

Carpenter v New York City Hous. Auth.

2019 NY Slip Op 33246(U)

October 29, 2019

Supreme Court, New York County

Docket Number: 101270/2017

Judge: Kathryn E. Freed

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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: HON. KATHRYN E. FREED PART IAS MOTION 2EFM

Justice

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INDEX NO. 101270/2017

MAKEBA CARPENTER,

MOTION SEQ. NO. 005

Plaintiff,

- v -

NEW YORK CITY HOUSING AUTHORITY and NEW YORK CITY POLICE DEPARTMENT,

DECISION AND ORDER

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 005) 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 50, 51, 52, 53, 56, 58, 59, 71, 73, 76

were read on this motion to/for

RENEW AND REARGUE

This action stems from allegations that defendants New York City Housing Authority ("NYCHA") and the New York City Police Department ("the NYPD") improperly removed and/or destroyed items in plaintiff's apartment in or about October 2013 (Doc. 26). Plaintiff now moves, pro se, pursuant to CPLR 2221, to reargue and renew her prior motion for leave to file a late notice of claim and NYCHA's motion for summary judgment seeking dismissal of the complaint against it (Doc. 17). By order entered May 29, 2018 (the "5/29/19 order"), this Court granted NYCHA's motion for summary judgment seeking dismissal of plaintiff's complaint against it and denied plaintiff's motion seeking leave to file a late notice of claim (Docs. 3, 4). Defendants oppose the instant motion (Docs. 18-23, 24-32). After oral argument, and after a review of the parties' papers and relevant statutes and caselaw, it is ordered that the motion is denied.

FACTUAL AND PROCEDURAL HISTORY

The underlying facts of this matter are set forth in detail in the decision and order of a related action with identical facts, *Makeba Carpenter v New York Housing Authority et al* (Index No. 154622/2014, NYSCEF Doc 1), entered July 8, 2015 (“the 7/8/19 order”) (Kotler, J.) (Doc. 27). In the related action, plaintiff filed suit against various defendants in April 2014, including NYCHA and the NYPD, claiming, *inter alia*, that property was improperly taken from her apartment in or about October 2013 (Index No. 154622/2014, NYSCEF Doc 1). The 7/8/19 order granted NYCHA’s motion seeking summary judgment and dismissal of plaintiff’s complaint against it since plaintiff failed to serve NYCHA with a notice of claim and did not seek leave to file it thereafter (Doc. 19). The NYPD’s motion to dismiss was also granted on the ground that it was not an entity amenable to suit (Doc. 19).¹

In September 2017, plaintiff commenced the captioned action against NYCHA and the NYPD seeking compensation for the same property allegedly stolen from her apartment (Doc. 20). The NYPD moved to dismiss the claims against it (Doc. 3). Thereafter, NYCHA moved for summary judgment seeking dismissal of plaintiff’s complaint and plaintiff moved, by Order to Show Cause, for leave to serve a late notice of claim on defendants (Doc. 4). By order entered February 20, 2018 (the “2/20/18 order”), this Court (Tisch, J.) granted the NYPD’s motion to dismiss plaintiff’s claims against it reasoning that it was not subject to suit under § 396 of the New York City Charter because agencies of the City are not legal entities for the purpose of suit (Doc. 30). The action was then transferred to this Court. In the 5/29/18 order, this Court granted

¹ This order was affirmed by the Appellate Division, and the Court of Appeals denied leave to appeal (*see Matter of New York City Hous. Auth.*, 146 AD3d 674, 674 [1st Dept 2017], *lv denied* 29 NY3d 911 [2017]).

NYCHA's motion for summary judgment dismissing plaintiff's complaint against it based on res judicata and the statute of limitations, and it also denied plaintiff's motion seeking leave to serve a late notice of claim for the foregoing reasons (Doc. 3, 4).

LEGAL CONCLUSION

Although it is unclear from plaintiff's motion papers what branch of this Court's decision she seeks to reargue and renew, her motion is nevertheless denied. Here, plaintiff fails to allege how this Court overlooked or misapprehended any relevant facts or law in deciding the prior motions (*see Jones v City of New York*, 146 AD3d 690, 690 [1st Dept 2017]; *Toukara v Fericola*, 63 AD3d 648, 649 [1st Dept 2009]). Accordingly, since it is well settled law that "[r]eargument is not a vehicle permitting a previously unsuccessful party to once again argue the very questions previously decided" (*Kent v 534 East 11th Street*, 80 AD3d 106, 116 [1st Dept 2010]; *see CPLR 2221 (d) (2); Matter of Setters v Props. & Devs. (USA) Corp.*, 139 AD3d 492, 492 [1st Dept 2016]; *William P. Pahl Equip. Corp. v Kassis*, 182 AD2d 22, 27 [1st Dept 1992], *lv dismissed in part and lv denied in part* 80 NY2d 1005 [1992]), that branch of plaintiff's motion seeking reargument is hereby denied.

Although plaintiff alleges "new evidence found in [her] case" warranting renewal (Doc. 17), she alleges only additional complaints against NYCHA and the NYPD that are wholly unrelated and have no bearing on the issues previously determined (*see CPLR 2221 [e]; Atlas v Smily*, 156 AD3d 562, 562 [1st Dept 2017]; *Sarfati v Palazzolo*, 142 AD3d 877, 877-878 [1st Dept 2016]). Thus, that branch of the motion seeking renewal is also denied.

The remaining arguments are either without merit or need not be addressed given the findings above.

In accordance with the foregoing, it is hereby:

ORDERED that the branch of plaintiff's motion seeking leave to renew and reargue her motion to file a late notice of claim is denied; and it is further ordered

ORDERED that the branch of plaintiff's motion seeking leave to renew and reargue defendant's summary judgment motion is denied; and it is further ordered

ORDERED that plaintiff shall serve a copy of this order with notice of entry upon all parties within 30 days of entry; and it is further

ORDERED that this constitutes the decision of the Court.

10/29/2019

DATE


KATHRYN E. FREED, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: