

<b>Tienken v Benedictine Hosp.</b>
2012 NY Slip Op 33921(U)
February 15, 2012
Supreme Court, Ulster County
Docket Number: 06-0070
Judge: Michael H. Melkonian
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.
This opinion is uncorrected and not selected for official publication.

2/20/12  
JT  
Dunn  
Fitz

STATE OF NEW YORK  
SUPREME COURT

COUNTY OF ULSTER

JUDY TIENKEN,

Plaintiff,

-against-

**DECISION**  
**AND**  
**ORDER**

BENEDICTINE HOSPITAL; SCOTT TIENKEN and  
TODD TIENKEN,

Defendants.

(Supreme Court, Ulster County, Motion Term, November 10, 2011)  
Index No. 06-0070 ✓  
(RJI No. 55-06-01376)

(Acting Justice Michael H. Melkonian, Presiding)

**FILED**  
**2 H 42 M**  
**MAR 05 2012**

APPEARANCES: Seligman & Seligman  
Attorneys for Plaintiff  
(Delice Seligman, Esq., of Counsel)  
70 Main Street  
Kingston, New York 12401

**Nina Postupack**  
**Ulster County Clerk**

✓ Sholes & Miller, LLP  
Attorneys for Defendant Benedictine Hospital  
(John Tackach, Esq., of Counsel)  
327 Mill Street  
P.O. Box 4609  
Poughkeepsie, New York 12602

Mainetti, Mainetti & O'Connor, P.C.  
Attorneys for Defendants Scott Tienken and Todd  
Tienken  
(Regina Fitzpatrick, Esq., of Counsel)  
303 Clinton Avenue  
P.O. Box 3058  
Kingston, New York 12402

MELKONIAN, J.:

Plaintiff Judy Tienken (“plaintiff”) moves pursuant to CPLR § 2221 for leave to reargue and on reargument to vacate the Court’s September 9, 2011 Decision and Order and reinstate her complaint.

CPLR §2221 governs motions affecting prior orders. A motion to reargue seeks to convince the Court that it overlooked or misapprehended relevant facts or misapplied relevant law. Plaintiff failed to annex a complete set of the original submissions that culminated in the Order to her present motion papers, annexing only a copy of this Court’s Order and exhibits that admittedly were never included in her original moving papers. This failure violates this Court’s Part Rule 111(1)(2):

Motions for Leave to Renew or Reargue: On any motion seeking leave to renew or reargue a prior motion, the moving party shall submit copies of all papers submitted on the prior motion. The failure to comply with this requirement shall result in the denial of the motion unless the papers on the prior motion are submitted to the Court by another party.

It seems axiomatic that on a “reargument” motion, the “initial arguments” must be considered by the Court. Sans the complete motion submissions, this Court cannot determine compliance with CPLR § 2221. In the absence of proper submissions, reargument is not available from this Court (see, CPLR § 2214(c); Sheedy v. Pataki, 236 AD2d 92; Loeb v. Tanenbaum, 124 AD2d 941).

Notwithstanding, the Court notes that in opposition to plaintiff’s motion, defendant Benedictine Hospital did attach the motion submissions. After review, the Court finds that

plaintiff's motion does not actually qualify as a valid motion to reargue. Notwithstanding her machinations, plaintiff has failed to meet her burden of demonstrating that the Court overlooked or misapprehended any argument or fact that was originally before the Court.

A motion for leave to reargue is addressed to the sound discretion of the Court and may be granted only upon a showing that the Court overlooked, misapplied or misapprehended the facts or the law, or for some reason mistakenly arrived at its earlier decision (CPLR 2221[d][2]; Spa Realty Associates v Springs Associates, 213 AD2d 781, 783; Matter of Mayer v National Arts Club, 192 AD2d 863, 865). Having thoroughly reviewed its prior determination and the papers submitted herein, this Court concludes that it has not overlooked or misapplied any controlling principles of law or fact. Nor can the Court glean from the record herein where it had, for some other reason, mistakenly arrived at its earlier decision. CPLR § 2221 motions are not intended to afford unsuccessful parties repetitive opportunities to reargue issues previously decided or, as is the case here, to present arguments that were not previously asserted (Foley v Roche, 68 AD2d 558, 567; Matter of Mayer v National Arts Club, 192 AD2d 863, 865); Pahl Equipment Corporation v Kassis, 182 AD2d 22, 27, lv den, dsmd 80 NY2d 1005). This is nothing more than a request that the Court reverse itself, and the Court denies leave to reargue in the exercise of the Court's discretion.

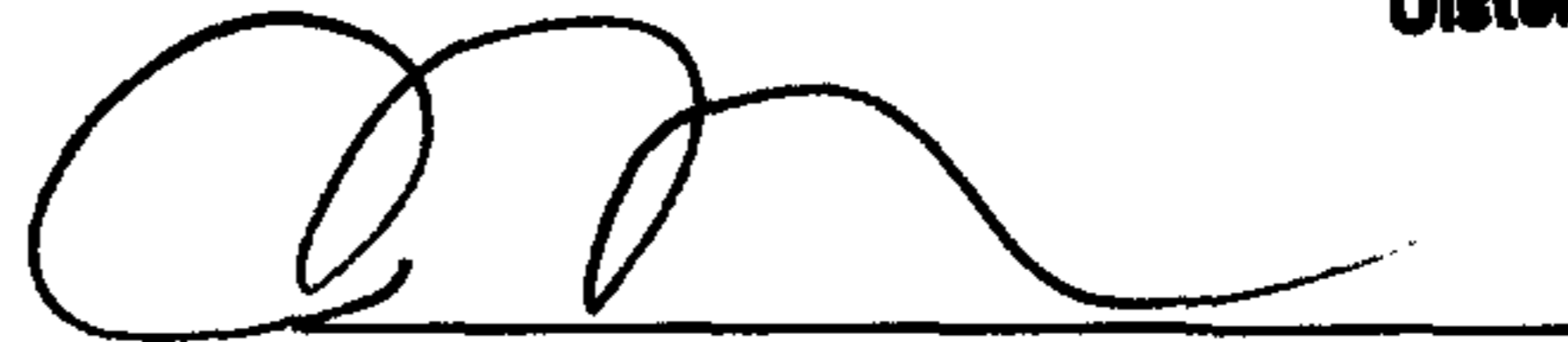
Accordingly, plaintiff's motion to reargue and on reargument to vacate the prior order is denied without costs.

This constitutes the Decision and Order of the Court. All papers including this Decision and Order are returned to the attorney for defendant Benedictine Hospital. The

signing of this Decision and Order shall not constitute entry or filing under CPLR Rule 2220. Counsel is not relieved from the applicable provisions of that Rule respecting filing, entry and Notice of Entry.

SO ORDERED.  
ENTER.

Dated: Troy, New York  
February 15, 2012



MICHAEL H. MELKONIAN  
Acting Supreme Court Justice

**FILED**  
**2 H 42 M**  
**MAR 05 2012**

**Nina Postupack**  
**Ulster County Clerk**

**Papers Considered:**

1. Notice of Motion dated October 27, 2011;
2. Affirmation of Delice Seligman, Esq., dated October 26, 2011, with exhibits annexed;
3. Affirmation of John Tackach, Esq., dated November 7, 2011, with exhibits annexed;
4. Affirmation of Regina Fitzpatrick, Esq., dated November 2, 2011
5. Affirmation Delice Seligman, Esq., dated November 14, 2011.