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| Hernandez v Marcano |
| 2017 NY Slip Op 32872(U) |
| June 23, 2017 |
| Supreme Court, Bronx County |
| Docket Number: 0305348/2011 |
| Judge: Doris M. Gonzalez |
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NEW YORK SUPREME COURT - COUNTY OF BRONX

JUN 26 2017

PART 24

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|---------------------|--------------------------|
| Case Disposed | <input type="checkbox"/> |
| Settle Order | <input type="checkbox"/> |
| Schedule Appearance | <input type="checkbox"/> |

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX:

HERNANDEZ, MARIA

Index No. 0305348/2011

-against-

Hon. DORIS GONZALEZ,

MARCANO, TREVOR

Justice Supreme Court

The following papers numbered 1 to _____ Read on this motion, REARGUE/RENEW/RESETTLE/RECONSI
Noticed on June 29 2016 and duly submitted as No. _____ on the Motion Calendar of _____

| | <u>PAPERS NUMBERED</u> | |
|--|------------------------|--|
| Notice of Motion - Order to Show Cause - Exhibits and Affidavits Annexed | | |
| Answering Affidavit and Exhibits | | |
| Replying Affidavit and Exhibits | | |
| _____ Affidavits and Exhibits | | |
| Pleadings - Exhibit | | |
| Stipulation(s) - Referee's Report - Minutes | | |
| Filed Papers | | |
| Memoranda of Law | | |

Upon the foregoing papers this

Motion is Respectfully Referred to: _____
Justice: _____
Dated: _____

See Memorandum Decision

Dated: 6 23, 17

Hon. 
DORIS GONZALEZ, J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

-----X
MARIA HERNANDEZ,

Plaintiff,

Index No. 305348/2011

v.

DECISION AND ORDER

TREVOR MARCANO, CRESCENT CAB CORP.,
DANIEL ALVARADO & MICHAEL COOK,

Defendants.

-----X

Decision rendered pursuant to CPLR §9001.

Recitation, as required by CPLR§2219[a], of the papers considered in the review of this motion:

| Papers | Numbered |
|---|-----------------|
| <u>Notice of Motion and Affirmation</u> | 1, 2 |
| <u>Affirmation in Opposition</u> | 3 |
| <u>Reply Affirmation</u> | 4 |

The plaintiff moves by Notice of Motion, dated June 7, 2016, by James A. Domini, Esq., Attorney for the plaintiff, to re-argue the Decision and Order of Honorable Sharon Aarons, dated April 21, 2016, pursuant to CPLR Rule 2221, and upon such re-argument for an order denying the defendants motion for summary judgment.

The defendant opposes the motion, by Thomas Torto, Esq., Attorney for the defendants Trevor Marcano and Crescent Cab Corp., by Affirmation in Opposition, dated June 22, 2016. A Reply Affirmation by James A. Domini, Esq., dated June 27, 2016, was submitted in support of the motion.

FACTUAL BACKGROUND

This is an action to recover damages for personal injuries allegedly sustained by the plaintiff arising from a multi-vehicle accident that occurred, on or about April 15, 2013, on the FDR Drive, in the County, City and State of New York. It is alleged that the plaintiff was traveling on the FDR Drive when her vehicle was struck in the rear.

PROCEDURAL HISTORY

The defendants Trevor Marcano and Crescent Cab Corp. moved by Notice of Motion, dated May 19, 2015, for an order granting summary judgment upon the grounds that the plaintiff did not sustain a serious injury within the meaning of Insurance Law §5102(d). By order, dated April 21, 2016, Justice Sharon Aarons granted the defendants' motion for summary judgment.

DISCUSSION OF LAW

The plaintiff seeks to submit an affirmed medical report that plaintiff claims was inadvertently omitted from her opposition papers. By order, dated April 21, 2016, Justice Sharon Aarons previously found that defendant sustained its burden in showing its entitlement to summary judgment, and dismissed the complaint.

An application to renew must be based upon additional material facts which existed at the time that the prior motion was made but which were not then known to the party seeking leave to renew and a valid excuse must be offered for not supplying such facts (CPLR 2221[e]; see also *Elson v. Defren*, 283 A.D.2d 109, 113; *Tishman Constr. Corp. v. City of New York*, 280 A.D.2d 374, 376). A request for renewal should be rejected when the moving party fails to offer a reasonable excuse for not submitting the new material on the previous motion (see *Linden v. Moskowitz*, 294 A.D.2d 114, 116; *Chelsea Piers Management v. Forest Electric Corp.*, 281 A.D.2d 252; *Matter of Creole Enterprises v. Giuliani*, 240 A.D.2d 279, lv dismissed 90 N.Y.2d 936).

Plaintiff's excuse is nothing more than unsubstantiated law office failure since she has failed to provide a "detailed and credible" explanation as to why the medical report was omitted (See *Ogunmoyin v 1515 Broadway Fee Owner, LLC*, 85 AD3d 991, 992 [2nd Dept 2011]).

Pursuant to Rule 2221 of the New York Civil Practice Law and Rules, a motion to reargue must be based upon the contention that the Court overlooked or misapprehended relevant facts or misapplied relevant law. Its purpose is not to permit a party to reargue the issues the Court has already decided. (*Foley v Roche*, 68 A.D.2d 558 [1st Dept. 1979]). Even assuming *arguendo*, the plaintiff has failed to establish that the Court has overlooked or misapprehended relevant facts or misapplied relevant law that would warrant this Court's reconsideration of Justice Sharon Aarons prior decision of April 21, 2016.

ACCORDINGLY, after consideration of the foregoing, the applicable law, a review of the Court file, and due deliberation; it is hereby

ORDERED, the plaintiff's motion to reargue is denied in its entirety.

This constitutes the Decision and Order of the Court.

Dated: June 23, 2017
Bronx, New York

ENTER:



HON. DORIS M. GONZALEZ, J.S.C.