

Ronelli v Grandview Palace of N.Y.

2018 NY Slip Op 31786(U)

April 12, 2018

Supreme Court, Westchester County

Docket Number: 60123/2015

Judge: Lawrence H. Ecker

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This opinion is uncorrected and not selected for official publication.

To commence the statutory time for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER**

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ROBERT J. RONELLI,

Plaintiff,

-against-

GRANDVIEW PALACE OF NEW YORK, a condominium, pursuant to a Declaration of Condominium executed October 18, 1996 and recorded on October 24, 1996 at the Sullivan County Clerk's Office in Liber 1905 of conveyances at Page 254, GRANDVIEW PALACE OF NEW YORK CONDOMINIUMS an unincorporated association by IVANNA JOHNSON, President, BOARD OF MANAGERS of GRANDVIEW PALACE OF NEW YORK CONDOMINIUM Acting on behalf of all unit owners of GRANDVIEW PALACE NEW YORK, GRANDVIEW PALACE HOMEOWNERS ASSOCIATION and HIGH GROUND INDUSTRIAL, LLC.,

Defendants.

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GRANDVIEW PALACE OF NEW YORK, GRANDVIEW PALACE OF NEW YORK CONDOMINIUMS, IVANNA JOHNSON, BOARD OF MANAGERS of GRANDVIEW PALACE OF NEW YORK CONDOMINIUM and GRANDVIEW PALACE HOMEOWNERS ASSOCIATION,¹

Third-Party Plaintiff,

-against-

MANNO ASSOCIATES, INC. d/b/a PMI,

Third-Party Defendant.

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¹ The parties have stipulated to discontinue the action against High Ground. Further, defendant/third party plaintiff shall herein be referred to as Grandview.

ECKER, J.

The following papers numbered 1 through 10 were considered on the motion of MANNO ASSOCIATES, INC. d/b/a PMI ("Manno"), made pursuant to CPLR 2221(d), for an order granting re-argument of its prior motion [Seq. 4], wherein it sought, *inter alia*, pursuant to CPLR 3212, dismissal of the first cause of action in the third-party complaint asserted against it by GRANDVIEW ("Grandview"), seeking to hold MANNO liable for common law indemnification, and the denial of said motion by the court in its Decision/Order dated December 19, 2017:

<u>PAPERS</u>	<u>NUMBERED</u>
Notice of Motion, Affirmation, Exhibits A-F	1 - 8
Affirmation in Opposition	9
Affirmation in Reply	10

Upon the foregoing papers, the court determines as follows:

The court hereby incorporates by reference, as if fully set forth herein, its findings of fact and conclusions of law, as stated in its decision/order dated December 17, 2017 ("the December Decision"). As part that prior motion practice, Manno moved to dismiss the third-party complaint brought against it by Grandview, which was denied. Manno now moves for re-argument only of that part of the December Decision which denied Manno's motion to dismiss the first cause of action in the third-party complaint which is based on common law indemnification. On this discreet issue, Manno argues that the first cause of action is appropriately dismissed because Grandview never opposed dismissal of the claim and there is no evidentiary support for the cause of action.

In opposition to the motion to re-argue this limited question, Grandview offers no cogent argument, except to assert that "the Court did not fail to address any portion of Manno's motion for summary judgment" [NYSCEF No. 143], citing the part of the decision which states that:

"The court has considered the additional contentions of the parties not specifically addressed herein. To the extent any relief requested by either party was not addressed by the court, it is hereby denied."

It is well established that CPLR 2221 governs motions affecting prior orders. A motion to reargue is addressed to this court's discretion and "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. CPLR 2221 [d][2]; *Weiss v Bretton Woods Condominium II*, 151 AD3d 905 [2d Dept 2017]; *Bigun v Ahmed*, 150 AD3d 1186 [2d Dept 2017]. With these principles in mind, the court finds that the above cited language from the December Decision does not bar the court from giving due consideration, upon re-argument, to a relevant issue of fact or law that it may have overlooked or misapprehended therein. CPLR 2221[d][2].

Manno is correct that Grandview did not specifically oppose the part of the prior motion wherein Manno argued that there was no evidence in the extensive pre-trial record from which an inference could be drawn that plaintiff, as Manno's employee, was negligent relative to the conditions that existed in the guard office prior to his entry. Plaintiff claims to have tripped and fell on an uneven floor surface within an enclosure that, it is undisputed, Manno never exercised dominion or control over. Nor is there anything in the record showing that plaintiff, or Manno, was on notice of the alleged dangerous condition. This being so, there is no view of the uncontradicted evidence that requires the submission of the issue of whether Grandview is entitled to common law indemnification, as set forth in the first cause of action.²

Upon review of the original motion papers and the papers submitted on this motion for re-argument, therefore, the court now grants re-argument of Manno's prior motion, and upon so doing, pursuant to CPLR 3212, grants summary judgment dismissal as to the first cause of action in the third-party complaint [NYSCEF No. 17], which seeks recovery under the theory of common law indemnification. Accordingly, it is hereby

ORDERED that the motion of third-party defendant MANNO ASSOCIATES, INC. d/b/a PMI, made pursuant to CPLR 2221(d), for an order permitting re-argument of its prior motion, made pursuant to CPLR 3212, for summary judgment dismissal of the first cause of action in the third-party complaint, brought against it by defendant/third-party plaintiff GRANDVIEW PALACE OF NEW YORK, is granted; and it is further

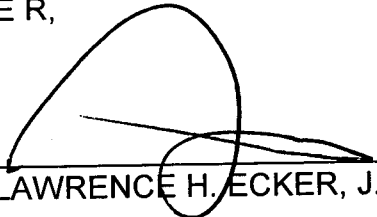
ORDERED that, upon re-argument, third-party defendant MANNO ASSOCIATES, INC.d/b/a/PMI's motion to dismiss the first cause of action in the third-party complaint, wherein it is alleged that defendant/third-party plaintiff GRANDVIEW PALACE OF NEW YORK, is entitled to common law indemnification from third-party defendant MANNO ASSOCIATES, INC. d/b/a PMI, is granted, and that cause of action is dismissed; and it is further

ORDERED that the parties shall appear, as previously scheduled, at the Compliance Conference Part of the Court in Room 813, on April 26, 2018, at 9:30 a.m.

The foregoing constitutes the Decision/Order of the court.

Dated: White Plains, New York
April 12 2018

ENTER,



HON. LAWRENCE H. ECKER, J.S.C.

² Manno does not seek to re-argue that part of the prior decision that referred, to the trial court, the rule of law to be applied to the issues of breach of contract and contractual indemnification, as alleged in the second and third causes of action in the third-party complaint.

Appearances

William A. Cerbone, Esq.
Attorneys for Plaintiff
Via NYSCEF

Craig P. Curcio, Esq.
Attorney for Defendant Grandview Palace of New York
Via NYSCEF

Lewis Johs Avallone Aviles, LLP
Attorneys for Defendant Manno Associates, Inc. d/b/a PMI
Via NYSCEF