

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

D23029
T/kmg

_____AD3d_____

Argued - March 9, 2009

REINALDO E. RIVERA, J.P.
DANIEL D. ANGIOLILLO
RANDALL T. ENG
ARIEL E. BELEN, JJ.

2008-00846

DECISION & ORDER

Leatrice Singleton, respondent, v
Lenox Hill Hospital, et al., appellants,
et al., defendants.

(Index No. 48795/00)

Martin Clearwater & Bell LLP, New York, N.Y. (Ellen B. Fishman, John L.A. Lyddane, and Nancy J. Block of counsel), for appellants Lenox Hill Hospital, OB-GYN Associates, P.C., and Kenneth James.

Wilson, Elser, Moskowitz, Edelman & Dicker, LLP, New York, N.Y. (Patrick J. Lawless and Judy C. Selmecci of counsel), for appellants Long Island College Hospital and John P. Brennan.

Birbrower, Beldock & Margolis, P.C. (Pollack, Pollack, Isaac & De Cicco, New York, N.Y. [Brian J. Isaac and Jillian Rosen], of counsel), for respondent.

In an action to recover damages for medical malpractice, the defendants Lenox Hill Hospital, OB-GYN Associates, P.C., and Kenneth James appeal, and the defendants Long Island College Hospital and John P. Brennan separately appeal, as limited by their respective briefs, from so much of an order of the Supreme Court, Kings County (Jackson, J.), dated December 7, 2007, as granted that branch of the plaintiff's motion which was for leave to reargue her opposition to the motion of the defendants Lenox Hill Hospital, OB-GYN Associates, P.C., and Kenneth James and the separate motion of the defendants Long Island College Hospital and John P. Brennan pursuant to CPLR 3216 to dismiss the complaint insofar as asserted against each of them, which had been determined in an order of the same court dated June 4, 2007, and, upon reargument, vacated the

April 28, 2009

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original determination granting the motion and the separate motion and, in effect, denied the motion and the separate motion.

ORDERED that the order dated December 7, 2007, is affirmed insofar as appealed from, with one bill of costs payable by the appellants appearing separately and filing separate briefs.

“Motions for reargument are addressed to the sound discretion of the court which decided the prior motion and may be granted upon a showing that the court overlooked or misapprehended the facts or law” (*Carrillo v PM Realty Group*, 16 AD3d 611, 611; *see CPLR 2221[d][2]*). Here, the Supreme Court providently exercised its discretion in granting the plaintiff’s motion for leave to reargue.

Upon reargument, the Supreme Court properly, in effect, denied the motions pursuant to CPLR 3216 to dismiss the complaint insofar as asserted against the appellants (*see Primiano v Ginsberg*, 55 AD3d 709; *Lubov v Welikson*, 36 AD3d 673, 674).

RIVERA, J.P., ANGIOLILLO, ENG and BELEN, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court