCE