

Martinez v Won Hee Lee
2020 NY Slip Op 34673(U)
December 21, 2020
Supreme Court, Queens County
Docket Number: Index No. 701515/18
Judge: Timothy J. Dufficy
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Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

PRESENT: HON. TIMOTHY J. DUFFICY
Justice

PART 35

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LUPE MARTINEZ,
Plaintiff,

Index No.: 701515/18
Mot. Date: 12/15/20
Mot. Seq. 2

-against-

WON HEE LEE and KYUNG SOOK LEE,
Defendants.

-----X
WON HEE LEE and KYUNG SOOK LEE,

Third-Party Plaintiff,
-against-

J YOO CORP.,
Third-Party Defendants.

-----X
WON HEE LEE and KYUNG SOOK LEE,
Second Third-Party Plaintiffs,

-against-

JAMAICA CENTER IMPROVEMENT
ASSOCIATION, INC. and JAMAICA
AVENUE MALL IMPROVEMENT
ASSOCIATION INC.

Second Third-Party Defendants.

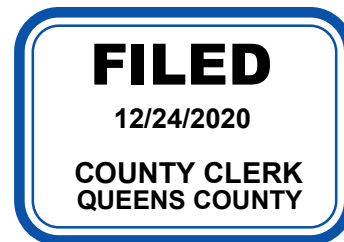
-----X
J YOO CORP.,
Third Third-Party Plaintiff,

-against-

JAMAICA CENTER IMPROVEMENT
ASSOCIATION, INC., JAMAICA AVENUE
MALL IMPROVEMENT ASSOCIATION
INC. and ATLANTIC MAINTENANCE CORP.,

Third Third-Party Defendants.

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The following papers were read on this motion by defendants/third-party plaintiffs/ second third-party plaintiffs Won Hee Lee and Kyung Sook Lee and defendant/third-party defendant/second third-party defendant J. Yoo Corp. for an order, pursuant to CPLR 2221, renewing/rearguing its prior motion for an order vacating the Note of Issue and Certificate of Readiness and extending the time to move for summary judgment until all pre-trial discovery has been completed, which motion (Motion Sequence No.1) resulted in this Court's Order, dated September 9, 2020.

	<u>PAPERS</u> <u>NUMBERED</u>
Notice of Motion-Affidavits-Exhibits	EF 111-122
Answering Affidavits-Exhibits.....	EF 131-137
Replying Affidavits-Exhibits.....	EF 138-140

Upon the foregoing papers, it is ordered that the instant motion is granted in part and denied in part.

The underlying action arises out of a sidewalk trip-and-fall of plaintiff Lupe Martinez that occurred, on September 12, 2017.

Defendants/third-party plaintiffs/ second third-party plaintiffs Won Hee Lee and Kyung Sook Lee and defendant/third-party defendant/second third-party defendant J. Yoo Corp. move for an order, pursuant to CPLR 2221, renewing/rearguing its prior motion (Motion Sequence No.1) that resulted in this Court's Order, dated September 9, 2020.

In the prior motion, third-party defendant/third third-party plaintiff J Yoo Corp submitted a motion seeking an order, *inter alia*, vacating the Note of Issue and Certificate and extending the time to move for summary judgment until all pre-trial discovery has been completed. Third third-party defendant Atlantic Maintenance Corp., cross moved and second third-party defendants/third-third party defendants Jamaica Center Improvement Association, Inc. and Jamaica Avenue Mall Improvement Association Inc. Cross moved for an order seeking similar relief (Motion Sequence No. 1).

In the decision/order of this Court, dated September 9, 2020 and entered on September 10, 2020, on the motion and cross-motions, submitted for Motion Sequence No. 1, this Court held, in relevant part, that: there was ample time to complete discovery, and, thus, all parties were directed to provide all outstanding discovery, within thirty (30) days from the date that the Order appeared in the minutes of the Office of the County Clerk–NYSCEF system; and all parties that had not appeared for examinations before trial (EBTs) were directed to appear for same, no later than sixty (60) days from the date that the Order appeared in the minutes of the Office of the County Clerk–NYSCEF

system. Additionally, the Court held that the action was to remain on the trial calendar; and that any applications not specifically addressed were denied.

Movant now contends that the Note of Issue, filed in January, 2020, should be vacated, and that the time to move for summary judgment should be extended until the completion of all pre-trial discovery. Movant maintains that after the issuance of the September 9, 2020 Order, plaintiff's examination before trial was conducted (on October 8, 2020), and, at that time, it came to light that the plaintiff was involved in three to four prior accidents and accompanying lawsuits for which she alleged similar injuries to the injuries alleged in the present matter and that the plaintiff has still not responded to plaintiff's Combined Demands, served on June 21, 2019, which Demands requested authorizations to retrieve the medical records for all similar injuries incurred by the plaintiff to the same part of the body as the plaintiff is alleging in the instant case. Movant maintains that without these medical records, a full and complete examination before tria (EBT) and an independnat medical exam (IME) of the plaintiff cannot occur. Furthermore, movant contends, that after the filing of the Note of Issue, and after the making of the prior motion, the plaintiff served a Supplemental Bill of Particulars,, dated June 18, 2020, alleging additional and further injuries.

A motion to renew must be based upon new facts that were not offered in the prior motion, and the party must set forth a reasonable justification for the failure to present such facts in the prior motion (*see* CPLR 2221[e]; *Delvecchio v Bayside Chrysler Plymouth Jeep Eagle Inc.*, 271 AD2d 636 [2d Dept 2000]; *McNeill v Sandiford*, 270 AD2d 467 [2d Dept 2000]; *Shapiro v State*, 259 AD2d 753 [2d Dept 1999]); or the motion must demonstrate that there has been a change in the law that would change the prior determination (*see* CPLR 2221[e]; *Delvecchio v Bayside Chrysler Plymouth Jeep Eagle Inc.*, *supra*).

A motion to reargue is addressed to the sound discretion of the court and is designed to afford a party an opportunity to demonstrate that the court overlooked or misapprehended the relevant facts or misapplied controlling principles of law (*see Schneider v Solowey*, 141 AD2d 813 [2d Dept 1988]; *Rodney v New York Pyrotechnic Products, Inc.*, 112 AD2d 410 [2d Dept 1985]). A "motion to reargue is not an opportunity to present new facts or arguments not previously offered, nor it is designed for litigants to present the same arguments already considered by the court" (*see Pryor v*

Commonwealth Land Title Ins. Co., 17 AD3d 434 [2d Dept 2005]; *Simon v Mehryari*, 16 AD3d 664 [2d Dept 2005]).

In light of the above, the branch of the motion seeking leave to renew/re-argue its prior motion seeking to vacate the Note of Issue and Certificate of Readiness and to extend the parties time for the making of a summary judgment motion until the completion of pre-trial discovery is granted.

Upon renewal/reargument, the Court grants the motion in part and denies the motion in part.

Renewal is applicable here because newly discovered material facts have been submitted by movant. Movant has demonstrated that the Note of Issue, filed on January 15, 2020, must be vacated as significant discovery remains outstanding. The parties shall complete discovery, as set forth below.

The branch of the motion seeking an extension of time for the filing of summary judgment motions is denied. As the Note of Issue has been vacated, pursuant to CPLR 3212(a), the parties may move for summary judgment, no later than one-hundred twenty days after the filing of a new note of issue.

Accordingly, it is

ORDERD that the motion is granted in part and denied in part, in that, it is

ORDERED that the branch of the motion seeking to renew/reargue this Court's decision/order, dated September 9, 2020, is granted; and it is further

ORDERED that the branch of the motion seeking to vacate the Note of Issue and Certificate of Readiness is granted; and it is further

ORDERED that the Note of Issue, filed on January 15 2020, shall be vacated and set aside; and it is further

ORDERED that the plaintiff shall provide full and complete responses to all outstanding discovery demands, within thirty (30) days from the date that this Order appears in the minutes of the Office of the County Clerk–NYSCEF system, or the

plaintiff shall be precluded from presenting evidence and testimony at the time of trial; and it is further

ORDERED that all parties shall appear for outstanding EBTs, including the plaintiff who shall appear for a further EBT, on a date, time, and place mutually agreed upon by the parties or via Skype for Business, Zoom, Skype, Microsoft Teams or its equal, **no later than** sixty (60) days from the date that this Order appears in the minutes of the Office of the Queens County Clerk–NYSCEF system; and it is further

ORDERED that any Post-EBT Demands shall be served, within ten (10) days from the date that this Order appears in the minutes of the Office of the Queens County Clerk–NYSCEF system; and it is further

ORDERED that the parties shall designate physicians to conduct any desired IMEs of the plaintiff, within ten (10) days of the completion of the plaintiff's deposition, with said medical examination(s) to occur within forty-five (45) days thereof; and it is further

ORDERED that plaintiff is directed to file a new Note of Issue, with payment of any requisite fees, on or before, but no later than, **Friday, June 25, 2021**, and it is further

ORDERED that the branch of the motion seeking an extension of time for the filing of summary judgment motions is denied. As the Note of Issue has been vacated, pursuant to CPLR 3212(a), the parties may move for summary judgment no later than one-hundred twenty days after the filing of a new note of issue.

The foregoing constitutes the decision and order of the Court.

Dated: December 21, 2020



TIMOTHY J. DUFFICY, J.S.C.

