

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

1038

CA 12-02139

PRESENT: SCUDDER, P.J., CENTRA, CARNI, LINDLEY, AND SCONIERS, JJ.

MARK A. LICCIARDI, INDIVIDUALLY AND AS A CITY OF
ROCHESTER FIREFIGHTER, PLAINTIFF-APPELLANT,

V

MEMORANDUM AND ORDER

CITY OF ROCHESTER, CITY OF ROCHESTER FIRE
DEPARTMENT, JOHN CAUFIELD, INDIVIDUALLY AND AS
CITY OF ROCHESTER FIRE CHIEF, SALVATORE MITRANO,
III, INDIVIDUALLY AND AS EXECUTIVE DEPUTY CHIEF,
MARTIN MCMILLIAN, INDIVIDUALLY AND AS LINE
DEPUTY FIRE CHIEF, RICHARD YACKEL, INDIVIDUALLY
AND AS BATTALION CHIEF, KEVIN CADY, INDIVIDUALLY
AND AS A CITY OF ROCHESTER FIRE LIEUTENANT,
MAUREEN HOPE, INDIVIDUALLY AND AS FIRE DEPARTMENT
CASE MANAGER, AND SUSAN WALZ, INDIVIDUALLY AND AS
VICE PRINCIPAL OF NORTHSIDE ELEMENTARY SCHOOL IN
THE FAIRPORT SCHOOL DISTRICT,
DEFENDANTS-RESPONDENTS.

EMMELYN LOGAN-BALDWIN, ROCHESTER, FOR PLAINTIFF-APPELLANT.

THE LAW FIRM OF FRANK W. MILLER, EAST SYRACUSE (J. RYAN HATCH OF
COUNSEL), FOR DEFENDANT-RESPONDENT SUSAN WALZ, INDIVIDUALLY AND AS
VICE PRINCIPAL OF NORTHSIDE ELEMENTARY SCHOOL IN THE FAIRPORT SCHOOL
DISTRICT.

Appeal from an order of the Supreme Court, Monroe County (Ann Marie Taddeo, J.), entered June 11, 2012. The order denied the motion of plaintiff for leave to renew or reargue the motion of defendant Susan Walz, individually and as Vice Principal of Northside Elementary School in the Fairport School District, to dismiss the complaint against her and seeking to compel disclosure from Walz.

It is hereby ORDERED that said appeal from the order insofar as it denied leave to reargue is unanimously dismissed and the order is affirmed without costs.

Memorandum: Plaintiff appeals from an order denying his motion for leave to renew or reargue the motion of defendant Susan Walz, individually and as Vice Principal of Northside Elementary School in the Fairport School District, to dismiss the complaint against her and seeking to compel disclosure from Walz. Plaintiff offered no new facts in support of that part of the motion seeking leave to renew or reargue, but merely argued that Supreme Court had misapprehended the

law and therefore reached the wrong conclusion with respect to the prior motion. That part of the motion, therefore, was in fact only a motion for leave to reargue, the denial of which is not appealable (see *Mugabo v City of Buffalo*, 94 AD3d 1577, 1577). Inasmuch as the complaint against Walz had been dismissed, the court properly denied as moot that part of the motion seeking to compel disclosure from her (see *Kinney & Kinsella, Inc. v NEI Fashions, LLC*, 85 AD3d 514, 515).

Entered: November 8, 2013

Frances E. Cafarell
Clerk of the Court