

Verizon N.Y., Inc. v Stilsing Elec., Inc.
2021 NY Slip Op 32668(U)
December 15, 2021
Supreme Court, New York County
Docket Number: Index No. 151005/2021
Judge: Frank P. Nervo
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. FRANK NERVO PART 04

Justice

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VERIZON NEW YORK, INC.,
Plaintiff,

- v -

STILSING ELECTRIC, INC., PETER LUIZZI & BROS
CONTRACTING

Defendant.

-----X

INDEX NO. 151005/2021
MOTION DATE 08/16/2021
MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47

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

Plaintiff seeks to reargue this Court's July 21, 2021 decision and order granting defendants' request to change venue of this instant matter to Rensselear County.

The purpose of reargument is to provide "a party an opportunity to establish that the court overlooked or misapprehended relevant facts or misapplied principles of law" (Foley v. Roche, 68 AD2d 558, 567 [1st Dept 1979]); see CPLR § 2221[d][2]). "Its purpose is not to serve as a vehicle to permit the unsuccessful party to argue once again the very questions previously decided" (id.). Nor is reargument a proper forum to present arguments different from

those originally asserted (*William P. Pahl Equip. Corp. v. Kassis*, 182 AD2d 22 [1st Dept 1992] *lv. dismissed in part and denied in part* 80 NY2d 1005 [1992]).

As to renewal, a motion to renew “shall be based upon new facts not offered on the prior motion that would change the prior determination...” (CPLR § 2221[e][2]). Where a motion for renewal is not based upon new evidence unavailable at the time of the original motion, and the movant fails to offer a reasonable excuse for the failure to submit evidence upon the original motion, renewal is properly denied (*Schumann v. City of New York*, 242 AD2d 616 [2d Dept 1997]). A motion for leave to renew is not a second chance freely given to parties who have not exercised due diligence in making their first factual presentation (*Elder v. Elder*, 21 AD3d 1005 [2d Dept 2005]).

Here, plaintiff contends that this Court misapplied the law, in considering the location of party witnesses, and misapprehended the facts, in determining the location of certain witnesses.

This Court did no such thing.

There is no basis, rational or as a matter of law, for this matter to proceed in New York County, more than 150 miles away and five counties removed from the site of the alleged incident. As this Court previously identified, the excavation work was performed in Rensselear County, and plaintiff's own telephone number, related to excavation work and stakeouts, is located in Syracuse, not plaintiff's New York City headquarters. There can be no argument that a large preponderance of witnesses, both party and non-party, reside outside of New York County, instead residing in Rensselear and the surrounding counties. The Court is confident that changing venue to a county where the majority of witnesses are located, and where the alleged cause of action arose, is within its sound discretion (*Hartigan v. Kurian*, 224 AD2d 299 [1st Dept 1996]; *Pittman v. Maher*, 202 AD2d 172 [1st Dept 1994]; see also *Lundgren v. Lovejoy, Wasson, Lundgren & Ashton*, 82 AD2d 912 [2d Dept 1981]).

Plaintiff's motion to reargue amounts to mere disagreement with this Court's decision and repeats those arguments made on the underlying motion; insufficient grounds to grant reargument. To the extent that plaintiff seeks renewal based upon affidavits, it has not provided a reasonable justification for its failure to submit same on the underlying motion. In any event, an affidavit by a witness that his business address is in Albany County, which adjoins

Rensselaer County, does not provide a basis for venue in New York County, some 150 miles and five counties south.

Accordingly, it is

ORDERED the motion is denied in its entirety; and it is further

ORDERED that any requested relief not expressly addressed herein has nevertheless been considered and is hereby denied.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

12/15/2021
DATE


FRANK NERVO, J.S.C.

CHECK ONE:

CASE DISPOSED
 GRANTED DENIED

NON-FINAL DISPOSITION

APPLICATION:

SETTLE ORDER

GRANTED IN PART OTHER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

SUBMIT ORDER
 FIDUCIARY APPOINTMENT REFERENCE