

Torres v City of New York

2013 NY Slip Op 32687(U)

October 21, 2013

Sup Ct, New York County

Docket Number: 105711/10

Judge: Geoffrey D. Wright

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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: JUDGE GEOFFREY D. WRIGHT
Justice

PART 62

Miguel Angel Torres

INDEX NO. 105711/10

-v-

MOTION DATE _____

MOTION SEQ. NO. 003

City of New York, Valeris Svs Station

The following papers, numbered 1 to 3, were read on this motion to/for Reargument

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ No(s). 1

Answering Affidavits — Exhibits _____ No(s). 2, 3

Replying Affidavits _____ No(s). _____

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

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

FILED
OCT 29 2013
NEW YORK
COUNTY CLERKS OFFICE

G
GEOFFREY D. WRIGHT
AJSC

Dated: 10/21/13

_____, 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
COUNTY OF NEW YORK

-----x
MIGUEL ANGEL TORRES,

Plaintiffs

Index # 105711/10

-against-

DECISION/ORDER

THE CITY OF NEW YORK and VALERIS-
SERVICE STATION, INC.,

Defendants.

Present:

Hon. Geoffrey D. Wright

-----x Acting Justice Supreme Court

RECITATION , AS REQUIRED BY CPLR 2219(A), of the papers considered in the review of
this Motion/Order for summary judgment.

PAPERS

FILED NUMBERED

Notice of Motion and Affidavits Annexed.....	1
Order to Show Cause and Affidavits Annexed	OCT 29 2013
Answering Affidavits.....	2, 3
Replying Affidavits.....	
Exhibits.....	
Other.....cross-motion.....	

**NEW YORK
COUNTY CLERKS OFFICE**

Upon the foregoing cited papers, the Decision/Order on this Motion is as follows:

Defendant, Valeris Service Station, Inc., (“Valeris”) moves for reargument of its motion for summary judgment pursuant to CPLR 2221(d) and CPLR 3212. By an Order of this court dated June 20, 2013, the court denied their motion for summary judgment. Plaintiff and the City of New York oppose the motion to reargue. They argue that the motion to reargue is nothing more than a rehash of the original motion for summary judgment and therefore should be denied.

This is an action for personal injuries arising out of a slip and fall accident that occurred on March 4, 2009 at the southwest corner, East 2nd Street and Avenue C, New York County. Plaintiff, Miguel Torres (“Plaintiff”) alleges that he slipped and fell on a pedestrian ramp and subsequently was injured by a curb guard that was bent away from the curb.

In my decision, I held in pertinent part:

The photographic evidence submitted by plaintiff demonstrates that there is a triable issue of fact regarding whether Valeris’ sidewalk cleaning methods contributed to a buildup of snow that the plaintiff allegedly slipped and fell on.

Valeris argues that the Court misapprehended or overlooked specific matters of fact or law when deciding the motion for summary judgment.

It is well settled that a motion for reargument pursuant to CPLR 2221(d)(2) "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 (internal citations omitted)." *Foley v Roche*, 68 AD2d 558 [1st Dept 1979]; *Ito v 324 East 9th Street Corp.*, 49 AD3d 816, 817 [2d Dept 2008]; *Mangine v Keller*, 182 AD2d 476 [1st Dept 1992]

Valeris argues that the Court did not review their Reply Affirmation in further support of its motion for summary judgment. Valeris bases this claim on the recitation of the papers on this Courts Decision and Order. In addition they assert that the Court's interpretation of the photographic evidence did not take the Plaintiff's testimony into consideration.

During his deposition, Plaintiff specifically identified the location of the snow and/or ice condition which caused him to fall. Plaintiff marked a photograph with a blue dot identifying the precise location where he slipped. The area that Plaintiff marked was clearly within the pedestrian ramp. The pedestrian ramp that Plaintiff alleges that he slipped and fell on is not the property of Valeris because a pedestrian ramp is not part of the sidewalk. See *Ortiz v. City of New York, et al.*, 67 A.D.3d 21 (App. Div. 1st Dept., 2009) (reversed on other grounds). The "corner intersection quadrant" mentioned in Section 7-201(a) and 7-210(b) of the New York City Administrative Code refers to the part of the sidewalk that is not directly faced by either of the sides of a building whose two sides form a 90 degree angle, but, as per *Ortiz*, does not include the pedestrian ramp. As a result of his slip and fall, Plaintiff cut his leg on a piece of metal that was hanging off the curb at the corner. This protruding piece of metal was later repaired by the City.

Plaintiff testified that immediately after the accident, he gave a "boy" \$10.00 to go to a local store to purchase a disposable camera. The pictures that were taken depicted the conditions of the area as it existed when the accident occurred. A closer review of the pictures depict a small amount of snow which existed on the pedestrian ramp and on the street surrounding the protruding metal piece, neither of which Valeris would have responsibility for. There does not appear to be any snow on the sidewalk, and as previously discussed, Plaintiff identified the location where he slipped as being in the pedestrian ramp.

Accordingly, it is ORDERED that the motion to re-argue is granted and upon re-argument, it is ORDERED that the motion for summary judgment is granted.

This constitutes the decision and order of the Court.

FILED

OCT 29 2013

Dated: October 21, 2013

NEW YORK COUNTY CLERK'S OFFICE

GEOFFREY D. WRIGHT
JUDGE GEOFFREY D. WRIGHT
Acting Justice of the Supreme Court