

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

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CA 10-02246

PRESENT: SMITH, J.P., FAHEY, PERADOTTO, AND LINDLEY, JJ.

AUGUSTIN MUGABO, PLAINTIFF-APPELLANT,

V

MEMORANDUM AND ORDER

CITY OF BUFFALO, DEFENDANT-RESPONDENT.

AUGUSTIN MUGABO, PLAINTIFF-APPELLANT PRO SE.

DAVID RODRIGUEZ, ACTING CORPORATION COUNSEL, BUFFALO (DAVID M. LEE OF COUNSEL), FOR DEFENDANT-RESPONDENT.

Appeal from an order of the Supreme Court, Erie County (Frederick J. Marshall, J.), entered October 1, 2010. The order denied the pro se motion of plaintiff for leave to renew and reargue his prior summary judgment motion and his opposition to defendant's cross motion for summary judgment.

It is hereby ORDERED that said appeal is unanimously dismissed without costs.

Memorandum: Plaintiff appeals from an order denying his pro se motion for leave to renew and reargue his prior motion for summary judgment on the amended complaint and his opposition to defendant's cross motion for summary judgment dismissing the amended complaint. As plaintiff conceded during oral argument on his motion for leave to renew and reargue, he offered no new facts in support thereof. Instead, plaintiff merely argued that Supreme Court had misapprehended the law and therefore reached the wrong conclusion with respect to the prior motion and cross motion. Thus, plaintiff's motion for leave to renew and reargue was actually only a motion for leave to reargue, and it is well settled that no appeal lies from an order denying such a motion (*see Hill v Milan*, 89 AD3d 1458, 1458; *Hilliard v Highland Hosp.*, 88 AD3d 1291, 1292-1293; *Schaner v Mercy Hosp. of Buffalo*, 16 AD3d 1095, 1096). The appeal therefore must be dismissed.

Entered: April 27, 2012

Frances E. Cafarell
Clerk of the Court