

Parrales v Whiting-Turner Contr. Co.
2025 NY Slip Op 35368(U)
January 15, 2025
Supreme Court, Westchester County
Docket Number: Index No. 55548/2023
Judge: Paul I. Marx
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (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.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER
HON. PAUL I. MARX, J.S.C.

-----X
PABLO FABIAN MEDRANDA PARRALES,

Plaintiff,

DECISION AND ORDER

-against-

Index No.: 55548/2023

THE WHITING-TURNER CONTRACTING
COMPANY, PURCHASE SENIOR LEARNING
COMMUNITY INC., PURCHASE COLLEGE AND
ADVANCEMENT CORPORATION, BLUEPRINT
PARTNERS CORP, CONSTRUCTION RESOURCES
CORP. OF NEW YORK, and CONSTRUCTION
RESOURCES CORPORATION OF NEW YORK,

Defendants.

-----X
THE WHITING-TURNER CONTRACTING COMPANY,
PURCHASE SENIOR LEARNING COMMUNITY INC.,
and PURCHASE COLLEGE ADVANCEMENT
CORPORATION,

Motion Seq, # 4

Third-Party Plaintiffs,

-against-

AGUINA BROTHERS CONTRACTING, LLC and
CONSTRUCTION RESOURCES CORPORATION
OF NEW YORK,

Third-Party Defendants.

-----X

The papers filed electronically via NYSCEF and numbered as documents 155 through 170 were read on the motion of Defendant/Third Party Plaintiff The Whiting turner Contracting Company, Purchase Senior Learning Community Inc and Purchase College Advancement Corporation (collectively “Whiting” or “movants”) seeking an order pursuant to CPLR § 2221(d) granting “leave to reargue the plaintiff’s motion to sever the third-party claims as against third-

party defendant Aquina Brothers Contracting LLC (motion sequence no. 3)” which was granted by this Court on September 5, 2024, and, upon granting re-argument, denying the motion.

BACKGROUND

Familiarity with the procedural history and underlying facts in this case are assumed.

By Decision and Order made on the record following oral argument on September 5, 2024, this Court granted Plaintiff’s motion seeking an order severing the third-party action against Aquinas. The Decision was later memorialized in a written order entered on September 8, 2024. NYSCEF # 152.

Whiting now moves to reargue the motion and ensuing Order asserting that it is contrary to Second Department precedent. Whiting asserts that Plaintiff failed to support its motion to sever with evidence of prejudice caused by the delay attendant to the discovery required by and of Aquinas, which had only recently appeared in the action. Whiting asserts that since no Note of Issue had been filed at the time, precedent required that discovery in the main action and the third-party action should be completed together. Whiting contends that the Court’s decision to sever the third-party action is in error and should be reversed.

Plaintiffs oppose the motion, submitting that the Court’s decision on its motion to sever was correct and that the Court did not overlook or misapprehend any controlling law. Plaintiff submits that discovery in his action is complete and that the main case has been deemed trial ready as evidenced by the Trial Readiness Order and subsequent Note of Issue having been filed. NYSCEF # 172.

Whiting replies, reiterating that Plaintiff failed to show prejudice that would warrant severance, and arguing that it would be prejudiced by severance.

Discussion

CPLR § 2221(d) provides, in relevant part, that:

A motion for leave to reargue: 1. shall be identified specifically as such; 2. 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; and 3. shall be made within thirty days after service of a copy of the order determining the prior motion and written notice of its entry.

“A motion for leave to reargue is addressed to the sound discretion of the Supreme Court”. *Rides Unlimited of New York, Inc. v Engineered Energy Solutions, LLC*, 184 AD3d 695, 695 [2nd Dept 2020]; *Bueno v Allam*, 170 AD3d 939, 940 [2nd Dept 2019]; *Foley v Roche*, 68 AD2d 558, 567 [1st Dept 1979].

“A motion for re-argument, addressed to the discretion of the court, is designed to afford a party an opportunity to establish that the court overlooked or misapprehended the relevant facts, or misapplied any controlling principle of law. Its purpose is not to serve as a vehicle to permit the unsuccessful party to argue once again the very questions previously decided. Nor does re-argument serve to provide a party an opportunity to advance arguments different from those tendered on the original application. It may not be employed as a device for the unsuccessful party to assume a different position inconsistent with that taken on the original motion. ... ‘A motion for re-argument is not an appropriate vehicle for raising new questions’ ”. *Foley* at 567-568; *Jaspar Holdings, LLC v Gotham Trading Partners #1, LLC*, 186 AD3d 582, 584 [2nd Dept 2020]; *McGill v Goldman*, 261 AD2d 593, 594 [2nd Dept 1999]; *DeSoignies v Cornasesk House Tenants’ Corp.*, 21 AD3d 715, 718 [1st Dept 2005].

Whiting’s motion is denied. The law is clear that discovery issues are matters left to the trial court and that the trial court is vested with broad discretion in managing its calendar. Here, the Court notes that discovery in the third-party action is ongoing and that such discovery is supposed to be completed by January 30, 2025, pursuant to directives issued on October 31, 2024. Thus, if the parties comply with the Court’s deadlines, there is no reason why the third-party action cannot be re-joined with the main action. If there have been delays in the completion of discovery in the third-party action, then the parties have no one to blame but themselves. The Court also notes that this matter has not yet been released to the Trial Assignment Part for selection of a jury selection date. Thus, timely completion of discovery in the severed action will allow for the re-joinder prior to trial.

Summary

It is hereby

ORDERED that Whiting's motion seeking re-argument is denied in all respects.

The parties are reminded that there is a compliance conference scheduled for January 30, 2025, at 9:15 a.m.

The foregoing constitutes the Decision and Order of the Court.

Dated: January 15, 2025
White Plains, New York

E N T E R

A handwritten signature in blue ink, appearing to be "Paul I. Marx", written over a horizontal line.

HON. PAUL I. MARX, J.S.C.