

Morini v Thurman

2022 NY Slip Op 34105(U)

December 6, 2022

Supreme Court, New York County

Docket Number: Index No. 159159/2021

Judge: David B. Cohen

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. DAVID B. COHEN

PART 58

Justice

-----X

INDEX NO. 159159/2021

ALINA MORINI,

MOTION SEQ. NO. 003

Plaintiff,

- v -

**DECISION + ORDER ON
MOTION**

TAYA THURMAN, JOHN DOE, and JANE DOE,

Defendants.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 003) 48, 49, 50, 51, 52, 53, 54, 55, 56, 58, 59

were read on this motion to/for

REARGUMENT/RECONSIDERATION.

In this intentional tort action, plaintiff Alina Morini moves, pursuant to CPLR 2221(d), for leave to reargue her motion seeking a default judgment against defendant Taya Thurman (Seq. 002) and to reargue Thurman's cross motion to dismiss the complaint against her; and, upon reargument, for an order granting a default judgment against Thurman and denying her cross motion. Alternatively, plaintiff moves, pursuant to CPLR 2221(e), for leave to renew her motion. Defendant opposes.

Factual and Procedural Background

This Court assumes familiarity with the facts and allegations in this case as set forth in the Court's order filed on August 25, 2022 (NYSCEF Doc No. 42). Briefly, plaintiff commenced this action against Thurman in October 2021 asserting that she was wrongfully forced out of Thurman's mother's apartment in Manhattan (Doc No. 17 at 1-2). After allegedly serving Thurman, plaintiff moved, pursuant to CPLR 3215, for a default judgment against her (Doc Nos. 15, 17). She argued that Thurman was properly served twice, once in October 2021 and again in

January 2022 (Doc No. 17 at 6-10). In the alternative, she moved, pursuant to CPLR 308(5), for an order granting her permission to serve Thurman through an alternative method of service, arguing that service was impracticable (Doc No. 15; Doc No. 17 at 6-10).

Thurman opposed the motion, arguing that she had never been properly served, and that plaintiff failed to demonstrate that service by any of the methods prescribed by CPLR 308(1), (2) and (4) was impracticable (Doc No. 27 at 6-13). Thurman also cross-moved, pursuant to CPLR 306-b, for an order dismissing the action as against her, arguing that plaintiff failed to properly serve her within the required 120 days (Doc No. 27 at 13-14). Plaintiff opposed the cross motion, reiterating her argument that Thurman was properly served (Doc Nos. 35-36).

By decision and order of August 25, 2022, plaintiff's default judgment motion was denied, Thurman's cross motion to dismiss was granted, and the action was dismissed against her (Doc No. 42). It was determined that Thurman was never properly served, since the October 2021 affidavit of service was defective and the follow-up mailing pursuant to CPLR 308(2) was untimely, and since the January 2022 affidavit of service was not properly executed (Doc No. 42 at 2-4). Absent proper service, plaintiff failed to serve Thurman within the 120 days required by CPLR 306-b, thereby warranting dismissal of the action (Doc No. 42 at 5-6).

Plaintiff now moves, pursuant to CPLR 2221(d), for leave to reargue her underlying motion and Thurman's underlying cross motion, arguing that facts were "overlooked" and the law was "misapprehended" in concluding that Thurman was never served (Doc No. 48; Doc No. 49 at 4-11; Doc No. 58 at 2). In the alternative, plaintiff moves, pursuant to CPLR 2221(e), for leave to renew. Thurman opposes, arguing that plaintiff raises the same issues and arguments addressed previously (Doc No. 56 at 4-9).

Legal Conclusions

Plaintiff's Request for Leave to Reargue

“A motion for leave to reargue is addressed to the sound discretion of the court and is properly granted upon a showing that the facts . . . or law were overlooked or misapprehended by the court in determining the prior motion” (*Cascade Bldrs. Corp. v Rugar*, 154 AD3d 1152, 1154 [3d Dept 2017] [citation omitted]; *see* CPLR 2221 [d] [2]; *Mendez v Queens Plumbing Supply, Inc.*, 39 AD3d 260, 260 [1st Dept 2007]). However, “[r]eargument is not designed to afford the unsuccessful party successive opportunities to reargue issues previously decided” (*Matter of Setters v AI Props. & Devs. (USA) Corp.*, 139 AD3d 492, 492 [1st Dept 2016] [internal quotation marks and citations omitted]).

Here, plaintiff’s contentions in support of her motion for reargument are identical to those she asserted previously (Doc No. 17 at 6-10; Doc No. 49 at 4-11). The prior order either directly addressed her contentions or denoted that any unaddressed contention was without merit (Doc No. 42). Therefore, plaintiff fails to demonstrate how this Court overlooked facts or misapprehended the law, and her request for leave to reargue is denied (*see William P. Pahl Equip. Corp. v Kassis*, 182 AD2d 22, 28 [1st Dept 1992], *lv dismissed and denied* 80 NY2d 1005 [1992]).

Plaintiff's Request for Leave to Renew

As with motions for leave to reargue, motions for leave to renew are left to the discretion of the trial court (*see Wang v LaFrieda*, 189 AD3d 732, 732 [1st Dept 2020], *lv dismissed* 37 NY3d 1042 [2021]). Such leave is warranted only when a movant demonstrates that there has been “a change in the law that would change the prior determination,” or when he or she demonstrates that there are “new facts not offered on the prior motion that would change the prior determination” and provides a reasonable justification for why such facts were not included before (CPLR 2221

[e] [2], [3]; see *Abu Dhabi Commercial Bank, P.J.S.C. v Credit Suisse Sec. (USA) LLC*, 114 AD3d 432, 432 [1st Dept 2022]).

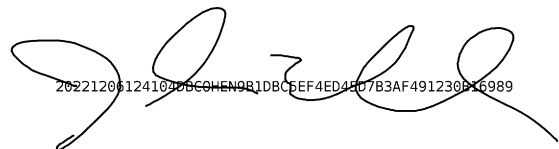
In her moving papers, plaintiff highlights the affidavits of service from October 2021 and January 2022, and several affidavits from her friends (Doc No. 48 at 7-11; Doc No. 58 at 2). However, all of these documents were previously presented in support of plaintiff’s prior motion (Doc No. 17 at 6-10; Doc Nos. 18-20, 22, 35-36), and were considered in deciding the motion (Doc No. 42). Therefore, as plaintiff fails to identify a change in law or new facts that would alter this Court’s prior determination, her request for leave to renew is denied (see *McGookin v Berishai*, 187 AD3d 472, 474 [1st Dept 2020]; *Brook v Peconic Bay Med. Ctr.*, 172 AD3d 468, 469 [1st Dept 2019]).

Accordingly, it is hereby:

ORDERED that plaintiff Alina Morini’s motion for leave to reargue and/or renew is denied.

12/6/2022

DATE



DAVID B. COHEN, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: