

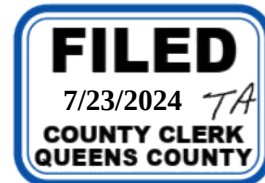
Gonzalez v Aurora Contrs., Inc.
2024 NY Slip Op 35385(U)
July 23, 2024
Supreme Court, Queens County
Docket Number: Index No. 701616/2018
Judge: Timothy J. Dufficy
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Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

PRESENT: HON. TIMOTHY J. DUFFICY
Justice

PART 35



-----X
JEANNETTE GONZALEZ,

Plaintiff,

-against-

Index No.: 701616/18

Mot. Date: 10/24/23

Mot. Seq.: 8

AURORA CONTRACTORS, INC., and
LOUIS L. BUTTERMARK & SONS
MECHANICAL CORP.,

Defendants.

-----X
AURORA CONTRACTORS, INC.,

Third Party Plaintiff,

-against-

ADCO ELECTRICAL CORP.,

Third Party Defendant,

-----X

The following papers were read on this motion by defendant Buttermark & Sons Mechanical Corp. (Buttermark) for an order, pursuant to CPLR 2221, for leave to reargue the prior decision of this Court, dated February 24, 2023, and, upon reargument, granting summary judgment in favor of Buttermark and dismissing plaintiff's Labor Law § 241(6) claim against Buttermark on its entirety.

	<u>PAPERS NUMBERED</u>
Notice of Motion-Affidavit-Exhibits.....	EF 214-215
Answering Affidavit-Exhibits.....	EF 234-238
Replying Affidavit	EF 240

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

This action is for personal injuries arising out of a work site accident. Plaintiff, an employee of third-party defendant ADCO Electrical Corp., alleges that she was caused to trip and fall due a hazardous condition at the work site. In the complaint, the plaintiff asserted numerous causes of action for, *inter alia*, violation of Labor Law § 241(6).

According to plaintiff's Verified Bill of Particulars, plaintiff's Labor Law § 241 (6) claim is predicated upon alleged violation of multiple Industrial Code Sections, specifically, §§23-1.5, 23-1.7, 23-1.8, 23-1.11, 23-1.22, 23-1.30, 23- 2.1 and 23-2.4.

There were multiple prior motions made by all parties (Motion Sequence Nos. 3, 4, 5 and 6). The direct defendants and the third-party defendant moved to dismiss all causes of action against them and the plaintiff moved for summary judgment against the direct defendants.

In its prior motion (Motion Sequence No. 6), Buttermark moved for summary judgment dismissing, *inter alia*, plaintiff's Labor Law § 241 (6) claim against it, on the grounds that the all of the cited regulations were either insufficiently specific or not applicable. Additionally, the plaintiff had moved for summary judgment against all defendants on her claim for violation of Labor Law § 241(6) (Motion Sequence No. 5). Specifically, the plaintiff claimed that she was entitled to summary judgment on her Labor Law § 241(6) claim predicated upon violations of Industrial Code Sections §§ 23-1.7(e)(1) and (2) and 23-2.1(a).

Significantly, the plaintiff did not oppose Buttermark's motion to dismiss the 241(6) claim predicated on Industrial Code §§23-1.5, 23-1.8, 23-1.11, 23-1.22, 23-1.30, and 23-2.4.

In the prior decision, the Court, in sum and substance, found that neither moving party had proved its entitlement to summary judgment on Industrial Code §§ 23-1.7(e)(1), (2), and 23-2.1 (a). As such, Buttermark's motion for summary judgment to dismiss the Labor Law § 241(6) claim predicated upon those regulations was denied; the Court also denied plaintiff's motion for summary judgment against the defendants for her Labor Law § 241(6) claim premised on those regulations.

The Court inadvertently did not address the issue of summary judgment dismissing the remaining Industrial Code Sections, which the plaintiff did not address in her opposition. Since the plaintiff did not oppose the part of Buttermark's motion to dismiss the portion of the Labor Law § 241(6) claim predicated on Industrial Code §§23-1.5, 23-1.8, 23-1.11, 23-1.22, 23-1.30, and 23-2.4, the Court should have dismissed the Labor Law § 241(6) claim based on those provisions as being abandoned (*see Pita v Roosevelt Union Free Sch. Dist.*, 156 AD3d 833 [2d Dept 2017]).

Furthermore, although in its underlying motion, Buttermark did not argue that it was not a statutory agent or special agent, and the evidence did not reflect Buttermark's entitlement to summary judgment on that issue, the Court held: "Here, Buttermark has shown that its participation did not rise to the level of special agent." This was a misapprehension of the facts and law.

Finally, the relevant decretal or "ordered" paragraphs, state:

"Accordingly, it is

ORDERED that defendant Buttermilk's motion for summary judgment dismissing plaintiff's complaint is granted in part and denied in part; in that: it is

ORDERED that defendant Buttermilk's motion for summary judgment dismissing plaintiff's complaint is granted only with respect to Industrial Code §§ 23-1.7(e)(1), (2), and 23-2.1 (a)."

It was clearly a clerical error by the Court to state in its Order that summary judgment was granted in favor of Buttermark on its Labor Law § 241(6) claim, since the Court had previously held, in the body of its decision, that Buttermark had failed to establish its entitlement to summary judgment dismissing the claims predicated upon Industrial Code §§ 23-1.7(e)(1), (2), and 23-2.1 (a).

A motion to reargue pursuant to CPLR 2221(d) is addressed to the sound discretion of the court and is designed to afford a party an opportunity to demonstrate that the court overlooked or misapprehended the relevant facts or misapplied controlling principles of law (*see Schneider v Solowey*, 141 AD2d 813 [2d Dept 1988]; *Rodney v New York Pyrotechnic Products, Inc.*, 112 AD2d 410 [2d Dept 1985]).

CPLR 5019 (a) permits the correction of mistakes, defects, and irregularities committed by the court itself (*see Kiker v Nassau County*, 85 NY2d 879, 881 [1995]).

"CPLR 5019(a) provides that "[a] trial or an appellate court may require the mistake, defect or irregularity to be cured," meaning that a trial court may unilaterally and affirmatively correct minor mistakes, defects, or irregularities in its orders or judgments, after the fact, so long as the correction does "not affect[] a substantial right of a party." When properly utilized, the statute has a utilitarian benefit. It operates as a safety net for jurists to correct clerical-type errors that may be contained in orders or judgments . . ."

(*Sokoloff v Schor*, 176 AD3d 120, 130 [2d Dept 2019]). “[W]hile a court must be circumspect in correcting its mistakes sua sponte, more latitude may exist if the correction of an order or judgment is the subject of notice to the parties with an opportunity to be heard. (*Sokoloff, supra*, 176 AD3d at 131)].

As stated above, upon further review of this Court’s prior decision, the underlying papers and the papers submitted in support of, and in opposition to, the instant motion to reargue, the Court finds that it misapprehended the facts and law in deciding the prior motion and made certain clerical type errors in the prior decision.

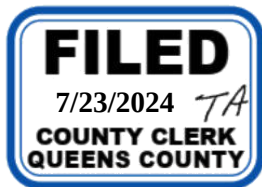
Accordingly, it is

ORDERED, that defendant Buttermilk’s motion for leave to reargue is granted, and, upon reargument, it is

ORDERED that defendant Buttermilk’s motion for summary judgment dismissing plaintiff’s cause of action, pursuant to Labor Law Labor Law § 241(6) is granted in part and denied in part; in that: it is

ORDERED that defendant Buttermilk’s motion for summary judgment dismissing plaintiff’s complaint is granted **solely to the extent** that the plaintiff’s Labor Law § 241(6) claim, predicated upon violations of Industrial Code Sections 23-1.5, 23-1.8, 23-1.11, 23-1.22, 23-1.30, and 23-2.4., is dismissed; and is otherwise **denied**.

Dated: July 23, 2024



A handwritten signature in black ink, appearing to read "T. Dufficy".

TIMOTHY J. DUFFICY, J.S.C.