Sosa v STV Inc.
2021 NY Slip Op 30199(U)
January 22, 2021
Supreme Court, Kings County
Docket Number: 515043/2018
Judge: Richard Velasquez
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part 66 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 22th day of JANUARY, 2021

P R E S E N T:
HON. RICHARD VELASQUEZ, Justice.

----------X

HECTOR SOSA as PROPOSED ADMINISTRATOR
Of the ESTATE OF ANA DEL VALLE, deceased, and
HECTOR SOSA, individually,

Plaintiff, Index No.: 515043/2018

-against- Decision and Order

STV INCORPORATED, NEW YORK CITY
HOUSING AUTHORITY and JOHN DOES 1-10

Defendants.

----------X

The following *papers NYSCEF* Doc #'s 89 to 104 read on this motion:

Papers	*NYSCEF DOC NO.'s*
Notice of Motion/Order to Show Cause Affidavits (Affirmations) Annexed	89-96
Opposing Affidavits (Affirmations)	103
Reply Affidavits (Affirmations)	104

After having heard Oral Argument on JANUARY 13, 2021 and upon review of the foregoing submissions herein the court finds as follows:

Defendant, STV INCORPORATED (hereinafter STV) moves pursuant to CPLR 2221(d) for an order granting leave to reargue the September 1, 2020 denial of defendant STV's motion for summary judgment, and upon reargument granting defendants motion pursuant to CPLR 3212 (1) dismissing the complaint of plaintiff's as

agsinst STV; and (2) dismissing the cross-claim of defendant NEW YORK CITY HOUSING AUTHORITY (hereinafter NYCHA) for contractual indemnification against the defendant STV. (MS#4). Plaintiff and co-defendant NYCHA oppose the same.

ANALYSIS

CPLR 2221 in pertinent part states: "(d) A motion for leave to reargue: 1. shall be identified specifically as such; 2. 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 3. shall be made within thirty days after service of a copy of the order determining the prior motion and written notice of its entry. CPLR 2221(d)(2) articulates the standards previously outlined in the caselaw. A motion to reargue, it says: "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. Additionally, A court has inherent discretionary power to vacate an order or judgment in the interests of substantial justice. *See Woodson v. Mendon Leasing Corp.*, 100 NY2d 62, 760 NYS2d 727, 790 NE2d 1156 (2003).

In the present case, defendant's contend that in deciding the previous motion, the Court overlooked or misapprehended relevant facts or misapplied controlling principles of law. The Court agrees. In addressing STV's motion, this Court reviewed the applicable law requiring good cause shown, but did not actually review the facts of STV's stated good cause for the untimeliness of the motion, nor did it consider the "genuine need" that this situation clearly merits. For clarity purposes, with respect to

that portion of defendant's motion regarding timeliness of their summary judgment motion and the merits of said motion, the court finds as follows;

In the present case, Defendants motion was not timely filed. This Part, consistent with Part G of the Kings County Supreme Court Uniform Civil Terms Rules, however, requires that dispositive motions be filed within 60 days of the filing of the note of issue. Indeed, defendants filed their motion 61 days after the filing of the note of issue.

This Court, "decided in 1998 as a matter of first impression (*John v. Bastien*, 178 Misc2d 664, 666–67, 681 NYS2d 456 (Civ.Ct. Kings Co.1998)), that given the plain language of the 1996 amendment to CPLR § 3212(a) reflecting a clear legislative policy determination, the Court lacked the discretion to entertain the merits of a late summary judgment motion absent "good cause" for the filing of the belated motion." "Professor Siegel had suggested that courts in the exercise of discretion should "cut to the chase" and permit parties to make dispositive motions on "good cause" grounds, especially in cases where there is potential for summary judgment." *citing Siegel's Practice Commentaries, McKinney's Consolidated Laws of New York, Book 7B* (Interim Pocket Part 1997–1998) CPLR C3212:12 at 60–61. The Court of Appeals in *Brill v. City of New York*, 2 NY3d 648, 781 NYS2d 261, 814 NE2d 431 (2004), agreed with this Court's reasoning and cited *John v. Bastien* with approval.

This Court is now faced with a similar issue, specifically whether the court is similarly constrained when a summary judgment motion is filed after the 60 days imposed by court rule. This Court answers in the negative. "Unlike *John v. Bastien*, here the Court is not similarly constrained" because it is not beyond the 120-day period. Here, the Court is specifically required to be flexible because it is a self-imposed rule.

The 60-day requirement was promulgated by the Supreme Court, Kings County, as a case management tool for the judge." *Hernandez ex rel. Hernandez v. 620 W. 189th Ltd. P'ship*, 7 Misc 3d 198, 199–201, 792 NYS2d 822, 823–25 (Sup. Ct. 2005). In other words, "**no such legislative intent, exists with respect to the 60–day requirement; it is court imposed. This Court has the "discretion to, as long as the exercise of such broad, but not unbridled, discretion does not exceed the legislative ceiling of 120 days."** As Chief Judge Kaye stated in writing for the majority in *Brill v. City of New York,* 2 NY3d at 651, 781 NYS2d 261, 814 NE2d 431, "the legislature struck a balance, fixing an outside limit on the time for filing summary judgment motions, but allowing courts latitude to set an alternative limit or to consider untimely motions to accommodate genuine need."; see also, *Florczyc v. Stahal*, NYLJ, Jan. 20, 2005, p. 19, col. 1 (Sup.Ct., Kings Co.)(court rejects plaintiff's argument that *Brill* precludes the court from entertaining summary judgment motion absent a showing of good cause, where motion filed within the 120 day limit).

Thus, "**courts have the discretion to disregard a self-imposed deadline for filing a summary judgment motion to "accommodate a genuine need."** *Hernandez ex rel. Hernandez v. 620 W. 189th Ltd. P'ship*, 7 Misc 3d 198, 199–201, 792 NYS2d 822, 823–25 (Sup. Ct. 2005). **The "genuine need," does not mean "good cause" as contemplated by CPLR 3212(a), and it may include entertaining the merits of a belated motion filed within the 120-day ceiling and, consistent with a court's traditional exercise of discretion, the absence of prejudice to the party opposing the belated motion. *Id.* Of course, "good cause" may also be a genuine need.** See *Kunz v. Gleeson*, 9 AD3d 480, 781 NYS2d 50 (2nd Dept.2004) (court held that lower

court providently exercised its discretion in entertaining defendant's motion for summary judgment made about two weeks beyond the deadline fixed by the court because defendant demonstrated good cause).

In the present case, this Court will exercise its discretion to extend the 60-day deadline. This court finds that good cause and a genuine need was demonstrated as a result of pending discovery that was still outstanding and not timely exchanged. *Hernandez ex rel. Hernandez v. 620 W. 189th Ltd. P'ship*, 7 Misc. 3d 198, 199–201, 792 NYS2d 822, 823–25 (Sup. Ct. 2005). Clearly, there can be no prejudice found in such a delay, nor has any such prejudice been claimed by any party.

It is well settled, while a transcript must be fully executed to be in admissible form, the Court has held that an unsigned transcript submitted by the party deponent is deemed to be adopted by said deponent, see *Pavane v. Marte*, 109 AD3d 970, 971 (2d Dept. 2013). As such, defendant STV's counsel did not possess a copy of the subject transcript in admissible form until the NYCHA Co-Defendant moved for summary judgment. Moreover, January 10, 2020 was a Friday, and the Co-Defendant's motion, with the subject transcript attached, was filed at 8:02 P.M. on that date, *see* Confirmation Notice attached as EXHIBIT D to STV moving papers MS#4.

On or around January 10, 2020, NYCHA served a copy of the contractor logbook for the Bushwick Houses project (*Id.* at 38:12-39:05), dated February 1, 2018 to May 15, 2018, *see* EXHIBIT A (to STV moving papers MS#4). Notably, said logbook indicates that STV personnel were at the Bushwick Houses site to observe work by NYCHA's contractors, Jemco and CSI, on the following dates at the following locations: April 19 at Buildings 1-8; April 22 at Buildings 1-8; April 25 at Building 6; April 26 at Building 6; May

1 at Buildings 1-8; May 2 at Buildings 6 and 8; May 3 at Building 6; May 4 at Buildings 1-3; May 7 at Buildings 1-3; May 8 at Buildings 2 and 6; May 9 at Building 3; May 10 at Buildings 1 and 2; May 11 at Buildings 1 and 2; May 14 at Buildings 1 and 2; and May 15 at Buildings 2 and 4 (*Id.*). The logbook is consistent with Zito's testimony, work continued on replacement of the security systems after the date of the incident.

Therefore, at the end of business on January 10, 2020, STV did not have access to or knowledge of NYCHA's work orders or logbook, nor had NYCHA's deposition transcript been executed and rendered in admissible form. On January 13, 2020, the next business day, NYCHA's motion, along with the transcript in admissible form and substantial new discovery was reviewed for the first time. Just one day beyond the January 13, 2020 deadline, STV moved for summary judgment on January 14, 2020. It is critical that all of the documents disclosed by NYCHA on January 10, 2020 were cited, attached and relied upon in said motion. In addition, the NYCHA deposition transcript was attached and was centrally relied upon by said motion as well. Furthermore, on November 13, 2019 NYCHA appeared for deposition by a witness, Supervisor of Caretakers Raheem Sanders, the transcript of which is annexed as EXHIBIT A (to STV moving papers MS#4). Sanders testified the entrance door to, the building here at issue, building 7, was not replaced until after the date of the incident (*Id.* at 60:04-60:21). Sanders additionally testified that the "old" camera system was monitored and controlled by NYCHA staff and not by STV (*Id.* at 67:13-67:19). Sanders testified that he and NYCHA staff under his supervision regularly.

Therefore, upon reviewing defendants STV's motion to reargue and considering the merits of the same it is undisputed that STV was not performing any work or

oversight at the time of the incident, and did not oversee, own, occupy, or have any control over the subject building when the murder occurred. Given these facts, compelling the parties to proceed to a frivolous trial will not serve the interest of judicial economy or of justice. In *Brill v. City of New York*, 2 NY3d 648, 653 (2004), the Court of Appeals recognized the risk of strict adherence to statutory or Court-ordered deadlines, "in that a meritorious summary judgment motion may be denied, burdening the litigants and trial calendar with a case that in fact leaves nothing to try. Indeed, the statute should not 'provide a safe haven for frivolous or meritless lawsuits'." *Brill*, supra, citing *Rossi v Arnot Ogden Med. Ctr.*, 252 A.D.2d 778, 779 (3d Dept 1998). As such, their motion for summary judgment dismissing the plaintiffs complaint against them and cross-claims by NYCHA for contractual indemnity must be dismissed.

Accordingly, defendant STV's request pursuant to CPLR 2221(d) for an order granting leave to reargue the September 1, 2020 denial of defendant STV's motion for summary judgment is hereby granted, and upon reargument defendant STV's motion pursuant to CPLR 3212 (1) dismissing the complaint of plaintiff's as against STV only is hereby granted, for the reasons stated above. Defendant STV's resquest dismissing the cross-claim of defendant NEW YORK CITY HOUSING AUTHORITY (hereinafter NYCHA) for contractual indemnification against the defendant STV is hereby granted, for the reasons stated above.

This constitutes the Decision/Order of the court.

Dated: Brooklyn, New York
January 22, 2020

ENTER FORTHWITH:

HON. RICHARD VELASQUEZ