

<b>Buongiovanni v Hasin</b>
2016 NY Slip Op 32969(U)
January 6, 2016
Supreme Court, Rockland County
Docket Number: 033080/2014
Judge: William A. Kelly
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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ROCKLAND

PRESENT:  
HON. WILLIAM A. KELLY  
SUPREME COURT JUSTICE

-----X  
CYNTHIA BUONGIOVANNI,

Plaintiff,

Index No. 033080/2014

-against-

DECISION & ORDER

DAVID V. HASIN, ESQ. and THE LAW OFFICE  
OF DAVID V. HASIN,

Defendants.  
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The following papers were read on the motion of plaintiff for an Order, granting reargument of the defendant’s motion to renew his motion to dismiss the complaint:

Notice of Motion - Affirmation	1-2
Memorandum of Law in Opposition	3

Upon the foregoing papers it is hereby ORDERED that the plaintiff’s motion is denied.

The instant action is based upon the defendant’s representation of plaintiff in a divorce action. The defendant undertook representation of the plaintiff in April of 2010. After obtaining *pendente lite* relief for the plaintiff, the defendant’s motion to be relieved as counsel was granted on October 19, 2011.

An action alleging professional negligence must “demonstrate that the attorney ‘failed to exercise the ordinary reasonable skill and knowledge commonly possessed by a member of the legal profession’ and that the attorney’s breach of this duty proximately caused plaintiff to sustain actual and ascertainable damages.” Rudolf v. Shayne, Dachs, Stanisci, Corker & Sauer, 8 N.Y.3d 438, 442 (2007)(quoting McCoy v. Feinman, 99 N.Y.2d 295 (2002)). See also Tooma v. Grossbarth, 121 A.D.3d 1093 (2nd Dep’t 2014); Katz v. Hertzfeld & Rubin, 48 A.D.3d 640 (2nd Dep’t 2008).

In denying the motion to dismiss the first count, this Court distinguished the instant case from cases where “control of the outcome of the litigation was wholly in the hands of successor counsel,” viewing the allegations in the light most favorable to the plaintiff, the complaint adequately alleged that the plaintiff was permanently damaged by the actions of the defendants and the ultimate outcome of the litigation was adversely affected. Tooma v. Grossbarth, 121 A.D.3d 1093 (2nd Dep’t 2014). The Court further held that, unlike the situations presented in Katz v. Hertzfeld & Rubin, 48 A.D.3d 640 (2nd Dep’t 2008) and Ramcharan v. Pariser, 20 A.D.3d 556 (2nd Dep’t 2005), at this point in the litigation, the Court cannot conclude as a matter of law that successor counsel had an adequate opportunity to correct the alleged inadequacies in the defendant’s representation.

However, following denial of the initial motion, the appellate division vacated the judgment of divorce in the underlying divorce action and ordered a new trial.

In granting renewal, this Court held that, the plaintiff and her counsel will now have sufficient time to prepare and litigate the divorce action. Now “control of the outcome of the litigation [is] wholly in the hands of successor counsel.”

Tooma v. Grossbarth, 121 A.D.3d 1093 (2nd Dep't 2014). Plaintiff's counsel in the divorce now has a "sufficient opportunity to protect the plaintiffs' rights by pursuing any remedies it deemed appropriate on their behalf." Katz v. Hertzfeld & Rubin, 48 A.D.3d 640 (2nd Dep't 2008). Accordingly, any deficiencies in the defendant's performance as plaintiff's counsel cannot be the proximate cause of any injury to plaintiff.

CPLR §2221 governs motions affecting prior orders. A motion to re-argue lies within the discretion of the Court. Barry v. Good Samaritan Hospital, 86 A.D.2d 853 (2nd Dep't 1982). A motion to reargue seeks to convince the court that it overlooked or misapprehended relevant facts or misapplied relevant law. Its purpose is not to permit a party to reargue once again the very questions the court has already decided. Foley v. Roche, 68 A.D.2d 558 (1st Dep't 1979).

In this case, the plaintiff has failed to convince this Court that it overlooked or misapprehended relevant facts or misapplied relevant law. The plaintiff bases her motion on the fact that despite the reversal, the defendant's conduct irreversibly prejudiced in that she has been receiving insufficient maintenance since the time of defendant's representation. While it may be possible that the plaintiff has been receiving insufficient support, the inadequacy can be addressed in the ongoing litigation.

Therefore, the Court, in its discretion, will not grant reargument of its prior Order.

This Decision shall constitute the Order of the Court.

**E N T E R**

Dated: New City, New York  
January 6, 2016

  
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HON. WILLIAM A. KELLY  
J.S.C.