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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. MILTON A. TINGLING J.S.C. Justice

PART 44

Prpig

-v-

Turner

INDEX NO. 105381/08

MOTION DATE 8/27/12

MOTION SEQ. NO. 7

The following papers, numbered 1 to _____, were read on this motion to/for _____

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ | No(s). _____

Answering Affidavits — Exhibits _____ | No(s). _____

Replying Affidavits _____ | No(s). _____

Upon the foregoing papers, it is ordered that this motion is decided in accordance with the annexed decision.

FILED

JUL 29 2013

COUNTY CLERK'S OFFICE
NEW YORK

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Dated: 7/12/13

MGT, J.S.C.

1. CHECK ONE: ..... ☐ CASE DISPOSED ☑ NON-FINAL DISPOSITION

2. CHECK AS APPROPRIATE: .....MOTION IS: ☐ GRANTED ☑ DENIED ☐ GRANTED IN PART ☐ OTHER

3. CHECK IF APPROPRIATE: ..... ☐ SETTLE ORDER ☐ SUBMIT ORDER

☐ DO NOT POST ☐ FIDUCIARY APPOINTMENT ☐ REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. MILTON A. TINGLING PART 44

JOSEPH PIPIA,

PLAINTIFF,

-V-

INDEX NO. 105381/2008
MOTION DATE 8/27/12

TURNER CONSTRUCTION COMPANY, THE CITY OF NEW YORK, GOVERNOR'S ISLAND PRESERVATION AND EDUCATION CORP., NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION, TREVCON CONSTRUCTION INC., AND J.E.S. PLUMBING & HEATING CORP.

DEFENDANTS

Upon the foregoing papers, it is ordered that the motion to reargue is denied.

Plaintiff moves the court to grant a motion to reargue pursuant to CPLR 2221(d). Plaintiff seeks a judgment that matters of fact and law were incorrectly found, overlooked and misapprehended by the court.

On September 25, 2007, Plaintiff Joseph Pipia, a plumber for J.E.S. Plumbing and Heating Corporation ("JES"), was injured when he fell off a float stage. Plaintiff was working on a construction project to rehabilitate Yankee Pier in New York Harbor at Governor's Island, NY, NY. At the time of the incident, Plaintiff was standing on the float stage, located underneath the pier, installing insulation around piping supported from the bottom of the pier. A wave from a passing vessel rocked the float stage, causing Plaintiff to lose balance. Plaintiff grabbed a pipe hanger above him to keep from falling over the side of the float stage. His foot then slipped on the surface of the stage, tripping

into a hole in the float stage, where it became caught. He then fell on top of the stage, causing his injury.

On April 15, 2008, Plaintiff filed a complaint against Turner Construction ("Turner"), The City of New York ("The City") Governor's Island Preservation and Education Corporation ("GIPEC"), New York City Economic Development Corporation ("EDC"), Trevcon Construction, Inc. ("Trevcon"), and J.E.S. Plumbing & Heating Corp. ("JES"). In the complaint, Plaintiff alleged that Defendants had a duty to provide a safe working environment under Labor Law §§ 220, 240, and 241(6); and that the injuries sustained by Plaintiff were caused by the negligence of Defendants.

Plaintiff moved for summary judgment against Defendants Tuner, GIPEC and Trevcon. Defendants cross-moved for summary judgment dismissing the complaint. The respective parties opposed the motions. On June 18, 2012, this court, denied Plaintiff's summary judgment and granted Defendants' cross-motion.

Pursuant to CPLR 2221(d), a motion for reargument must be based upon matters of fact or law allegedly overlooked by or misapprehended by the court in determining the prior motion, but must not include any matters of fact not offered in the prior motion. A motion for reargument, addressed to the discretion of the court, is not to serve as a vehicle to permit the unsuccessful party to argue once again the very question previously decided. Nor does reargument serve to provide a party an opportunity to advance

arguments different from those tendered to the original application. *Foley v. Roche*, 418 N.Y.S.2d 588 (1st Dept. 1979).

Plaintiff alleges the Court has made the following misapprehensions of law and fact, which must be corrected. In its previous ruling, the Court found that Defendant Trevcon employed Plaintiff when in actuality Defendant JES employed Plaintiff at the time of the injury. Also, the court erred in finding that GIPEC was not the owner of the property. The Court erroneously referred to the float stage as a barge, and misapplied the Longshore and Harbor Workers Compensation Act ("LHWCA"); which permits third party claims against non-employer tortfeasors under 33 USC § 933, including claims under New York's Labor Laws, and under 33 USC § 905(b).

In arguing the court's misapplication of LHWCA, Plaintiff asserts the court ignored *Cammon v. City of New York*, 95 N.Y.2d 583 (2000), a "necessary" case to the underlying decision. Plaintiff alleges under the holding of *Cammon,* construction workers who received LHWCA benefits injured while constructing land based structures, while working on floating stages, are entitled to bring Labor Law claims against property owners and general contractors.

Defendants allege Plaintiff has not met the burden imposed by CPLR 2221(d). Defendants argue that Plaintiff's motion is based on "de minimus" typos, which had no impact on the legal outcome of the underlying motions. Also, the Court did not misapprehend the facts by referring to the float stage as a barge because the float stage

was properly classified as a barge pursuant to 20 CFR § 1918. Consequently, the Court did not misapply any controlling principles of law when holding that the float stage was a vessel, and dismissing the complaint against Defendants.

It is not necessary for the Court to decide this case under the purview of *Cammon* because the float stage, regardless of whether or not it can be classified as a barge, can surely be classified as a vessel pursuant to section 902(3)(G) of LHCWA and *Stewart v. Dutra*, 543 U.S. 481. In *Stewart*, the court holds that to establish a meaning of vessel in maritime general law it only requires a watercraft be used or capable of being used as a means of transportation. Furthermore, it does not require that the watercraft be used primarily for that purpose, nor does it need to be in motion. In the case at hand, Plaintiff was on the float stage, in navigable waters, while installing insulation. Consequently, Plaintiff was on a vessel.

Contrary to Plaintiff's assertions, the Court did not err in its finding that Plaintiff's remedies lie under LHCWA.

> The LHWCA clearly states, in section 905(b), that an action in negligence may be brought against a vessel and that such remedy "shall be the exclusive of all other remedies against the vessel except remedies available under this chapter". Congress clearly intends that actions maintained against a vessel be brought solely within the confines of LHCWA. *Lee v. Astoria Generating Co., L.P.*, 13 N.Y.3d 382.

Because the float stage can be classified as a vessel, the Court was well within its discretion to defer to LHCWA rather than local labor law. As a result, the Court rightfully dismissed the complaint against Defendant Trevcon pursuant to section 905(b) of LHCWA.

Furthermore, unlike *Cammon*, which involved an injured worker receiving LHWCA benefits and seeking labor law liability solely against the defendant property owner, in this case the defendants The City, EDC, Trevcon and Turner are not the property owners. Also, the property owner, GIPEC, has provided sufficient evidence that their ownership is not local in nature - one of the factors under *Cammon* the Court *may* consider when determining preemption. Given the historic nature and location of the property, and the prior two hundred years of operation by the U.S. Coast Guard and federal government, it is of both local and federal importance with far reaching implications. Given these facts, the Court rightfully dismissed the complaint against Defendants.

The Court's error regarding Trevcon and GIPEC was immaterial and had no affect on the outcome of the underlying case.

Based on the evidence provided, Plaintiff has failed to establish that the Court misapprehended material facts or the law such that the motion to reargue is denied.

DATED: July 12, 2013

HON. MILTON A. TINGLING
J.S.C.