

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

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_____AD3d_____

Submitted - February 7, 2007

WILLIAM F. MASTRO, J.P.
DAVID S. RITTER
PETER B. SKELOS
EDWARD D. CARNI
WILLIAM E. McCARTHY, JJ.

2006-01440

DECISION & ORDER

Monica C. Jones, appellant, v Amiee Lynn
Accessories, et al., respondents.

(Index No. 18186/01)

Monica C. Jones, Brooklyn, N.Y., appellant pro se.

Goldman & Grossman, New York, N.Y. (Eleanor R. Goldman and Jay S. Grossman
of counsel), for respondents.

In an action to recover damages for personal injuries, the plaintiff appeals from an order of the Supreme Court, Kings County (Ruchelsman, J.), dated January 9, 2006, which denied her motions, in effect, for leave to reargue the defendants' motion for summary judgment dismissing the complaint on the basis that she did not sustain a serious injury within the meaning of Insurance Law § 5102(d).

ORDERED that the appeal is dismissed, without costs or disbursements, as no appeal lies from an order denying reargument.

The court properly treated the plaintiff's first motion, denominated as one for leave to renew and reargue, as a motion for leave to reargue because it was not based upon new facts which were unavailable at the time of the defendants' motion for summary judgment and the plaintiff did not offer a reasonable justification for the failure to present the allegedly new facts in opposition to the defendants' motion for summary judgment (*see* CPLR 2221[d], [e]; *CPI Contr., Inc. v Expert Elec. Inc.*, 36 AD3d 582; *Crawn v Sayah*, 31 AD3d 367; *Rivera v Toruno*, 19 AD3d 473, 474). The

March 13, 2007

Page 1.

JONES v AMIEE LYNN ACCESSORIES

court properly treated the plaintiff's second motion as, in effect, for leave to reargue the defendants' motion for summary judgment, since it sought essentially the same relief as the first motion. The court denied both motions. The plaintiff's appeal must be dismissed as the denial of reargument is not appealable (*see CPI Contr., Inc. v Expert Elec. Inc., supra; Crown v Sayah, supra; Rivera v Toruno, supra*).

MASTRO, J.P., RITTER, SKELOS, CARNI and McCARTHY, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court