

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

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CA 24-01733

PRESENT: WHALEN, P.J., SMITH, GREENWOOD, DELCONTE, AND HANNAH, JJ.

EUGENE FISCH, PLAINTIFF-APPELLANT,

V

MEMORANDUM AND ORDER

CITY OF NEW YORK AND DISTRICT ATTORNEY
OF NEW YORK COUNTY, DEFENDANTS-RESPONDENTS.

EUGENE FISCH, PLAINTIFF-APPELLANT PRO SE.

MURIEL GOODE-TRUFANT, CORPORATION COUNSEL, NEW YORK CITY (HANNAH J. SAROKIN OF COUNSEL), FOR DEFENDANT-RESPONDENT CITY OF NEW YORK.

Appeal from an order of the Supreme Court, Onondaga County (Robert E. Antonacci, II, J.), entered July 16, 2024. The order denied the motion of plaintiff for leave to reargue his opposition to a prior motion for a change of venue.

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

Memorandum: Plaintiff, pro se, commenced this personal injury action pursuant to the Adult Survivors Act (see CPLR 214-j) asserting causes of action to recover damages arising from an alleged act of sexual assault. Defendant City of New York (NYC) answered the complaint and filed a demand to change venue to New York County pursuant to CPLR 504 (3). Plaintiff failed to respond to the demand, and NYC thereafter moved for a change of venue. Supreme Court, by order entered February 23, 2024 (February order), granted the motion. Plaintiff moved for leave to reargue NYC's motion, which was denied. Plaintiff then filed a motion to "[r]everse [d]ecision." The court treated the filing as another motion for leave to reargue the February order and denied plaintiff's motion by order entered July 16, 2024 (July order). Plaintiff filed a notice of appeal from the July order.

It is well settled that "[a]n order denying a motion [for leave] to reargue is not appealable" (*Empire Ins. Co. v Food City*, 167 AD2d 983, 984 [4th Dept 1990]; see *Crockett v Home Depot U.S.A., Inc.*, 237 AD3d 1604, 1606 [4th Dept 2025]). Here, plaintiff failed to appeal from the February order granting NYC's motion to change venue and

instead appealed only from the denial of his second motion for leave to reargue, and thus his appeal must be dismissed.

Entered: November 21, 2025

Ann Dillon Flynn
Clerk of the Court