

<b>Keselman v City of New York</b>
2011 NY Slip Op 34152(U)
July 20, 2011
Supreme Court, Kings County
Docket Number: 37481/06
Judge: Kenneth P. Sherman
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**SUPREME COURT  
COUNTY OF KINGS, PART 67**

**Index No.:37481/06**

**VLADIMIR KESELMAN,**  
*Plaintiffs,*

**DECISION/ORDER**

*-against-*

**Hon. Kenneth P. Sherman**

**CITY OF NEW YORK, POLICE OFFICER  
ANIBAL MARTINEZ (shield No. 8606) and  
POLICE COMMISSIONER BERNARD KERIK,**

*Defendants.*

**Recitation, as required by CPLR §2219(a), of the papers considered in the review of this motion:**

<u>Papers</u>	<u>Numbered</u>
Notice of Motion and Affidavits/Affirmations Annexed.....	<u>1-2 Ex A-C</u>
Opposing Affidavits/Affirmations.....	<u>3 Ex A-C</u>

Upon the foregoing papers, plaintiff Vladimir Keselman (plaintiff), pro se, moves for an order: (1) pursuant to CPLR 2221(d) granting leave to reargue defendants' City of New York, Police Officer Anibal Martinez, and Police Commissioner Bernard Kerik (collectively defendants or City), summary judgment motion; (2) pursuant to CPLR 3025(c) granting amendment of plaintiff's complaint nunc pro tunc; (3) pursuant to CPLR 3126(2) precluding defendants from introducing witnesses or evidence to oppose plaintiff's inattention to medical needs claims; and (4) for recusal. For the reasons stated below, plaintiff's motion is denied.

***Background***

This matter arises out of a personal injury action brought by plaintiff for injuries allegedly sustained on November 3, 2000, when plaintiff claims he was assaulted by a non-party civilian while on a New York City Transit Authority subway platform. Plaintiff commenced his action in state court against defendants on December 6, 2006.

Prior to commencement of plaintiff's state action, in October 2001, plaintiff commenced an action against the same defendants in the United States District Court for the Eastern District of New York pursuant to 42 USC § 1983 alleging deprivations of his rights under the Fourth, Fifth, and Fourteenth Amendments to the United States Constitution arising out of the November 3, 2000 incident and pendent state tort claims based on the November 3, 2000 incident. Defendants thereafter moved for summary judgment dismissing the complaint, and plaintiff cross-moved to amend the complaint. The District Court, after finding that the federal claims were without merit, declined to exercise jurisdiction over plaintiff's supplemental or pendent state law claims.

On appeal, the United States Court of Appeals for the Second Circuit affirmed the District Court's judgment in an order dated May 3, 2006 (*Keselman v City of New York*, 179 Fed Appx 774, 2006 WL 1228848, 2006 US App Lexis 11503 [2<sup>nd</sup> Cir 2006][not selected for publication in the Federal Reporter]). The Court of Appeals, addressed plaintiff's assertion that he should have been allowed to amend the complaint to add false arrest and inattention to medical needs claims on the merits and found that they were not supported by the record (179 Fed Appx at 775). The Court of Appeals thereafter denied plaintiff's petition for a rehearing.

Thereafter, defendants moved for summary judgment in the state action pending before this court and the court granted defendants' motion on November 5, 2010. The court noted that the Court of Appeals expressly addressed plaintiff's false arrest and inattention to medical needs claims on the merits and found that the motion to amend the complaint was properly denied, therefore, res judicata barred plaintiff's false arrest and inattention to medical needs claims in the state action. In any event, the court conducted an in depth analysis of each claim asserted by plaintiff in the state action, and upon a careful and complete review of the submitted documents, plaintiff's deposition testimony and relevant case law, the court granted summary judgment.

Plaintiff now brings the instant motion for leave to reargue this court's decision granting defendants summary judgment on November 5, 2010, leave to amend his complaint nunc pro tunc, preclusion of defendants' witnesses or evidence regarding his inattention to medical needs claim, and recusal.

#### *Discussion*

A motion to reargue pursuant CPLR § 2221(d), "shall be based upon matters of fact or

law allegedly overlooked or misapprehended by the court in determining the prior motion,” but “shall not include any matters of fact not offered on the prior motion.” On a motion to reargue it is within the court’s discretion to grant the motion when it appears the court may have overlooked certain facts in its initial order or misapprehended the law (*see Mazzei v Licciardi*, 47 AD3d 774 [2008]).

Here plaintiff fails to assert any matters of fact or law that this court overlooked or misapprehended in determining defendants’ motion for summary judgment. Plaintiff points to various portions of his opposition to the motion for summary judgment and argues that the court overlooked these arguments. Plaintiff also cites to numerous cases already cited to in his opposition to the summary judgment motion and argues in a conclusory fashion that the court overlooked and misapprehended the law. In the instant motion the plaintiff is simply reiterating the same arguments and citing to the same cases already submitted in the previously fully briefed summary judgment motion, and plaintiff is at best attempting to expand on those arguments. The court’s November 5, 2010 decision granting summary judgment to defendants clearly indicates that it was based on a thorough review of all submitted documents as well as relevant case law, and the court provided a thorough analysis of the legal issues and cited case law to substantiate its analysis. Plaintiff provides no basis for granting reargument in the matter as he fails to establish that the court overlooked or misapprehended any facts or law. Accordingly, plaintiff’s motion to reargue is denied.

In light of the court’s denial of plaintiff’s motion to reargue, plaintiff’s requests for preclusion pursuant to CPLR 3126(2) and amendment of the complaint pursuant to CPLR 3025, are moot.

Finally, plaintiff’s request for recusal in this matter is denied as plaintiff fails to provide any proper basis for recusal. Plaintiff’s conclusory assertion of “extreme bias” by the court appears to be grounded in the fact that the court ruled against the plaintiff in deciding the summary judgment motion. Plaintiff has failed to establish any grounds to support recusal under Judiciary Law Section 14 or under 22 NYCRR Section 100.3(E), other than the unsupported claim of “extreme bias” by the court. Therefore, the motion for recusal is denied.

#### ***Conclusion***

Accordingly, plaintiff’s motion for leave to reargue the court’s decision dated November

5, 2010 granting defendants summary judgment is denied because plaintiff failed to demonstrate that the court misapprehended or overlooked any matters of fact or law. Plaintiff's request to amend his complaint pursuant to CPLR 3025 is denied as moot, as is plaintiff's request for preclusion pursuant to CPLR 3126. Plaintiff's request for recusal is also denied.

The foregoing constitutes the Decision and Order of the Court.

July 20, 2011

  
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Kenneth P. Sherman  
Justice Supreme Court

Hon. Kenneth P. Sherman, J.S.C.