

Richardson v New York City Hous. Auth.

2023 NY Slip Op 31575(U)

May 11, 2023

Supreme Court, New York County

Docket Number: Index No. 153556/2022

Judge: Lori S. Sattler

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.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. LORI S. SATTLER PART 02TR

Justice

-----X

ABDUL RICHARDSON,

Plaintiff,

- v -

NEW YORK CITY HOUSING AUTHORITY, THE CITY OF
NEW YORK

Defendant.

-----X

INDEX NO. 153556/2022

MOTION DATE 02/15/2023

MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 34, 35
were read on this motion to/for REARGUMENT/RECONSIDERATION.

Plaintiff Abdul Richardson (“Plaintiff”) moves to renew and reargue this Court’s
Decision and Order dated December 14, 2022 (“Decision and Order”) and seeks an order
reversing the dismissal of this action against Defendant New York City Housing Authority
 (“Defendant”) and reinstating Plaintiff’s complaint. Defendant opposes the motion.

In its Decision and Order, this Court dismissed the Complaint finding that Plaintiff had
failed to comply with General Municipal Law § 50-h, thereby precluding him from filing this
action. The Court specifically found that Plaintiff had filed the action prior to appearing for a
50-h hearing and that this was a pre-condition to commencing an action against Defendant
pursuant to the statute and relevant case law. The Court noted that Plaintiff cancelled his 50-h
hearing on three different occasions. Plaintiff had cancelled a noticed hearing for September 15,
2021, one hour prior to its start. Plaintiff cancelled the second scheduled date on April 18, 2022,
three days in advance, and the last hearing date of June 24, 2022 was cancelled the day before
the hearing after Plaintiff had agreed to appear earlier that day.

Plaintiff, through an affirmation of counsel, seeks to renew and reargue claiming that the Court overlooked documentation submitted which demonstrates that Plaintiff had good cause to miss the three hearing dates. In his affirmation, counsel points to the voluminous disorganized hospital records that were submitted with the prior motion and indicates that they support a good faith finding. He further indicates that the Court has overlooked the fact that Plaintiff is not a typical party as he has suffered a life altering brain injury and that in the interest of justice the Complaint must not be dismissed.

Defendant opposes the motion. In addition to relying on the law regarding compliance with respect to 50-h hearings, Defendant further contends that the various excuses for the cancellations of the hearing date are not supported. Defendant states that despite Plaintiff's repeated failure to appear, it made efforts to reschedule each hearing date, and that Plaintiff's counsel never made an effort to reach out and schedule a new date after cancelling, even as the statute of limitations was running. Defendant indicates that at one point after months of waiting it reached out to try to schedule a final hearing date. Defendant further claims it was given different reasons for the cancellations than those proffered by Plaintiff in this and the underlying motions, and that the documents submitted by Plaintiff do not support the contentions made in this action regarding his cancellations.

Plaintiff now moves to renew and reargue pursuant to CPLR 2221. CPLR 2221(d), requires that a motion to reargue must be "based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion." A motion to renew pursuant to CPLR 2221(e) "shall be based upon new facts not offered on the prior motion that would change the prior determination."

Plaintiff contends the Court failed to consider documentation submitted in the underlying motion. Plaintiff does not mention the September 15, 2021 hearing date in the instant motion. That hearing was cancelled the morning of and, in an email sent by the firm representing him, it was claimed that Plaintiff had an emergency (NYSCEF Doc. No. 13). In the underlying motion, a different reason was stated; it was claimed that he had a migraine the day before and had “an inability to keep the facts of [his] case” (NYSCEF Doc. No. 23). No reason is given as to why the cancellation did not occur until the following day, after the reporter had been ordered and Defendant was there ready to proceed. Nor is any reason given for why Plaintiff’s counsel did not request a new hearing date.

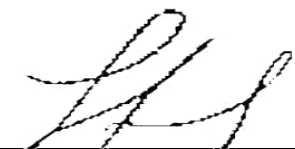
It is undisputed that Defendant, not Plaintiff, reached out to schedule the next hearing for April 18, 2022, prior to the statute of limitations running. That hearing date was cancelled three days before and, in an email, when asked “Any word on the client?” the response was “No luck-let’s pick a new date please” (NYSCEF Doc. No. 15). In the underlying motion, Plaintiff claims he was receiving treatment related to his accident in the hospital in April 2022 and on the actual date of the hearing (NYSCEF Doc. No. 23). The hospital records do not reflect that Plaintiff was receiving treatment on the day in question or even on the prior date asserted; rather, they are records of a hospital social worker. It is not apparent from these records that Plaintiff was even present in the hospital on those dates, as the notes reference the social worker writing a letter to assist with housing as well as information regarding the shelter system.

With respect to the June 24, 2022 hearing date scheduled by Defendant, hospital records reflect that Plaintiff had been hospitalized in June 2022, on a date that was after this case was already commenced. He was released two days prior to the hearing date and, the following day, one day prior to the hearing date, confirmed that he would appear, only to again cancel later that

day. Although Plaintiff claimed that he felt “weak and confused” in his affidavit submitted with the underlying motion, in an email dated June 23, 2022 at 4:33 pm, the firm representing Plaintiff cancelled the deposition scheduled for 10:00 am the following morning on the grounds that an attorney had become ill (NYSCEF Doc. No. 18). Notably, they asked for a 60-day extension and an afternoon time slot.

Based on the facts set forth above and for the reasons set forth in the decision dated December 13, 2022 (NYSCEF Doc. No. 31), the Court finds that Plaintiff has not set forth a “valid excuse” for the failure to comply with Defendant’s demand for an examination prior to the commencement of this action (*see* General Municipal Law § 50-h[5]; *Best v City of New York*, 97 AD2d 389 [1st Dept 1990]). Plaintiff has failed to demonstrate matters of fact or law allegedly overlooked or misapprehended by the Court in determining the prior motion. Similarly, Plaintiff fails to offer new facts not offered on the prior motion that would change the prior determination. Accordingly, Plaintiff’s motion is denied.

This constitutes the Decision and Order of the Court.

<p><u>5/11/2023</u> DATE</p>			 <hr/> LORI S. SATTLER, J.S.C.	
CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	REFERENCE
			<input type="checkbox"/>	FIDUCIARY APPOINTMENT