

Aaronson v Maglione
2019 NY Slip Op 31382(U)
May 15, 2019
Supreme Court, New York County
Docket Number: 151356/2018
Judge: Adam Silvera
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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART IAS MOTION 22**

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ALAN AARONSON, BILLYE AARONSON	INDEX NO. <u>151356/2018</u>
Plaintiff,	MOTION DATE <u>04/11/2019</u>
- v -	MOTION SEQ. NO. <u>002</u>
MICHAEL MAGLIONE,	
Defendant.	

DECISION AND ORDER

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HON. ADAM SILVERA:

The following e-filed documents, listed by NYSCEF document number (Motion 002) 28, 29, 30, 31, 32, 33, 34, 35, 36
were read on this motion to/for RENEWAL.

Upon the foregoing documents, it is ORDERED that defendant's motion to renew and reargue is denied for the reasons set forth below. Before the court is defendant's Motion Sequence 002 to reargue and renew the court's decision of March 6, 2019, on the issue of whether defendant Michael A. Maglione experienced a sudden medical emergency and, whether said medical emergency was unforeseen, and upon granting reargument, to issue an Order denying plaintiffs' motion for summary judgment, in its entirety. Plaintiffs oppose the motion.

BACKGROUND

The suit at bar stems from an incident which occurred on September 9, 2017, plaintiffs were passengers in a vehicle operated by defendant Michael A. Maglione when defendant's vehicle lost control and collided with a guard rail on State Street in the County of Jefferson, Village of Clayton, State of New York. In a March 6, 2019 Decision/Order, this court granted plaintiffs' motion, motion sequence 001, for summary judgment, pursuant to CPLR 3212, on the

issue of liability in favor of plaintiffs and against defendant. Here, defendant argues that “the Court failed to address the fact that defendant submitted sufficient evidentiary proof to raise a triable issue of fact on whether [defendant] experienced a sudden medical emergency and, whether said medical emergency was unforeseen” (Mot at 1). Further, defendant moves for renewal on the basis that it has produced additional medical records in support of its previously served Affidavits.

DISCUSSION

CPLR 2221(d)(2) permits a party to move for leave to reargue a decision upon a showing that the court misapprehended the law in rendering its initial decision. “A motion for leave to reargue pursuant to CPLR 2221 is addressed to the sound discretion of the court and may be granted only upon a showing that the court overlooked or misapprehended the facts or the law or for some reason mistakenly arrived at its earlier decision.” *William P. Pahl Equip. Corp. v Kassis*, 182 AD2d 22, 27 (1st Dep’t 1992), *appeal denied in part, dismissed in part* 80 NY2d 1005 (1992) (internal quotations omitted). A motion to renew under CPLR 2221(e), is intended to draw the Court’s attention to new or additional facts that were unavailable at the time the parties filed the original motion and the moving party must offer a valid excuse of unavailability for not submitting the additional facts upon original application (*Lee v Ogden Allied Maintenance Corp.*, 226 AD2d 226 [1st Dep’t 1996]).

Here, in the original motion, the Court finds that it did not overlook or misapprehend the facts or law or mistakenly arrive to its decision. Further, for the reasons mentioned below, the Court does not find that the additional medical records submitted by defendant support defendant’s argument that defendant’s medical condition of sleep apnea caused defendant to experience a sudden medical emergency that caused the accident at issue.

Renew and Reargue

Defendant unconvincingly argues that this Court misapprehended both the law and the facts in motion sequence 001. Defendant proffers the same argument it did in opposition to plaintiffs' motion for summary judgment. Defendant alleges that the Court did not consider the Affidavits submitted by defendant in opposition to motion sequence 001; however, the Court did indeed address defendants Affidavits. The Affidavits at issue merely stated that defendant was diagnosed with sleep apnea after the accident and provide no causal relation or definitive statement by defendant's doctor that defendant's medical condition of sleep apnea is related to the accident.

Defendant hinges its argument on *Rivera v New York City Tr. Auth.*, 54 AD3d 545, 549 [1st Dept 2008], and argues that the Affidavit of defendant Maglione and Dr. Wieber rebutted plaintiff's prima facie showing of negligence in motion sequence 001. However, *Rivera* is distinguishable from the present set of facts as the defendant driver's opposition in *Rivera* included a sworn affidavit from a doctor that provided an opinion within a reasonable degree of medical certainty regarding causation of the accident and defendant's medical condition. In contrast to *Rivera*, defendant Maglione's doctor made no such connection in the Affidavit submitted in motion sequence 001.

Regarding the branch of defendant's motion for renewal based on additional medical records, the Court finds that defendant fails to comply with CPLR § 2221(e). As stated above, the moving party must offer a valid excuse of unavailability for not submitting the additional facts upon original application (*Lee*, 226 AD2d 226 [1st Dep't 1996]). Here, defendant fails to proffer a sufficient explanation for why it did not provide the additional medical records, attached to the present motion as Exhibit D & E, at the time their opposition papers were filed.

The medical reports are dated May 3, 2018, July 27, 2018, and the Department of Motor Vehicles Physician Statement was available August 1, 2018, several months before defendant submitted its opposition papers. Thus, defendant has failed to meet its burden to entitle it to an Order granting reargument and renewal of this Court's Decision and Order dated March 6, 2019.

Accordingly, it is


ORDERED that defendant's Motion Sequence 002 to reargue and renew the court's Decision and Order of March 6, 2019, on the issue of whether defendant Michael A. Maglione experienced a sudden medical emergency and, whether said medical emergency was unforeseen, and to issue an Order denying plaintiffs' motion for summary judgment is denied in its entirety; and it is further

ORDERED that all parties appear for a Compliance Conference on August 2, 2019, at 9:30 AM, in room 106 of 80 Centre street; and it is further

ORDERED that within 30 days of entry, plaintiffs shall serve a copy of this decision/order upon defendant with notice of entry.

This constitutes the Decision/Order of the Court.

5/15/2019
DATE


ADAM SILVERA, J.S.C.

CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> GRANTED		<input type="checkbox"/> GRANTED IN PART	
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> SUBMIT ORDER	
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE