

Dorme v National Convention Servs., Inc.
2018 NY Slip Op 31594(U)
March 2, 2018
Supreme Court, New York County
Docket Number: 154257/2014
Judge: Manuel J. Mendez
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: MANUEL J. MENDEZ
Justice

PART 13

VITO J. DORME,
Plaintiff,

- against -

INDEX NO. 154257/2014

MOTION DATE 02/28/2018
MOTION SEQ. NO. 006
MOTION CAL. NO. _____

NATIONAL CONVENTION SERVICES, INC.,
F.B. INTERNATIONAL, INC. and GLOBAL EXPERIENCE
SPECIALISTS, INC.,

Defendants.

The following papers, numbered 1 to 11 were read on this motion to renew/reargue and cross-motion for summary judgment .

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	<u>1-3; 4 - 6</u>
Answering Affidavits — Exhibits _____	<u>4 - 6 ; 7 - 8; 9 - 10</u>
Replying Affidavits _____	<u>11</u>
Cross-Motion: X Yes <input type="checkbox"/> No	

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

Upon a reading of the foregoing cited papers, it is Ordered that Plaintiff’s motion to renew/reargue this Court’s October 27, 2017 Order that granted Defendants F.B. International, Inc. (“FB”) and Global Experience Specialists, Inc.’s (“Global Experience”) motions for summary judgment (Mot. Seqs. 004, 005), and denied Plaintiff’s cross-motion to vacate this Court’s April 26, 2017 Status Conference Order that precluded Plaintiff from offering any evidence as to damages at trial, is granted. Defendants FB and National’s motions for summary judgment are denied, this Court’s April 26, 2017 Status Conference Order that precluded Plaintiff from offering any evidence as to damages at trial is vacated, and the Verified Complaint as against these Defendants is restored. Defendant National Convention Services, Inc’s (“National”) cross-motion for summary judgment pursuant to CPLR §3212 to dismiss Plaintiff’s Verified Complaint against it, is denied.

On October 27, 2017 this Court granted Defendants FB and Global Experience’s motions for summary judgment to dismiss Plaintiff’s Verified Complaint, and denied Plaintiff’s cross-motion to vacate this Court’s April 26, 2017 Status Conference Order that precluded Plaintiff from offering any evidence as to damages at trial because he failed to fully comply with previous Court conference orders directing Plaintiff to comply with Defendants’ discovery demands. Plaintiff now moves for leave to renew/reargue this Court’s October 27, 2017 Order in its entirety. Plaintiff argues that the Court overlooked certain facts in that he sufficiently complied with the March 15, 2017 Status Conference Order and should not have been precluded at the April 26, 2017 status conference. The Plaintiff further argues that the Defendants misled the Court during oral argument regarding Plaintiff’s proper workers’ compensation carrier. Defendants oppose the motion. Defendant National also cross-moves for summary judgment to dismiss Plaintiff’s Verified Complaint against it.

CPLR §2221[d] states that a motion for leave to reargue (i) shall be identified specifically as such, (ii) shall be based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior

motion, but shall not include any matters of fact not offered on the prior motion, and (iii) shall be made within thirty (30) days after service of a copy of the order determining the prior motion and written notice of its entry.

The Court has discretion to grant a motion to reargue upon a showing that it “overlooked or misapprehended any relevant facts, or misapplied any controlling principle of law” (Kent v 534 East 11th Street, 80 AD3d 106, 912 NYS2d 2 [1st Dept. 2010]). Reargument is not intended to afford an unsuccessful party successive opportunities to reargue issues previously decided, or to present arguments different from those originally asserted (Kent, *supra*). The movant cannot merely restate previous arguments (*Id*). Successive motions for reargument are generally denied (McGill v Goldman, 261 AD2d 593, 691 NYS2d 75 [2nd Dept. 1999]).

Plaintiff points out that this Court overlooked relevant facts when holding that the Plaintiff “repeatedly [has] been willful and contumacious in failing to fully comply with the Court’s ten orders,” and had failed to comply with the February 1, 2017 and March 15, 2017 Status Conference Orders that led to the April 26, 2017 Status Conference Order that precluded the Plaintiff.

Plaintiff is correct. The Court overlooked Plaintiff’s Letter to the Defendants dated March 15, 2017 that was in response to this Court’s February 1, 2017 and March 15, 2017 Conference Orders (Moving Papers Ex. C, Sub-Exhibit L). In Plaintiff’s Letter, he annexed twenty-three (23) separate authorizations that corresponded with Defendants’ demands expressly listed in this Court’s February 1, 2017 Status Conference Order. On February 1, 2017 the Court warned Plaintiff that he “shall be precluded from presenting evidence at trial of the items ordered to be provided in this Order if Plaintiff fail[ed] to comply with the terms of this Order” within twenty (20) days (FB Opposition Papers Ex. E). On March 15, 2017, after Plaintiff failed to comply with this Court’s February 1, 2017 Order, this Court ordered Plaintiff “to fully comply with [the] 2/1/17 order by 5:00pm Monday 3/20/17..[or Plaintiff would] be precluded from presenting any evidence on damages at the time of trial” (*Id* at Ex. F). It was on this date, after the status conference took place, that Plaintiff fully complied with the Court’s February 1, 2017 and March 15, 2017 Orders by providing the authorizations annexed to his Letter. The Court overlooked this fact during the April 26, 2017 Status Conference when it precluded the Plaintiff from presenting evidence at trial during the conference, for failure to comply with the February 1, 2017 and March 15, 2017 Orders.

The Plaintiff correctly points out that contrary to the language in this Court’s April 26, 2017 Status Conference Order, he did provide the correct authorizations for his workers’ compensation carrier on March 15, 2017 (AIG), rather than authorizations for the State Insurance Fund, the carrier that Defendants alleged was Plaintiff’s correct compensation provider. In Plaintiff’s July 13, 2017 Letter, he alerted Defendants that the State Insurance Fund is not the appropriate workers’ compensation carrier while also annexing an authorization to obtain the records from the surgeon that performed Plaintiff’s prior knee surgery (Moving Papers Ex. C, Sub-Exhibit N). Plaintiff admits to sending an attorney to the April 26, 2017 Court’s conference without “all the prior responses in her possession to physically prove” compliance, which would have

prevented unnecessary expenditure of everyone's capital and time.

On reargument, Plaintiff's cross-motion to vacate this Court's April 26, 2017 Order is granted pursuant to CPLR §5015(a)(1). As a result, Defendants FB and Global Experience's motions for summary judgment (Mot. Seq. 004 and 005) are denied as they were originally granted solely on the legal theory that Plaintiff was unable to present evidence on damages (1500 Inv. L.P. v Wiener, 299 AD2d 206, 749 NYS2d 138 [1st Dept. 2002]).

Likewise, Defendant National's cross-motion for summary judgment is denied since it relies solely on the Courts now vacated April 26, 2017 Status Conference Order that precluded Plaintiff from presenting evidence at trial.

Accordingly, it is ORDERED, that Plaintiff's motion to renew/reargue this Court's October 27, 2017 Order, is granted, and it is further,

ORDERED, that upon reargument the Court's Orders deciding Motion Sequences 004 and 005 granting Defendants F.B. International, Inc. and Global Experience Specialists, Inc. summary judgment are vacated, and it is further,

ORDERED, that Defendants F.B. International, Inc. and Global Experience Specialists, Inc.'s motions for summary judgment pursuant to CPLR §3212, are denied, and it is further,

ORDERED, that Plaintiff's cross-motion to Vacate this Court's April 26, 2017 Status Conference Order pursuant to CPLR §5015(a)(1) is granted, and it is further,

ORDERED, that this Court's April 26, 2017 Status Conference Order that precluded Plaintiff from presenting evidence on damages at trial is vacated, and it is further,

ORDERED, that the Verified Complaint against Defendants F.B. International, Inc. and Global Experience Specialists, Inc. Is restored, and it is further,

ORDERED, that Defendant National Convention Services, Inc.'s cross-motion for summary judgment pursuant to CPLR §3212 to dismiss Plaintiff's Verified Complaint is denied, and it is further,

ORDERED, that the caption in this action is amended and shall read as follows:

VITO J. DORME,

INDEX NO. 154257/2014

Plaintiff,

- against -

**NATIONAL CONVENTION SERVICES, INC.,
F.B. INTERNATIONAL, INC. and GLOBAL EXPERIENCE
SPECIALISTS, INC.,**

Defendants.

,and it is further,

ORDERED, that Plaintiff serve a copy of this Order with Notice of Entry upon all parties within twenty (20) days from the date of entry of this Order and upon the Trial Support Clerk located in the General Clerk's Office (Room 119) and upon the County Clerk (Room 141B), who are directed to vacate both orders (Motion Sequence 004, 005) and restore Defendants F.B. International, Inc. and Global Experience Specialists, Inc. as party Defendants, and it is further,

ORDERED, that the parties appear for a conference at IAS Part 13 located at 71 Thomas Street, Room 210, New York, New York on May 23, 2018 at 9:30 A.M.

ENTER:

MANUEL J. MENDEZ
J.S.C.

Dated: March 2, 2018



Manuel J. Mendez
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION
Check if appropriate: DO NOT POST REFERENCE