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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. KATHRYN FREED JUSTICE OF SUPREME COURT **PART** 5

Justice

Index Number : 100139/2011
PHAN, STEVEN

vs

CITY OF NEW YORK
Sequence Number : 004 CALENDAR
REARGUMENT/RECONSIDERATION

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

The following papers, numbered 1 to _____, were read on this motion to/for _____

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ **No(s).** _____

Answering Affidavits — Exhibits _____ **No(s).** _____

Replying Affidavits _____ **No(s).** _____

Upon the foregoing papers, it is ordered that this motion is

DECIDED IN ACCORDANCE WITH
ACCOMPANYING DECISION / ORDER

FILED
MAR 14 2014
NEW YORK
COUNTY CLERK'S OFFICE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

Dated: 3-12-14
~~MAR 11 2014~~ MAR 12 2014

_____, J.S.C.
HON. KATHRYN FREED
JUSTICE OF SUPREME COURT

1. CHECK ONE: ..... ☐ CASE DISPOSED ☐ NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: .....MOTION IS: ☒ GRANTED ☐ DENIED ☒ GRANTED IN PART ☐ OTHER
3. CHECK IF APPROPRIATE: ..... ☒ SETTLE ORDER ☐ SUBMIT ORDER
☐ DO NOT POST ☐ FIDUCIARY APPOINTMENT ☐ REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: Part 5

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STEVEN PHAN a/k/a LAT TAI PHAN,

Plaintiff,

-against-

THE CITY OF NEW YORK, NEW YORK CITY POLICE DEPARTMENT, IESHEAL ARNOLD, WILLIAM ROBBINS, DYSON WILLIAMS, AMY H. FINEBERG and ABRAHAM B. FINEBERG,

Defendants.

DECISION and ORDER
Index. No. 100139/11
Action No. 1

----------X

AMY FINEBERG and ABRAHAM FINEBERG,

Plaintiffs,

-against-

THE CITY OF NEW YORK, NEW YORK CITY POLICE DEPARTMENT, IESHEAL R. ARNOLD, WILLIAM ROBBINS, and DYSON WILLIAMS,

Defendants.

Index No. ~~109735/11~~
Action No. 2

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CAPTION CONTINUED ON FOLLOWING PAGE

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PATRICIA CRUZ and IN THE MATTER OF THE CLAIM OF THE ESTATE OF SISTER MARY CELINE GRAHAM BY MARION GRAHAM, JR., AS NEPHEW AND ADMINISTRATOR,

Plaintiffs,

-against-

Index No. ~~400355/12~~
Action No. 3

CITY OF NEW YORK, THE NEW YORK CITY POLICE DEPARTMENT, DYSON WILLIAMS, WILLIAM ROBBINS, and JOHN DOE representing as yet unidentified robbery suspect, POLICE OFFICER P.O. JARVIS, in his individual and official capacity, "JANE and JOHN DOE" POLICE OFFICERS 1-10, Shield Nos. Unknown, individually and in their official capacities, as police officers of the NEW YORK POLICE DEPARTMENT, AMY H. FINEBERG, and ABRAHAM B. FINEBERG,

Defendants.

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HON. KATHRYN E. FREED:

RECITATION, AS REQUIRED BY CPLR 2219(a), OF THE PAPERS CONSIDERED IN THE REVIEW OF THIS MOTION.

PAPERS	NUMBERED
NOTICE OF MOTION AND AFFIDAVITS ANNEXED.....	1-2(Exs. A-I)
ORDER TO SHOW CAUSE AND AFFIDAVITS ANNEXED.....	.....
ANSWERING AFFIDAVITS.....	.....3.....
REPLYING AFFIDAVITS.....	.....
EXHIBITS.....	.....
STIPULATIONS.....	.....
OTHER.....	.....

UPON THE FOREGOING CITED PAPERS, THIS DECISION/ORDER ON THIS MOTION IS AS FOLLOWS:

Plaintiffs in Action No. 3, Marion Graham, Jr. , as Administrator of the Estate of Sister Mary Celine Graham, and Patricia Cruz, by and through their attorneys, the Law Offices of Frederick K.

Brewington, move for an Order, pursuant to CPLR 2221, seeking reargument of a prior motion made, pursuant to 22 NYCRR §520.11(a)(1)(c), for leave to admit Benjamin J. Crump, Esq. and Jasmine O. M. Rand to appear as counsel for plaintiffs pro hac vice. Counsel for defendant William Robbins submits an affirmation in partial opposition to the motion. Based on a review of the papers submitted and the relevant statutes and case law, the motion is **denied**.

Factual and Procedural Background:

This action, sounding, inter alia, in negligence and wrongful death, was commenced by plaintiffs Patricia Cruz ("Cruz") and Marion Graham, Jr. ("Graham"), as Administrator of the Estate of Sister Mary Celine Graham, on or about June 21, 2011. Plaintiffs' action against, inter alia, the City of New York, the New York City Police Department ("NYPD"), Dyson Williams, and William Robbins, was subsequently consolidated, under Index Number 100139/11, with an action commenced by Amy Fineberg and Abraham Fineberg and an action commenced by Steven Phan a/k/a Lat Tai Phan.

On or about November 30, 2012, Frederick J. Brewington, Esq., counsel for Cruz and Graham, moved for an Order, pursuant to 22 NYCRR §520.11(a)(1)(c), seeking to have Benjamin J. Crump, a Florida attorney, admitted to practice in New York pro hac vice for the purpose of representing those plaintiffs. On or about January 30, 2013, Mr. Brewington's office also moved to have Jasmine O. M. Rand, also a Florida attorney, admitted pro hac vice to assist in the representation of plaintiffs. By Order dated March 19, 2013 and entered March 25, 2013, this Court denied the motion relating to Mr. Crump, stating that:

> [P]laintiff's counsel, Mr. Brewington, fails to apprise the Court of the specific facts of the instant case; if he intends to be replaced by Mr. Crump in the instant action or if he is to be merely assisted by Mr. Crump; and how Mr. Crump's expertise will benefit plaintiff[s]. Most importantly, he fails to provide this Court with an affidavit from plaintiff[s] agreeing to the retention of Mr. Crump to represent [them] in any capacity."[1]

Mr. Brewington subsequently moved, in October of 2013, to have Mr. Crump and Ms. Rand admitted pro hac vice as counsel for plaintiffs Cruz and Graham. In support of the motion, Mr. Brewington submitted a sponsoring affidavit in which he set forth "underlying factual allegations." Mr. Brewington stated, inter alia, that the action arose from a high speed car chase in which Cruz was injured and Graham's aunt was killed. According to Mr. Brewington, defendants Williams and Robbins were robbery suspects and, prior to the chase, while the NYPD was handcuffing defendant Robbins, who was a passenger in Williams' vehicle, Robbins moved to the driver's side of the vehicle and drove away, leading to the pursuit by the NYPD in which the alleged injuries occurred.

In his affirmation, Mr. Brewington states that he has known Mr. Crump and Ms. Rand for two and one-half years, that Mr. Crump and Ms. Rand are admitted to practice in the State of Florida, that they are "of good moral character, and are fully qualified to practice in [the State of New York]", and that they "believe in the fundamental principles of the Constitution of the United States and will support them."

Mr. Brewington further stated that "[g]iven the complex nature of this litigation, [he and p]laintiffs would benefit considerably by the assistance of [Mr. Crump] and [Ms. Rand]."

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[1]The Court file indicates that no decision was rendered regarding the January, 2013 motion seeking to admit Ms. Rand pro hac vice.

He added that "Mr. Crump's and Ms. Rand's experience as trial lawyers in multiple venues, knowledge of trial practice, and agreement with our office in the division of labor will serve the client and greatly benefit the full litigation of this matter and aid in judicial economy."

In support of the motion, Mr. Crump and Ms. Rand submitted verified petitions in which they each stated that they were "familiar with, and shall comply with the standards of professional conduct imposed upon members of the New York bar, including the rules of court governing the conduct of attorneys, and the Rules of Professional Conduct promulgated as joint rules of the Appellate Divisions..." Mr. Crump and Ms. Rand also submitted their respective resumes and proof of their good standing in the Florida Bar.

Graham supported the motion with an affidavit in which he stated that "Mr. Crump's and Ms. Rand's expertise will benefit me, especially since I live in Florida," whereas Cruz simply stated that "Mr. Crump's and Ms. Rand's expertise will benefit me." Cruz and Graham stated in their respective affidavits that they agreed to allow Mr. Crump, Ms. Rand, and Mr. Brewington to represent them "in any capacity."

In an affirmation submitted "in partial opposition" to plaintiffs' motion, Robbins' attorney, who stated that Robbins "[took] no position" with respect to the pro hac vice motion, asserted that Cruz improperly omitted her address from her affidavit in support of the plaintiffs' motion. Robbins' attorney also argued that Mr. Brewington's recitation of the facts of the case was incorrect insofar as he reversed the roles of Robbins and Williams in the events leading up to the plaintiffs' injuries. Specifically, counsel for Robbins stated that it was Williams who moved into the driver's seat of the vehicle and departed the scene while Robbins was being handcuffed. Plaintiffs submitted no reply to Robbins' affirmation in partial opposition.

By Order dated December 10, 2013, this Court denied, without prejudice, plaintiffs' motion to admit Mr. Crump and Ms. Rand pro hac vice in New York. In so holding, this court reasoned that Mr. Brewington "fail[ed] to apprise the Court of the specific facts of the instant case; if he intends to be replaced by Mr. Crump in the instant action or if he is to be merely assisted by Mr. Crump; and how Mr. Crump's expertise will benefit plaintiff. Most importantly, he fails to provide this Court with an affidavit from plaintiff agreeing to the retention of Mr. Crump to represent her in any capacity."[2]

Following the denial of plaintiffs' motion, they brought the instant motion for reargument.

Plaintiffs' Position:

Plaintiffs assert that reargument of their motion to admit Mr. Crump and Ms. Rand pro hac vice should be granted because this Court overlooked the law and the facts in denying their motion. In support of their argument, plaintiffs assert that they rectified each of the four deficiencies cited by this Court in its Order of March 19, 2013 denying plaintiffs' initial motion to admit Mr. Crump pro hac vice. Specifically, they assert that, in their second motion, they set forth the facts of the case, clarified whether Mr. Brewington intended to be replaced or assisted by the Florida attorneys, elaborated on how the skills of Mr. Crump and Ms. Rand would be helpful to plaintiffs, and provided plaintiffs' affidavits stating that they agreed to be represented by Mr. Crump and Ms. Rand in any capacity.

[2]Since the Order was silent regarding that branch of plaintiffs' motion seeking Ms. Rand's admission pro hac vice, such relief was implicitly denied.

Legal Conclusions:

A motion for leave to reargue "shall be based upon matters of fact allegedly overlooked or misapprehended by the court in determining the prior motion." CPLR 2221(d)(2). Such motion "is addressed to the sound discretion of the court." *William P. Pahl Equip. Corp. v. Kassis*, 182 A.D.2d 22, 27 (1st Dept.1992), *lv dismissed*, 80 N.Y.2d 1005 (1992), *rearg denied* 81 N.Y.2d 782 (1993). Reargument is not designed or intended to afford the unsuccessful party successive opportunities to reargue issues previously decided (*see Pro Brokerage v. Home Ins. Co.*, 99 A.D.2d 971 [1st Dept. 1984]), or to present arguments different from those originally asserted. *William P.Pahl Equip. Corp. v. Kassis, supra* at 27; *Amato v. Lord & Taylor, Inc.*,10 A.D.3d 374 (2d Dept. 2004). On reargument, the court's attention must be drawn to any controlling fact or applicable principle of law which was misconstrued or overlooked. *See Macklowe v. Browning School*, 80 A.D.2d 790 (1st Dept. 1981). Professor David Siegel in N.Y. Prac, § 254, at 449 (5th ed) succinctly instructs that a motion to reargue "is based on no new proof; it seeks to convince the court that it was wrong and ought to change its mind."

"Pursuant to 22 NYCRR §520.11(a)(1), whether an out-of-[s]tate attorney should be admitted pro hac vice to participate in a particular matter is a determination best left to [the] Supreme Court's discretion." *Neal v Ecolab, Inc.*, 252 AD2d 716 (3d Dept 1998); *see Perkins v Elbilia*, 90 AD3d 543 (1st Dept 2011). In the exercise of its discretion, this Court finds that plaintiffs have failed to set forth sufficient reasons why Mr. Crump and Ms. Rand should be admitted pro hac vice and that it did not overlook or misconstrue any issues of fact or law in denying plaintiffs' motion which warrant the granting of the instant motion for reargument.

Contrary to plaintiffs' contention, they failed to set forth in their underlying motion a "robust explanation" as to how Mr. Crump's and Ms. Rand's expertise would assist them in this litigation. Rather, Mr. Brewington stated in support of plaintiffs' motion to admit Mr. Crump and Ms. Rand pro hac vice that:

> Mr. Crump's and Ms. Rand's experience as trial lawyers in multiple venues, knowledge of trial practice, and agreement with our office in the division of labor will serve the client and greatly benefit the full litigation of this matter and aid in judicial economy.

This explanation is conclusory at best. It provides no detail whatsoever regarding any special skill or experience these Florida attorneys have which would warrant their admission pro hac vice in this particular matter. *Cf.*, *Perkins v Elbilia, supra* at 544. Further, plaintiffs fail "to clarify the role that [Mr. Brewington, Mr. Crump, and Ms. Rand] would assume" in the litigation. *Neal v Ecolab, Inc., supra* at 716.

Although Mr. Brewington asserts that plaintiffs' underlying motion contained five pages of facts, which were sufficient to rectify plaintiffs' failure to provide the same in their initial motion seeking to admit Mr. Crump pro hac vice, it is evident from Robbins' affirmation in partial opposition to the motion that there is a possible error in the facts provided regarding the roles of Robbins and Williams in the events giving rise to plaintiffs' injuries. Since plaintiffs neither submitted a reply affirmation addressing this point, nor set forth the source of the facts submitted, this Court cannot discern from the papers submitted whether the facts, as presented by plaintiffs, are accurate.

Finally, this Court notes that plaintiffs failed to set forth in their underlying motion whether

Mr. Brewington would be their attorney of record, as required by 22 NYCRR §520.11(c), or that Mr. Crump and Ms. Rand would be "subject to the jurisdiction of the courts of [New York] State with respect to any acts occurring during the course of [their] participation in [this] matter." 22 NYCRR §520.11(e)(2); *see Pludeman v Northern Leasing Systems, Inc.*, 2011 N. Y. Misc. LEXIS 3983 (Sup Ct NY County 2011). Although the underlying motion was not denied on these grounds, this Court notes that such requirements must be met should plaintiffs move once again to admit Mr. Crump and Ms. Rand pro hac vice in this litigation.

Therefore, in accordance with the foregoing, it is hereby:

ORDERED that plaintiffs' motion for reargument of their motion to have Benjamin L. Crump and Jasmine O. M. Rand admitted pro hac vice is denied; and it is further,

ORDERED that this constitutes the decision and order of the Court.

DATED: March 12, 2014

ENTER:

FILED
MAR 12 2014
NEW YORK
COUNTY CLERK'S OFFICE

Hon. Kathryn E. Freed,
J.S.C.

HON. KATHRYN FREED
JUSTICE OF SUPREME COURT

MAR 12 2014