

Green v Harlem Hosp. Ctr.

2026 NY Slip Op 31167(U)

March 20, 2026

Supreme Court, New York County

Docket Number: Index No. 805184/2017

Judge: Hasa A. Kingo

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

PRESENT: HON. HASA A. KINGO **PART** **65M**
Justice

-----X
PAMELA GREEN,

Plaintiff,

- v -

INDEX NO. 805184/2017
MOTION DATE 02/24/2026
MOTION SEQ. NO. 007

HARLEM HOSPITAL CENTER, NEW YORK CITY HEALTH AND HOSPITALS CORPORATION, SANJIV GRAY MD, SUSAN M. TALBERT, DANNE R. LORIEO, ZEAH N. VENITELLI, MOUNT SINAI ST. LUKE'S, AKELLA CHENDRASEKHAR, RICHMOND UNIVERSITY MEDICAL CENTER,

DECISION + ORDER ON MOTION

Defendant.
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The following e-filed documents, listed by NYSCEF document number (Motion 007) 350, 351, 352, 353, 354, 357, 358, 359

were read on this motion for REARGUMENT/RECONSIDERATION.

Plaintiff Pamela Green (“plaintiff”) moves, pursuant to CPLR § 2221(d), for leave to reargue limited portions of the court’s December 18, 2025 decision and order (the “prior order”), which granted summary judgment dismissing certain claims in this medical malpractice action. Specifically, plaintiff seeks reargument as to the dismissal of: First, as against Harlem Hospital Center, New York City Health and Hospitals Corporation (“NYCHHC”), and Sanjiv Gray, M.D.: (i) lack of informed consent, and (ii) performance of an unindicated (unnecessary) surgery, relating to an elective sigmoidectomy¹ performed April 12, 2016. Second, as against Mount Sinai St. Luke’s and Danne R. Lorieo, M.D.: (i) lack of informed consent, (ii) negligent performance of surgery (including alleged failures in preoperative assessment and planning), and (iii) performance of an unindicated surgery, relating to the October 20, 2016 colostomy reversal and the ensuing postoperative course.

Plaintiff requests that, upon reargument, the court vacate the challenged portions of the prior order and deny summary judgment as to those claims, thereby reinstating them for trial. As a threshold matter, the court notes that the prior order was signed by Justice Arthur F. Engoron, who has since retired from the bench and is therefore unavailable to hear this CPLR § 2221 motion. Under CPLR § 2221(a), a motion for leave to reargue “shall be made” to the judge who signed the order unless that judge is unable to hear it. Consistent with controlling Appellate Division, First Department, authority, where a case has been reassigned and the original justice is unavailable, it

¹ A sigmoidectomy (or sigmoid colectomy) is the surgical removal of the sigmoid colon, the lower part of the colon that connects to the rectum.

is proper for the successor justice presiding to determine the reargument motion (*Totaram v Gibson*, 179 AD3d 451, 452 [1st Dept 2020]). Accordingly, the motion is properly before the undersigned.

This is an action sounding in medical malpractice and lack of informed consent arising out of plaintiff's gastrointestinal care and surgeries at two institutions: Harlem Hospital Center/NYCHHC and Mount Sinai St. Luke's. Plaintiff alleges, among other things, that (1) an elective sigmoidectomy performed at Harlem Hospital Center in April 2016 was not medically indicated for her clinical presentation and risk profile, and that informed consent was not properly obtained; and (2) a later colostomy reversal at Mount Sinai St. Luke's in October 2016 was negligently planned and performed, was unindicated under the circumstances, and was likewise performed without legally sufficient informed consent.

By decision and order dated December 18, 2025, the court (Engoron, J.) granted defendants summary judgment dismissing, *inter alia*, the categories of claims identified above. Plaintiff thereafter filed the present CPLR § 2221(d) motion seeking leave to reargue those limited determinations.

Plaintiff claim generally that the prior order either overlooked or misapprehended material facts and/or controlling legal standards, particularly by (a) dismissing unindicated-surgery theories without addressing plaintiff's expert opinion; (b) treating written consent materials/consent discussions as dispositive of informed-consent claims; and (c) viewing certain malpractice theories (including alleged failures in preoperative assessment/planning and certain "technical negligence" contentions) as unpleaded or impermissibly "new," even though—plaintiff contends—they were encompassed within the pleadings and bills of particulars.

Defendants oppose and argue that plaintiff does not identify any matter of law or fact overlooked or misapprehended within the meaning of CPLR § 2221(d); that plaintiff instead seeks an impermissible "second bite" at issues already decided; and that several of plaintiff's reargument theories either were not raised on the original motion or constitute new theories not pleaded in the complaint/bills of particulars and therefore cannot be used to defeat summary judgment.

ARGUMENTS

Plaintiff's full arguments, fairly summarized, are fourfold.

First, plaintiff contends that the prior order dismissed the "unindicated surgery" theory against Harlem Hospital Center/NYCHHC/Sanjiv Gray, M.D. without substantively engaging with plaintiff's opposing expert submission, which purportedly opined that an elective sigmoidectomy was not clinically justified given plaintiff's diagnosis (including her asserted "Hinchey stage" classification), presentation, and risk profile.

Second, plaintiff asserts that the prior order dismissed informed-consent claims by relying too heavily on documentary consent materials and/or generalized consent discussions, rather than evaluating whether defendants disclosed the material risks, benefits, and alternatives that a

reasonable practitioner would have disclosed under the circumstances—particularly as to patient-specific factors allegedly increasing risk.

Third, as to Mount Sinai St. Luke's/Danne R. Lorieo, M.D. plaintiff contends that the court improperly characterized certain malpractice theories as “new” (or outside the bills of particulars), specifically allegations concerning preoperative assessment and planning (including the adequacy of preoperative workup and evaluation of individualized risk) and “technical negligence” in surgical execution. Plaintiff argues these theories were within the pleadings/bills of particulars and were further supported by plaintiff's expert affirmation, such that summary judgment should not have been granted.

Fourth, plaintiff maintains that, at minimum, the submissions on the original summary judgment motion reflected classic “battle of the experts” issues that should have been left for the factfinder and that the prior order misapprehended the evidentiary sufficiency of plaintiff's opposition.

Defendants respond in substance as follows. As an initial matter, defendants emphasize that reargument is a narrow remedy; it exists to permit correction of matters the Court overlooked or misapprehended and is not intended to allow relitigation of issues already decided or presentation of new arguments. They cite controlling Appellate Division, First Department, authority that reargument “is not designed to afford the unsuccessful party successive opportunities to reargue issues previously decided ... or to present arguments different from those originally asserted” (*Matter of Setters v AI Props. & Devs. (USA) Corp.*, 139 AD3d 492, 493 [1st Dept 2016]). They further cite First Department precedent reiterating that reargument affords an opportunity to show the court “overlooked or misapprehended” the relevant facts or misapplied a controlling principle, not to “argue once again the very questions previously decided” (*see, e.g., Springs v L&D Law P.C.*, 234 AD3d 422, 424 [1st Dept 2025], *quoting Foley v Roche*, 68 AD2d 558, 567 [1st Dept 1979]).

On the merits, defendants argue that the prior order did not overlook plaintiff's expert proof; rather, it found the proof insufficient as a matter of law to raise a triable issue because it was conclusory, speculative, inconsistent with the record, failed to address the defense expert's opinions, and/or advanced theories not pleaded.

Defendants also argue that certain theories plaintiff now highlights—particularly (a) a standalone “unindicated surgery” theory as against the Harlem Hospital Center defendants, and (b) certain patient-specific “inadequate warning” or risk-factor informed-consent theories as against Mount Sinai St. Luke's/Danne R. Lorieo, M.D.—were either not pursued on the original summary judgment motion or were raised for the first time in opposition, and thus are barred under Appellate Division, First Department, precedent on unpleaded/new theories. They rely heavily on *Karanevich-Dono v Haas*, where the Appellate Division, First Department, held that a malpractice theory and the “only theory of inadequate warning” were improperly raised for the first time in opposition to summary judgment and were not pleaded in the complaint/bill of particulars (231 AD3d 576, 578 [1st Dept 2024]).

Finally, defendants argue that plaintiff cannot satisfy the statutory elements of Public Health Law § 2805-d. In particular, defendants contend plaintiff failed to adduce competent proof that a fully informed, reasonable person in plaintiff's position would have declined the procedures at issue (as opposed to merely delaying them or seeking additional opinions), and they cite Court of Appeals authority holding that evidence suggesting only that a patient would have sought a second opinion is insufficient to establish the "reasonable person" element (*Orphan v Pilnik*, 15 NY3d 907, 909 [2010]).

DISCUSSION

I. Standard for reargument under CPLR § 2221(d)

CPLR §2221(d)(2) provides that a motion for leave to reargue "shall be based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion," and "shall not include any matters of fact not offered on the prior motion." A motion to reargue is addressed to the court's discretion and is not a vehicle for an unsuccessful party to obtain repeated consideration of issues already resolved or to recast arguments in new form (*Matter of Setters*, 139 AD3d at 493; *Foley*, 68 AD2d at 567; *William P. Pahl Equip. Corp. v Kassis*, 182 AD2d 22, 27 [1st Dept 1992])[reargument not meant to provide successive opportunities or different arguments]).

Where a movant does not identify a controlling legal principle that the court misapplied, or a material fact the court overlooked or misapprehended, reargument must be denied (*see Springs*, 234 AD3d at 424).

Against that standard, the present motion largely seeks to revisit substantive determinations made on summary judgment by reemphasizing plaintiff's expert opinions and urging the court to weigh those opinions differently. Disagreement with the court's reasoning or outcome, however, is not itself a proper ground for reargument (*Foley*, 68 AD2d at 567; *Matter of Setters*, 139 AD3d at 493).

II. The underlying summary judgment posture and the court's analytic framework

Because the motion seeks reargument of summary judgment determinations in a medical malpractice case, it bears emphasizing the controlling framework the prior order applied. A medical malpractice defendant moving for summary judgment must establish, prima facie, either that there was no departure from accepted standards of care or that any departure did not proximately cause plaintiff's injuries (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324-325 [1986]; *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]; *Bartolacci-Meir v Sassoon*, 149 AD3d 567, 571-572 [1st Dept 2017]).

Once that prima facie showing is made through competent proof (typically expert affirmation and medical records), the burden shifts to plaintiff to produce admissible evidence—generally a nonconclusory expert opinion grounded in the record—raising a triable issue of fact (*Bartolacci-Meir*, 149 AD3d at 571-572; *Diaz v New York Downtown Hosp.*, 99 NY2d 542, 544 [2002]).

It is likewise controlling Appellate Division, First Department, authority that a plaintiff cannot defeat summary judgment by (a) introducing a new theory of liability not pleaded in the complaint and bills of particulars, or (b) presenting expert opinions that fail to confront material aspects of the defense experts' opinions where those opinions are central to defendants' prima facie showing (*Rotante v New York Presbyt. Hosp.-N.Y. Weill Cornell Med. Ctr.*, 175 AD3d 1142, 1144 [1st Dept 2019][rejecting new theory and noting plaintiff expert failed to address defense expert's conclusions]; *Karanevich-Dono*, 231 AD3d at 578 [theory of liability and inadequate-warning theory improperly raised for the first time in opposition and not pleaded]).

These principles are particularly salient here because several aspects of plaintiff's reargument motion either (1) seek to repurpose allegations as distinct causes of action not pressed as such in the original motion practice, or (2) depend on the premise that plaintiff's expert submissions raised triable issues despite not squarely addressing the record and the defense expert's key opinions.

III. Reargument as to "unindicated surgery" against the Harlem Hospital defendants

Plaintiff argues that the prior order dismissed the unindicated-surgery theory against the Harlem Hospital Center defendants without addressing plaintiff's expert opinion that an elective sigmoidectomy was not medically necessary.

This contention does not warrant reargument for two independent reasons. First, plaintiff does not demonstrate that the prior order overlooked the relevant record in the CPLR §2221(d) sense; rather, plaintiff advances the position that the court should have credited plaintiff's expert's analysis of clinical indication and surgical threshold decision-making. That is quintessentially an argument that the court decided the question incorrectly—not that the court overlooked it—and is not a proper basis for reargument (*Foley*, 68 AD2d at 567; *Matter of Setters*, 139 AD3d at 493).

Second, to the extent plaintiff now treats "unindicated surgery" as a standalone distinct theory—separate from informed consent—the record reflects that, at the prior oral argument, plaintiff's counsel framed the "indication" contention as intertwined with, and ultimately subsumed within, an informed-consent theory ("I think that those two arguments are intertwined, but I think in the end, it is an informed consent claim."). That representation materially undercuts plaintiff's present attempt to repackage "unindicated surgery" as an independently preserved and independently developed summary judgment opposition point. Where a party's presentation on the original motion did not fairly press a theory as a distinct basis for denying summary judgment, CPLR § 2221(d) does not permit a second opportunity to "present arguments different from those originally asserted" (*Matter of Setters*, 139 AD3d at 493; *Pahl*, 182 AD2d at 27).

Accordingly, leave to reargue is denied as to the Harlem Hospital defendants on the "unindicated surgery" branch.

IV. Reargument as to lack of informed consent against the Harlem Hospital defendants

A cause of action for lack of informed consent is defined and limited by statute. Public Health Law § 2805-d requires proof, among other elements, that (1) the practitioner failed to disclose the risks, benefits, and alternatives that a reasonable practitioner would have disclosed under similar circumstances, and (2) a fully informed, reasonable person in plaintiff's position would have declined the procedure (*Orphan*, 15 NY3d at 908-909; Public Health Law § 2805-d[1], [3]). Expert medical testimony is required to establish the insufficiency of the disclosure (*Orphan*, 15 NY3d at 909; CPLR § 4401-a).

Critically, the Court of Appeals has held that evidence suggesting only that a patient might have sought a second opinion (or, by extension, might have delayed a procedure) does not establish that a fully informed reasonable person would have declined the procedure, and therefore does not raise a triable issue sufficient to defeat summary judgment (*Orphan*, 15 NY3d at 909).

Here, plaintiff's reargument papers argue that the prior order treated written consent documentation as dispositive. Even accepting as a general proposition that a signed consent form is not invariably dispositive of informed consent in every case, plaintiff's argument still fails to demonstrate that the prior order overlooked a controlling principle. The decisive issue, as framed by the controlling Court of Appeals authority the parties cite, is whether plaintiff adduced competent evidence—expert and otherwise—supporting the statutory elements, including the “reasonable person” element (*Orphan*, 15 NY3d at 908-909).

Plaintiff does not show that the prior order overlooked admissible proof establishing that a fully informed reasonable person would have declined the elective sigmoidectomy. To the contrary, to the extent plaintiff's showing parallels the proof rejected in *Orphan*—i.e., proof suggesting only that a patient might have acted differently in timing or process (delay, second opinion)—that does not satisfy Public Health Law § 2805-d(3) as a matter of law (*Orphan*, 15 NY3d at 909).

Accordingly, plaintiff has not met the CPLR § 2221(d) standard as to informed consent against the Harlem Hospital defendants.

V. Reargument as to Mount Sinai St. Luke's and Dr. Lorieo

a. *Informed consent*

As noted, an informed-consent claim requires proof both of inadequate disclosure (requiring expert medical testimony) and that a fully informed reasonable person would have declined (*Orphan*, 15 NY3d at 908-909). Defendants argued (and plaintiff does not meaningfully refute for CPLR § 2221 purposes) that the prior order dismissed the informed-consent claim in part because plaintiff's expert proof did not establish a statutory violation and because key informed-consent theories were not pleaded in the bills of particulars and were raised, if at all, for the first time in opposition. On those points, controlling Appellate Division, First Department, authority holds that new or unpleaded “inadequate warning” theories raised for the first time in opposition to summary judgment cannot be used to defeat dismissal (*Karanevich-Dono*, 231 AD3d at 578).

Moreover, even setting aside any pleading/bill-of-particulars limitations, plaintiff does not demonstrate that the prior order misapprehended the *Orphan* “reasonable person” element. Where the record does not support that a reasonable person fully informed would have declined, and plaintiff’s proof suggests only that *she* might have delayed the procedure or sought further information, the claim fails as a matter of law (*Orphan*, 15 NY3d at 909).

Accordingly, reargument is denied as to informed consent against Mount Sinai St. Luke’s and Danne R. Lorioe, M.D.

b. *Negligent performance, including preoperative assessment/planning and “technical negligence”*

Plaintiff next seeks reargument contending, among other things, that the prior order improperly dismissed negligent-performance theories by treating certain allegations as “new” and not within the pleadings or bills of particulars. The controlling Appellate Division, First Department, decisions cited in the parties’ papers foreclose reargument on this record.

First, to the extent plaintiff’s opposition to summary judgment relied on malpractice theories not sufficiently pleaded to avoid surprise and prejudice—whether framed as failure in preoperative planning, preoperative workup, or particularized technical approaches—such theories cannot be raised for the first time in opposition (*Karanevich-Dono*, 231 AD3d at 577-578; *Rotante*, 175 AD3d at 1144).

Second, even where a malpractice theory is properly pleaded, plaintiff’s expert must still provide a nonconclusory opinion grounded in the record and must address the material aspects of defendants’ prima facie showing. The Appellate Division, First Department, has affirmed summary judgment where plaintiff advanced a new theory and where plaintiff’s expert failed to confront defendants’ expert’s conclusions, or offered only speculation (*Rotante*, 175 AD3d at 1144).

Here, plaintiff’s reargument papers do not identify a fact the prior order overlooked that would cure these deficiencies; instead, they ask the court to reassess the sufficiency of plaintiff’s expert proof and interpret the scope of the pleadings/bills of particulars more broadly than the prior order did. That is not the proper function of CPLR § 2221(d) (*Matter of Setters*, 139 AD3d at 493; *Foley*, 68 AD2d at 567).

Accordingly, reargument is denied as to negligent performance (including preoperative assessment/planning and “technical negligence”) against Mount Sinai St. Luke’s and Danne R. Lorioe, M.D.

c. *Unindicated surgery*

For substantially the same reasons discussed above, plaintiff does not demonstrate that the prior order overlooked or misapprehended a controlling principle or material record fact as to the “unindicated surgery” theory against Mount Sinai St. Luke’s and Danne R. Lorioe, M.D.

Where defendants have made a prima facie showing on summary judgment in a medical malpractice case, it is incumbent on plaintiff to raise a triable issue with competent, nonconclusory expert proof grounded in the record (*Bartolacci-Meir*, 149 AD3d at 571-572). Plaintiff's reargument submission does not identify any specific matter the prior order overlooked in applying that standard; it re-urges the same substantive position that the procedure was unjustified and should have been deferred or avoided. Such contentions go to disagreement with the prior order's weighing of the proof, not to an overlooked fact or misapplied principle (*Foley*, 68 AD2d at 567; *Matter of Setters*, 139 AD3d at 493).

Accordingly, reargument is denied as to unindicated surgery against Mount Sinai St. Luke's and Danne R. Lorieo, M.D.

For the foregoing reasons, it is hereby:

ORDERED that plaintiff's motion, pursuant to CPLR § 2221(d), for leave to reargue limited portions of the December 18, 2025 decision and order is denied in its entirety; and it is further

ORDERED that the parties shall contact the Trial Assignment Part (Part 40) at sfc-part40-clerk@nycourts.gov to schedule a future conference date in this matter.

This constitutes the decision and order of the court.

3/20/2026
DATE

HASA A. KINGO, J.S.C.

CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> GRANTED		<input type="checkbox"/> GRANTED IN PART	
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> SUBMIT ORDER	
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE