

Assenzio v A.O. Smith Water Prods.

2015 NY Slip Op 31120(U)

June 30, 2015

Supreme Court, New York County

Docket Number: 190008/12

Judge: Joan A. Madden

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 11

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INDEX NOS 190008/12
190026/12, 190200/12,
190183/12; 190184/12

SANTOS ASSENZIO and
ANNITOLIA ASSENZIO,
ROBERT BRUNCK, PAUL LEVY,
ROSLYN LEVY
CESAR O. SERNA
RAYMOND VINCENT,

Plaintiffs,
-against-

A.O. SMITH WATER PRODUCTS, ET AL.,

Defendants.

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JOAN A. MADDEN, J:

In this consolidated action, plaintiffs move, by order to show cause, to enlarge the time that they may stipulate to a reduction in verdict pursuant to the court’s decision and order dated February 5, 2013, and entered February 9, 2015 (hereinafter “the Decision”), to a date on or before fourteen days following the decision to be rendered by the Appellate Division, First Department, in the appeal currently pending, entitled *In re New York City Asbestos Litigation: Peraica v. A.O. Water Products, Co.*; Index No. 190339/11 (hereinafter “*Peraica*”), and granting plaintiffs leave to renew and reargue their opposition to such portion of defendants’ post-verdict motion as sought a new trial or remittitur of the jury’s verdict. Defendants Cleaver-Brooks, Inc. and Burnham, LLC jointly oppose the motion.

In *Peraica*, jury awarded’s estate \$35 million for Mr. Peraica’s two years of past pain and suffering from his mesothelioma. Justice Martin Shulman remitted the award to \$18 million. Defendant Crane appealed and plaintiffs requested that the damage award be sustained.

On this motion, plaintiffs argue that their request for an enlargement of time is meritorious as “the principal issue before the [First Department on the *Peraica* appeal] concerns the methodology by which the Court evaluates a jury damages assessment” and in particular whether the trial court’s damages analysis under CPLR 5501(c) will be sustained. Plaintiffs therefore assert that the ruling in *Peraica* is “likely to provide significant guidance both to the Court and to the parties concerning their decision making on this issue.”

In addition, plaintiffs assert that they should be permitted to renew their opposition to the post-verdict motions seeking to set aside the jury verdict as plaintiffs are not seeking full restoration of the original verdict amounts, but rather modest reductions to comport with the *Peraica* assessment. In this connection, they assert the new facts consist of “the judgment-molding excise [under the General Obligations Law § 15-108] that would pertain to the reduced verdicts amounts” and that plaintiffs were reasonably justified in not presenting these facts on the original motion as such “judgment molding exercise based on the remittitur amounts was not possible until the court announced such amounts.”

Plaintiffs also seek reargument of their opposition to defendants’ post-trial motion seeking to set aside the damage verdicts as the court overlooked or misapprehended the extent of similarities between the pain and suffering of instant plaintiffs, and that experienced by Mr. Peraica.

Defendants oppose the motion, arguing that there is no basis for a stay the plaintiffs’ time for stipulating to a reduction of the awards as the Decision was based on First Department precedent, and expressly took into account the trial court decision in *Peraica* when it remitted the damage award. Defendants also argue that the motion to renew their opposition to the post-

trial motions lacks merit since the only “new facts” offered on the motion concerns the results of “the judgment molding” exercise under the General Obligations Law and that this is not a new fact and could lead to the “absurd result that post-trial briefing could be renewed in every case by mere dint of ‘judgment molding’ exercise.” Defendants further argues that plaintiffs provide no basis for granting reargument.

A motion for reargument is addressed to the discretion of the court, and is intended to give a party an opportunity to demonstrate that the court overlooked or misapprehended the relevant facts, or misapplied a controlling principle of law. See, Foley v Roche, 68 AD2d 558, 567 (1st Dept 1979). However, “[r]eargument is not designed to afford the unsuccessful party successive opportunities to reargue issues previously decided.” William P. Pahl Equipment Corp. v. Kassis, 182 AD2d 22, appeal denied in part dismissed in part 80 NY2d 1005 (1992) .

“A motion for leave to renew is intended to bring to the court’s attention new facts or additional evidence which, although in existence at the time the original motion was made were unknown to the movant and were therefore not brought to the court’s attention.” Tishman Constr. Corp. of New York v. City of New York, 280 AD2d 374, 376 (1st Dept 2001)(citations omitted). To successfully move for renewal based on intervening law it must be shown that there has been either “a new law or a clarification of prior law,” that would change the prior determination. See Jackson v. Westminster House Owners Corp., 52 AD3d 404 (1st Dept 2008);CPLR 2221(e)(2)

Under these standards, the court finds that there is no basis for granting reargument, as plaintiffs have pointed to no law that the court overlooked or misapprehended in remitting the damage awards, particularly as the court considered the trial court decision in *Peraica* in

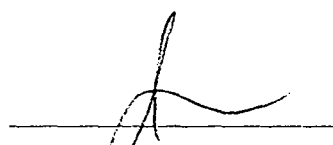
reaching its decision. As for renewal, it cannot be said that there has been a change or clarification of law warranting renewal since there has been no ruling by the First Department in *Peraica*. In addition, the "judgment molding" exercise under the General Obligation Law does not constitute a new fact, nor does the court's decision as to the remittitur amounts do not constitute new facts warranting renewal.

That being said, however, the court finds based on its discretionary authority to grant a stay of proceedings, plaintiffs' motion should be granted to the extent that the time to stipulate to a reduced damage award set forth in the Decision is extended from 30 days of service of a copy of the Decision with notice of entry to 60 days from the date of this decision and order. See generally, Estate of Salerno v. Estate of Salerno, 154 AD2d 430 (2d Dept 1989) CPLR 2201 (providing that "the court in which an action is pending may grant a stay of proceedings in a proper case, upon such terms as may be just"). The court finds that this enlargement of time is appropriate, given that outcome of the *Peraica* appeal may assist both sides in determining whether to stipulate as to reduction of the award, and that the additional 60 day period will not prejudice either side.

In view of the above, it is

ORDERED that plaintiffs' motion is granted to the extent that the time to stipulate to a reduced damage award set forth in the Decision is extended from 30 days of service of a copy of the Decision with notice of entry to 60 days from the date of this decision and order, and is otherwise denied.

DATED: June 30, 2015



HON. JOAN A. MADDEN
J.S.C.