

Francis v Freeport Mem. Lib.
2024 NY Slip Op 35521(U)
March 25, 2024
Supreme Court, Nassau County
Docket Number: Index No. 610135/2022
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

BEVERLY FRANCIS,

Plaintiff,

-against-

FREEPORT MEMORIAL LIBRARY,
INCORPORATED VILLAGE OF FREEPORT and
TOWN OF HEMPSTEAD,

Defendants.

TRIAL/IAS PART 30
NASSAU COUNTY

Index No.: 610135/2022
Motion Seq. Nos.: 04, 05
Motion Dates: 07/21/2023
09/22/2023
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The following papers have been read on these motions:

	Papers Numbered
Notice of Motion (Seq. No. 04) and Affirmation	1
Affirmation in Opposition to Motion (Seq. No. 04)	2
Affirmation in Opposition to Motion (Seq. No. 04) and Exhibits	3
Reply Affirmation to Motion (Seq. No. 04)	4
Reply Affirmation to Motion (Seq. No. 04)	5
Notice of Cross-Motion (Seq. No. 05) and Affirmation	6
Affirmation in Opposition to Cross-Motion (Seq. No. 05)	7
Affirmation in Reply to Cross-Motion (Seq. No. 05)	8

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

Plaintiff moves (Seq. No. 04), pursuant to CPLR § 2221(d), for leave to re-argue her opposition to the motion (Seq. No. 01) made by defendant Incorporated Village of Freeport ("Village"), pursuant to CPLR § 3212, for an order granting summary judgment dismissing plaintiff's Verified Complaint as against it, and any and all cross-claims as against it, upon which the Court rendered its Decision and Order on May 18, 2023, and, upon re-argument, for the Court to deny defendant Village's motion (Seq. No. 01); and moves, pursuant to CPLR § 2221(d), for leave to re-argue her opposition to the cross-motion (Seq. No. 03) made by

defendant Freeport Memorial Library (“Library”), pursuant to CPLR § 3212, for an order granting summary judgment dismissing plaintiff’s Verified Complaint as against it, and any and all cross-claims as against it, upon which the Court rendered its Decision and Order May 23, 2023, and, upon re-argument, for the Court to deny defendant Library’s cross-motion (Seq. No. 03). Defendant Village opposes the motion (Seq. No. 04). Defendant Library opposes the motion (Seq. No. 04).

Defendant Village cross-moves (Seq. No. 05), pursuant to 22 NYCRR 130-1.1, for an order directing the imposition of sanctions against plaintiff for reasonable, good faith legal fees in connection with the filing of this cross-motion (Seq. No. 05) and her motion to reargue (Seq. No. 04). Plaintiff opposes the cross-motion (Seq. No. 05).

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*” (emphasis added). *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).

Plaintiff has not demonstrated that the Court overlooked or misapprehended the facts (and viable issues thereto) or law relative to its analysis and subsequent granting of defendant Village's motion (Seq. No. 01) and granting of defendant Library's cross-motion (Seq. No. 03).

Having reviewed its prior determinations 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 decisions. *See Long v. Long*, 251 A.D.2d 631, 675 N.Y.S.2d 557 (2d Dept. 1998).

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

Accordingly, the Court adheres to its original determination and decision, and plaintiff's instant motion (Seq. No. 04) is hereby **DENIED**.

With respect defendant Village's cross-motion (Seq. No. 05), 22 NYCRR 130-1.1 deals with Costs and Sanctions. It reads, in pertinent part, that

“(a) The court, in its discretion, may award to any party or attorney in any civil action or proceeding before the court, except where prohibited by law, costs in the form of reimbursement for actual expenses reasonably incurred and reasonable attorney's fees, resulting from frivolous conduct as defined in this Part. In addition to or in lieu of awarding costs, the court, in its discretion may impose financial sanctions upon any party or attorney in a civil action or proceeding who engages in frivolous conduct as defined in

this Part, which shall be payable as provided in section 130-1.3 of this Subpart....

(b) The court, as appropriate, may make such award of costs or impose such financial sanctions against either an attorney or a party to the litigation or against both....

(c) For purposes of this Part, conduct is frivolous if:

(1) it is completely without merit in law and cannot be supported by a reasonable argument for an extension, modification or reversal of existing law;

(2) it is undertaken primarily to delay or prolong the resolution of the litigation, or to harass or maliciously injure another; or

(3) it asserts material factual statements that are false.

Frivolous conduct shall include the making of a frivolous motion for costs or sanctions under this section. In determining whether the conduct was frivolous, the court shall consider, among other issues the circumstances under which the conduct took place, Including the time available for investigating the legal or factual basis of the conduct, and whether or not the conduct was continued when its lack of legal or factual basis was apparent, should have been apparent, or was brought to the attention of counsel or the party."

"Pursuant to 22 NYCRR 130-1.1, sanctions may be imposed against a party or the party's attorney for frivolous conduct." *Keyspan Generation, LLC v. Nassau County*, 118 A.D.3d 949, 991 N.Y.S.2d 46 (2d Dept. 2014). "Conduct during litigation, ... is frivolous and subject to sanction and/or the award of costs when it is completely without merit in law or fact and cannot be supported by a reasonable argument for the extension, modification, or reversal of existing law; it is undertaken primarily to delay or prolong the resolution of the litigation, or to harass or maliciously injure another; or it asserts material factual statements that are false." *Id. quoting Mascia v. Maresco*, 39 A.D.3d 504, 833 N.Y.S.2d 207 (2d Dept. 2007). "The decision of whether to award sanctions and the amount or nature of those sanctions is generally entrusted to the trial court's sound discretion." *Matter of Khan-Soleil v. Rashad*, 111 A.D.3d 727, 974 N.Y.S.2d 798 (2d Dept. 2013). The Court has carefully reviewed the record before it and,

guided by the foregoing precepts, hereby declines to impose sanctions upon plaintiff as requested by counsel for defendant Village. *See id.*

Accordingly, defendant Village's cross-motion (Seq. No. 05), pursuant to 22 NYCRR 130-1.1, for an order directing the imposition of sanctions against plaintiff for reasonable, good faith legal fees in connection with the filing of this cross-motion (Seq. No. 05) and her motion to reargue (Seq. No. 04), is hereby **DENIED**.

This constitutes the Decision and Order of this Court.

ENTER:


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

Dated: Mineola, New York
March 25, 2024

ENTERED
Mar 25 2024

NASSAU COUNTY
COUNTY CLERK'S OFFICE