

Moncrieffe v City of White Plains

2012 NY Slip Op 33577(U)

July 30, 2012

Supreme Court, Westchester County

Docket Number: 27098/2008

Judge: William J. Giacomo

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This opinion is uncorrected and not selected for official publication.

To commence the statutory time 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.

FILED AND ENTERED ON 7-31-2012 WESTCHESTER COUNTY CLERK

SUPREME COURT OF THE STATE OF NEW YORK COUNTY OF WESTCHESTER PRESENT: HON. WILLIAM J. GIACOMO, J.S.C.

-----X

PATRICIA MONCRIEFFE,

Plaintiffs,

-against-

CITY OF WHITE PLAINS, WESTCHESTER COUNTY AND LIBERTY LINES TRANSIT, INC.,

Defendants.

-----X

The following papers numbered 1 to 50 were read on plaintiff's motion to renew and reargue this Court's decision and order of December 22, 2011, which, inter alia, granted defendant City of White Plains' ("White Plains") motion for summary judgment dismissing the complaint.

PAPERS NUMBERED

Notice of Motion/Affirmation/Exhibits A-O
Affirmation in Opposition/Exhibits A-C

1-17
18-21

FILED

JUL 31 2012

TIMOTHY C. IDONE
COUNTY CLERK

Index No. 27098/2008-ESTCHES
DECISION & ORDER

Factual & Procedural Background

On December 15, 2007, at about 6:45 a.m. plaintiff slipped and fell, allegedly on an icy condition, while she was walking across Ferris Avenue at its intersection with New Street near the Transcenter in downtown White Plains.

Plaintiff commenced this personal injury action on December 16, 2008. In her complaint, plaintiff alleges, *inter alia*, her fall was caused by the unsafe piling and plowing of snow which blocked the crosswalk causing an icy condition for pedestrians to traverse. White Plains interposed an answer on February 18, 2009 and the Westchester Defendants answered on January 8, 2009. In its answer, White Plains asserted a cross claim against the Westchester Defendants claiming that it was their negligence that caused the accident. The Westchester Defendants also asserted a negligence cross claim against White Plains.

By order entered on December 22, 2011 this Court granted defendants' motions for summary judgment dismissing the complaint. In granting summary judgment in favor of White Plains, the court held that Plaintiff "attempts to create an issue of fact with respect to White Plains by claiming White Plains plowed the snow at the crosswalk on the median", yet submitted only portions of the unsigned deposition of [White Plains' Highway Superintendent of Grounds] Patsy Fucale in inadmissible form.

Plaintiff now moves to renew and reargue the prior motion pursuant to CPLR §2221(d) and CPLR §2221(e) respectively. In support of its motion, Plaintiff alleges that the court misapprehended the fact that the Fucale's unsigned deposition was timely forwarded to White Plains pursuant to CPLR §3116(a) and therefore was admissible. Plaintiff claims that Fucale's deposition states that White Plains was responsible for plowing the area of the accident. As such, Plaintiff argues that there is a triable issue of

fact regarding whether the Westchester Defendants or White Plains caused the accident, which warrants denial of White Plains' summary judgment motion.

In opposition, White Plains contends that the Court did not misapprehend facts; rather Plaintiff failed to provide the transmittal letter accompanying Fucale's deposition to evidence in connection with the prior motion and now fails to offer any reasonable excuse for such omission. Furthermore, Fucale's deposition does not state that White Plains plowed the area of the accident. In fact, the affidavits of Fucale and White Plains' public works employee Victor Cottini confirm that White Plains neither plowed the area of the accident nor had notice of any hazardous condition thereon.

Discussion

To prevail on a motion for leave to reargue a prior motion pursuant to CPLR §2221(d), Plaintiff must prove that there are "matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion." In pertinent part, to prevail on a motion for leave to renew a prior motion pursuant to CPLR §2221(e), Plaintiff must prove that there are "new facts not offered on the prior motion that would change the prior determination..." Plaintiff has failed to satisfy these burdens.

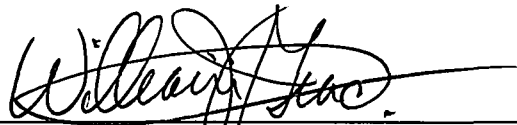
With respect to its motion to reargue, Plaintiff has failed to demonstrate that the Court overlooked or misapprehended facts pertaining to Fucale's deposition. Rather, Plaintiff failed to submit a signed full copy of Fucale's deposition in admissible form or provide the transmittal letter to evidence the unsigned copy was timely served upon White Plains and admissible.

With respect to its motion to renew, Plaintiff has failed to demonstrate the existence of new facts which would change the prior determination. Plaintiff failed to submit the

transmittal letter evidencing service of and the admissibility of Fucale's deposition transcript. Assuming, *arguendo*, that Fucale's deposition was admissible, it nonetheless does not offer any new facts that would change this Court's prior determination. Contrary to Plaintiff's motion papers, Fucale's deposition transcript does not indicate that White Plains was responsible for plowing or actually plowed the specific area of the accident. Furthermore, Fucale's deposition does not establish that White Plains had actual or constructive notice of the alleged hazardous condition created by any such plowing.

For the reasons set forth herein, Plaintiff's motion to vacate or modify or reargue and/or renew this Court's prior order is DENIED.

Dated: White Plains, New York
July 30, 2012



HON. WILLIAM J. GIACOMO, J.S.C.

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