

Torres v Love Lane Mews, LLC.
2017 NY Slip Op 32788(U)
August 30, 2017
Supreme Court, Bronx County
Docket Number: 308396/2008
Judge: Doris M. Gonzalez
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

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HILARION TORRES,

Plaintiff,

Index No. 308396/2008

v.

DECISION AND ORDER

LOVE LANE MEWS, LLC., LOVE LANE POOH, LLC
and RED HOOK CONSTRUCTION GROUP-I, LLC,

Defendants.

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LOVE LANE MEWS, LLC., and LOVE LANE POOH,
LLC.,

Third-Party Plaintiff,

Third-Party Index No.
83783/2009

v.

GALAXY GENERAL CONTRACTING CORP.,

Third-Party Defendant.

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GONZALEZ, D.:

Upon: 1) the Cross-Motion, dated May 10, 2017, by Michael B. Doyle, Esq., Attorney for the third-party defendant, to renew and reargue two Decisions and Orders of Honorable Sharon Aarons, both dated August 8, 2016; 2) the Affirmation in Opposition, dated June 16, 2017, by Costas Cyprus, Esq., Attorney for the third-party plaintiffs Love Lane Mews, LLC. and Love Lane Pooh, LLC.; 3) Affirmation in Opposition, dated June 12, 2017, by Jessica G. Price, Esq., Attorney for the defendant Red Hook Construction Group-I, LLC; and 4) the Reply Affirmation by Michael B. Doyle, Esq., dated June 30, 2017.

FACTUAL BACKGROUND

This is an action to recover damages for personal injuries allegedly sustained by the plaintiff arising from a construction accident that occurred on July 23, 2008, at the premises known as 9 College Place, in the County of Kings, City and State of New York. It is alleged the plaintiff was injured by falling bricks.

PROCEDURAL HISTORY

The third-party defendant Galaxy General Contracting Corp. (“Galaxy”) moved by Cross-Motion, dated February 12, 2014, for an order granting partial summary judgment on liability against defendants and dismissing the third-party complaint or, in the alternative, allowing Galaxy to commence a fourth-party action against non-party Eeyore LLC upon the grounds that Galaxy is not liable for the plaintiff’s injuries. By order, dated August 8, 2016, Justice Sharon Aarons denied the third-party defendant’s motion for summary judgment.

The third-party defendant Galaxy moved again by Notice of Motion, dated July 30, 2014, for an order striking the third-party complaint and awarding treble damages in favor of Galaxy against third-party plaintiffs for their willful fraud and deceit upon the Court. By order, dated August 8, 2016, Justice Sharon Aarons denied the third-party defendant’s motion to strike the complaint.

DISCUSSION OF LAW

Pursuant to Rule 2221 of the New York Civil Practice Law and Rules, a motion to reargue must be based upon the contention that the Court overlooked or misapprehended relevant facts or misapplied relevant law. Its purpose is not to permit a party to reargue the issues the Court has already decided. (*Foley v Roche*, 68 A.D.2d 558 [1st Dept. 1979]).

It is undisputed that the Note of Issue was filed on March 21, 2013, and Galaxy's cross-motion for summary judgment was filed and served on February 14, 2014. Galaxy argues that the Court should have decided its cross-motion for summary judgment on the merits because the Court itself was late in rendering its decision.

CPLR 3212(a) requires a showing of good cause for the delay in filing a motion for summary judgment (*Brill v City of New York*, 2 NY3d 648 [2004]). It is undisputed that Galaxy's cross-motion for summary judgment was served beyond the statutory deadline of 120 days. In support of a late motion for summary judgment, the movant must submit to the Court, the basis for such a late motion. Galaxy, however, submitted no reason for the late motions for the Court's consideration, other than the Court rendered its decision late.

As to the motion to strike the third-party complaint and award treble damages, Galaxy argues that the third-party complaint should have been dismissed because it was not responsible for the plaintiff's injuries. Galaxy contends that defendants'/third-party plaintiffs' counsel violated Judiciary Law § 487 because the defendants/third-party plaintiffs failed to produce its contract with non-party Eeyore, the general contractor responsible for the plaintiff's injuries, for approximately 5 years.

It is undisputed that defendant/third-party plaintiff Love Lane Mews, LLC. (Mews) owned the premises in question and contracted with Galaxy to perform the work at the premises in question. Mews has alleged contractual indemnification against Galaxy in its third-party complaint. The law is well settled that where the potential liability of the owner stems from statutory liability under Labor Law 240(1) or vicarious liability under Labor Law 241(6), the owner can enforce the indemnity clause agreed to by the parties (*see Velez v Tishman Foley Partners*, 245 AD2d 155 [1st Dept 1997]; *Fiorentino v Atlas Park LLC*, 95 AD3d 424 [1st Dept

2012]). The plaintiff has alleged claims under Labor Law 240(1) and Labor Law 241(6) in the main action against Mews and, as such, Galaxy has failed to demonstrate its entitlement to dismissal of the third-party action.

Based on the record before the Court, the third-party defendant has failed to establish that the Court has overlooked or misapprehended relevant facts or misapplied relevant law that would warrant this Court's reconsideration of Justice Sharon Aarons prior two decisions of August 8, 2016.

ACCORDINGLY, after consideration of the foregoing, the applicable law, a review of the Court file, and due deliberation; it is hereby

ORDERED, the third-party defendant's motion to renew and reargue is denied in its entirety.

This constitutes the Decision and Order of the Court.

Dated: August 30, 2017
Bronx, New York

E N T E R:



HON. DORIS M. GONZALEZ, J.S.C.