Mandel v 340 Owners Corp.
2020 NY Slip Op 31591(U)
May 26, 2020
Supreme Court, New York County
Docket Number: 155169/2017
Judge: W. Franc Perry

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. W. FRANC PERRY** **PART** **IAS MOTION 23EFM**

Justice

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LAURA MANDEL,

Plaintiff,

- v -

340 OWNERS CORP., MAXWELL-KATES, INC., MAXWELL-KATES HOLDING, INC.

Defendant.

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INDEX NO. 155169/2017

MOTION DATE 01/31/2020

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 38, 39, 40, 41, 42, 43, 44, 46, 47, 48, 49, 50, 51, 52

were read on this motion to/for REARGUMENT/RECONSIDERATION.

In this personal injury action, plaintiff seeks an order pursuant to CPLR 2221 (d), for leave to reargue this court's October 18, 2019 decision and order resolving motion sequence number 001 which granted summary judgment to defendants 340 Owners Corp., Maxwell-Kates, Inc., and Maxwell-Kates Holding, Inc. ("defendants"). Defendants oppose the motion.

BACKGROUND

In this action, plaintiff alleges that she was injured when exiting the elevator in a building owned and managed by defendants. Specifically, plaintiff claimed that she tripped over a "hump" in a carpeted runner on the lobby floor. The evidence submitted in support of summary judgment demonstrated that plaintiff had never complained about the runner bunching up in the ten years preceding the accident. In motion sequence number 001, defendants moved for summary judgment on the grounds that the runner was not in a dangerous condition at the time

of the accident, and that they did not have actual or constructive notice of any "hump" in the runner even if plaintiff had shown one to exist.

In granting defendants' summary judgment, this court concluded that plaintiff had failed to demonstrate that defendants "created the hazard or that the alleged hazardous condition was 'visible and apparent and [existed] for a sufficient length of time prior to the accident to permit defendant's employees to discover and remedy it' (*Penn v Fleet Bank*, 12 AD3d 584 [2d Dept 2004])." (NYSCEF Doc. No. 34, p. 8). This court also rejected plaintiff's expert's conclusions, noting that "to the extent the expert identified certain defects or raised edges in the safety runner at the time of the inspection, the expert's affidavit does not state where the raised edges were located or that the raised edges were observed on the same portion of the safety runner of which Plaintiff alleges she tripped and fell." (*id.*). Based on a review of the record evidence and the parties' submissions, this court concluded that plaintiff had failed to establish that defendants created or had actual or constructive notice of any alleged defective or dangerous condition.

STANDARD OF REVIEW/ANALYSIS

A motion for leave to reargue 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. NY CPLR §2221(d). While the determination to grant leave to reargue a motion lies within the sound discretion of the court, a motion for leave to reargue is not designed to provide an unsuccessful party with successive opportunities to reargue issues previously decided. *Kent v 534 E. 11th St.*, 80 AD 3d 106, 116 (1st Dept. 2010) ("Reargument is not a vehicle permitting a previously unsuccessful party to once again argue the very questions previously decided or to assert new, never, previously offered arguments."); *Foley v Roche*, 68 AD2d 558, 567 (1st Dept. 1979) (a motion to reargue does not

properly serve as a "vehicle to permit the unsuccessful party to argue once again the very questions previously decided.").

Here, plaintiff contends that the court misapprehended the law in granting defendants' summary judgment. Specifically, plaintiff claims that this court misunderstood her expert's opinion and further misapprehended the law on constructive notice.

Plaintiff has failed to demonstrate any basis for leave to reargue this court's prior decision. Indeed, in its decision this court concluded that plaintiff's own testimony that she never previously observed a "hump" in the safety runner either prior to or at the time of her accident demonstrates that she failed to prove that defendants had actual or constructive notice of a dangerous condition. In addition, this court relied on the testimony of the doorman that he had never had any difficulty getting the safety runner to lay flat, as evidenced by the safety runner laying flush with the floor in the color photographs submitted in support of the motion and the testimony of the building's super that there had been no prior accidents in the lobby caused by any defects in the safety runner during the ten years that the safety runner was in service.

Plaintiff's motion to reargue the order of this court dated October 18, 2019 must be denied. The court did not overlook or misapprehend any matters of fact or law when making its determination that plaintiff failed to rebut defendants' prima facie showing that the safety runner over which plaintiff fell did not constitute a dangerous or defective condition and that defendants did not have actual or constructive notice of the alleged defective condition. Indeed, plaintiff simply rehashes the same arguments previously made in opposition to defendants' motion for summary judgment. Those arguments were previously rejected by this court as plaintiff has simply failed to establish that defendants created or had actual or constructive notice of any alleged defective or dangerous condition.

Here, plaintiff merely restates the previous arguments regarding issues already decided by the court. Reargument is not a vehicle permitting a previously unsuccessful party to once again argue the very questions previously decided or to assert new, never previously offered arguments. *Kent v 534 E. 11th St.*, 80 AD3d 106,116 (1st Dept. 2010).

Accordingly, it is

ORDERED that plaintiff 's motion sequence number 002, for leave to reargue this court's October 18, 2019 decision resolving motion sequence number 001, is denied.

Any requested relief not expressly addressed by the court has nonetheless been considered and is hereby denied and this constitutes the decision and order of the court.

5/26/2020
DATE

W. FRANC PERRY, J.S.C.

CHECK ONE:	[X]	CASE DISPOSED		[ ]	NON-FINAL DISPOSITION		
	[ ]	GRANTED	[X] DENIED	[ ]	GRANTED IN PART	[ ]	OTHER
APPLICATION:	[ ]	SETTLE ORDER		[ ]	SUBMIT ORDER		
CHECK IF APPROPRIATE:	[ ]	INCLUDES TRANSFER/REASSIGN		[ ]	FIDUCIARY APPOINTMENT	[ ]	REFERENCE