Guzman v Johnson Kirchner Holdings LLC
2025 NY Slip Op 35345(U)
February 5, 2025
Supreme Court, Rockland County
Docket Number: Index No. 030985/2022
Judge: David Fried
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To commence the statutory time period 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 ROCKLAND
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JEFFREY GUZMAN,

Plaintiff,

-against-

JOHNSON KIRCHNER HOLDINGS LLC, JPMORGAN CHASE BANK, N.A., JONES LANG LASALLE AMERICAS, INC., 3L BROS. CORP. and SMS ASSIST, L.L.C.,

Defendants.
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DECISION & ORDER

Index No. 030985/2022
Motion Sequence No. 2

HON. DAVID FRIED, A.J.S.C.

The papers filed electronically via NYSCEF numbered 176 through and including 193 ("Motion") were read and considered herein. Upon such reading and consideration, the Motion is disposed as follows:

BACKGROUND

This action arises out of an alleged trip on a defect and slip on ice on a sidewalk at the Defendant JPMorgan Chase Bank, N.A. ("Defendant Chase") branch located in Orangeburg, New York ("branch" and or "premises").

On June 28, 2024, Defendants Johnson Kirchner Holdings LLC ("Defendant JKH") and Defendant Chase brought Motion sequence No. 1, seeking an Order granting the aforesaid Defendants conditional summary judgment on their crossclaims against Co-Defendants Jones Lang LaSalle Americas, Inc. ("Defendant JLL") and SMS Assist, L.L.C. ("Defendant SMS") for contractual defense and indemnification, and dismissal of Defendant JLL's crossclaims against Defendant Chase and Defendant JKH. Defendants JLL and Defendant SMS opposed said Motion. Defendant 3L Bros. Corp ("Defendant 3L") supported Defendant Chase and Defendant JKH's Motion by purportedly incorporating by reference all submissions by Defendant Chase and Defendant JKH.

By Decision & Order dated November 25, 2024 (NYSCEF Doc. No. 170), Defendant Chase and Defendant JKH's Motion Sequence No. 1 was denied. This Court held, *inter alia*, that conditional summary judgment on a cross-claim for contractual indemnification, should not be granted if there are issues of fact as to whose negligence, if any, caused the accident (citing to, *George v. Marshalls of MA, Inc.*, 61 A.D.3d 925, 930-931,878 N.Y.S.2d 143 [2nd Dept. 2009]; *Alexander v. New York City Tr.*, 34 A.D.3d 312, 314, 824 N.Y.S.2d 262; *Barnes v. DeFoe/Halmar*, 271 A.D.2d 387, 388, 705 N.Y.S.2d 628; *Chun v. Ecco III Enters.*, 268 A.D.2d 454, 701 N.Y.S.2d 910). This Court also held, that contrary to Defendant Chase and Defendant JKH's contention, "a party seeking contractual indemnification must prove itself free from negligence, because to the extent its negligence contributed to the accident, it cannot be indemnified therefor (citing to *Reisman v. Bay Shore Union Free School Dist.*, 74 A.D.3d 772, 773, 902 N.Y.S.2d 167, quoting *Cava Constr. Co., Inc. v. Gealtec Remodeling Corp.*, 58 A.D.3d 660, 662, 871 N.Y.S.2d 654); *Jin Gak Kim v. Kirchoff-Consigli Constr. Mgt., LLC*, 197 A.D.3d 1289, 1291, 152 N.Y.S.3d 324 [2nd Dept. 2021]).

More specifically, this Court determined that it was unclear from the parties' submissions, what the purported sidewalk defect is, if any, the existence/duration of the ice, if any, and whether Defendant Chase and Defendant JKH – the parties seeking contractual indemnification – were free from negligence, if any, because to the extent their negligence, if any, contributed to the accident, they cannot be indemnified therefor (citing to *Reisman v. Bay Shore Union Free School Dist.*, 74 A.D.3d 772, 773, 902 N.Y.S.2d 167, quoting *Cava Constr. Co., Inc. v. Gealtec Remodeling Corp.*, 58 A.D.3d 660, 662, 871 N.Y.S.2d 654). See, *Jin Gak Kim v. Kirchoff-Consigli Constr. Mgt., LLC*, 197 A.D.3d 1289, 1291, 152 N.Y.S.3d 324 (2nd Dept. 2021).

This Court also held that given that Plaintiff alleges both a trip on a defective sidewalk and slip on ice on February 4, 2022, at 11:15 PM, the causes of each, if any, may be separate and distinct and material issues of fact exist regarding same. This Court noted that Defendant Chase and Defendant JKH contend, *inter alia*, that Defendant JLL is negligent because Defendant JLL's witness, Mr. Butterworth's, inspection report stated that a defect in the sidewalk existed in October 2021; yet, Defendant Chase's Branch Manager, Ms. Ranallo, testified that she inspects the sidewalk on a daily basis and that she never made complaints to Mr. Butterworth or anyone else regarding the condition of the sidewalk. Accordingly, this Court found that material issues of fact exist requiring trial.

Defendant Chase and Defendant JKH now bring the within Motion Sequence No. 2, seeking an Order pursuant to CPLR §2221, granting reargument to the aforesaid Defendants, and upon reargument, granting Defendant Chase and Defendant JKH their conditional summary judgment motion. Defendant JLL and Defendant SMS oppose Motion Sequence No. 2.

DISCUSSION

"A motion for reargument is addressed to the sound discretion of the court and may be granted upon a showing that the court overlooked or misapprehended the relevant facts or misapplied any controlling

principle of law (see, CPLR §2221(d)(2); *Pahl Equip. Corp. v. Kassis*, 182 A.D.2d 22, 588 N.Y.S.2d 8; *Foley v. Roche*, 68 A.D.2d 558, 418 N.Y.S.2d 588). Reargument is not designed to afford the unsuccessful party successive opportunities to reargue issues previously decided or to present arguments different from those originally asserted. *Coke-Holmes v. Holsey Holdings, LLC*, 189 AD3d 1162, 1164 (2nd Dept 2020); *Jaspar Holdings, LLC v. Gotham Trading Partners # 1, LLC*, 186 AD3d 582, 584 (2nd Dept 2020); *Ahmed v. Pannone*, 116 A.D.3d 802, 805 (2nd Dept 2014); *Haque v. Daddazio*, 84 AD3d 940, 942 (2nd Dept 2011); *Mazinov v. Rella*, 79 AD3d 979, 980 (2nd Dept 2010). Rather, reargument is designed to allow a party to call to a Court's attention errors of fact or law committed by the court.

On their Motion to reargue, Defendant Chase and Defendant JKH contend that the only issue before this Court is which party is responsible for the existence of an alleged unsafe condition, and that the parties responsible are Defendants JLL and Defendant SMS, by virtue of the master services agreement and service contractor agreement, respectively. Defendant Chase and Defendant JKH now seek to rehash the arguments previously made and introduce an argument not previously briefed in its underlying papers.

The Court did not overlook or misapprehend the law or the facts on Motion Sequence No. 1. The Court thoroughly considered all the facts and arguments raised in the underlying motion papers. More specifically, the Court considered, *inter alia*, the following facts: that the last inspection of the sidewalk at issue was conducted by Mr. Butterworth, on behalf of Defendant JLL, several months prior to the incident; and that Defendant Chases' Branch Manager Ranallo testified that she inspects the sidewalk on a daily basis to make sure that it is in good condition, and if she observes any issues, she would contact Mr. Butterworth, yet never made complaints to Mr. Butterworth or anyone else regarding the condition of the sidewalk.

As to Defendant Chase and Defendant JKH's new argument that the duty to defend is broader than the duty to indemnify, the aforesaid Defendants neither made said argument in their underlying Motion papers on Sequence No. 1, nor did they previously cite to the cases they now rely upon, for the first time, in support of said new argument (i.e., *Fitzpatrick v. American Honda Motor Co.*, 78 NY2d 61, 65, 571 NYS 672 [1991]; *Federal Ins. Co. v. Kozlowski*, 18 A.D.3d 33, 40, 792 N.Y.S.2d 397, 402 [1st Dept. 2005]; and *BP A.C. Corp. v. One Beacon Ins. Group*, 8 NY3d 708, 711, 871 NE2d 1128, 840 NYS2d 302 [2007]). Notwithstanding that movant has a cross-claim for *defense* and indemnification, its underlying motion merely states the existence of their claim for defense, but does not present any argument or authority specifically in reference to same.

As to *Arriola v. City of New York*, 128 A.D.3d 747, 749, 9 N.Y.S.3d 344, 346 (2d Dept. 2015), *Correia v. Professional Data Mgmt., Inc.*, 259 A.D.2d 60, 65, 693 N.Y.S.2d 596 (1st Dept.1999), *Jamindar v. Uniondale Union Free School Dist.*, 90 A.D.3d 612, 616, 934 N.Y.S.2d 437, 442 (2d Dept. 2011), and *Martinez v. City of New York*, 73 A.D.3d 993, 994, 901 N.Y.S.2d 339, 340 (2d Dept. 2010) – cases Defendant Chase and Defendant JKH cited to in their underlying Motion Sequence No. 1 – they continue to overlook, disregard and or omit a significant portion of the holdings therein. Said appellate cases held that the

party seeking contractual indemnification must establish that it was free from negligence and where a triable issue of fact exists regarding the indemnitee's negligence, a conditional order of summary judgment for contractual indemnification must be denied as premature. Accordingly, this Court did not overlook or misapprehend the law or the facts on Motion Sequence No. 1.

In light of the foregoing, it is hereby

ORDERED, that Motion Sequence No. 2, seeking an Order pursuant to CPLR §2221, for leave to reargue this Court's November 25, 2024 Decision & Order (NYSCEF Doc. No. 170), is DENIED in its entirety; and it is further

ORDERED, that all parties are to appear as previously directed.

The foregoing constitutes the Decision & Order of this Court.

Dated: New City, New York
February 5, 2025

E N T E R:

HON. DAVID FRIED, A.J.S.C.
STATE OF NEW YORK
COUNTY OF ROCKLAND