

**Hudson Pointe at Riverdale Ctr. for Nursing &
Rehabilitation v Damianakos**

2019 NY Slip Op 31618(U)

June 4, 2019

Supreme Court, New York County

Docket Number: 654998/17

Judge: Arthur F. Engoron

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY - - PART 37

HUDSON POINTE AT RIVERDALE CENTER
FOR NURSING & REHABILITATION,

Index No.: 654998/17

Plaintiff,

- against -

DECISION/ORDER

PHAEDRA DAMIANAKOS,
ANASTASIA DAMIANAKOS, and
MARIA DAMIANAKOS,
Defendants.

ENGORON, A, J.:

Plaintiff Hudson Pointe at Riverdale Center for Nursing & Rehabilitation (Hudson) commenced this action to recover money allegedly owed by defendants Phaedra Damianakos, Anastasia Damianakos and Maria Damianakos for health care services provided to defendant Phaedra Damianakos, alleging causes of action for breach of implied contract, fraudulent conveyance, and unjust enrichment. The action was commenced in July 2017, and in April 2018, upon defendants' failure to answer or appear, Hudson moved for a default judgment. Defendants then served an answer, which was rejected by plaintiff, and opposed the motion for a default on the sole grounds that Hudson was not prejudiced by the delay in answering and courts favor determination of matters on the merits. By decision and order dated August 10, 2018, the court granted plaintiff's motion, finding defendants failed to offer a reasonable excuse for their delay in answering or a meritorious defense, and awarded plaintiff a judgment in the amount of \$37,787.84, plus interest, costs and disbursements. Defendants now move, pursuant to CPLR 2221, for leave to renew and reargue the prior motion.

Pursuant to CPLR 2221 (d) (2), a motion for leave to reargue "shall be based upon

matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion, but shall not include any matters of fact not offered on the prior motion.” A motion for leave to renew pursuant to CPLR 2221 (e) (2) “shall be based upon new facts not offered on the prior motion that would change the prior determination or shall demonstrate that there has been a change in the law that would change the prior determination.” *See Foley v Roche*, 68 AD2d 558 (1st Dept 1979). “A combined motion for leave to reargue and leave to renew shall identify separately and support separately each item of relief sought.” CPLR 2221 (f).

“A motion for reargument is addressed to the discretion of the court, and is intended to give a party an opportunity to demonstrate that the court overlooked or misapprehended the relevant facts, or misapplied a controlling principle of law.” *Rosenblum v Corcoran Group Eastside Inc.*, 2014 WL 1767597, *5, 2014 NY Misc LEXIS 1994, *8, 2014 NY Slip Op 31102(U) (Sup Ct, NY County 2014), citing *Foley*, 68 AD2d at 567; *see Hernandez v St. Stephen of Hungary School*, 72 AD3d 595, 595 (1st Dept 2010). “Reargument is not designed to afford the unsuccessful party successive opportunities to reargue issues previously decided or to present arguments different from those originally asserted.” *William P. Pahl Equip. Corp. v Kassis*, 182 AD2d 22, 27 (1st Dept 1992) (internal citations omitted); *see Matter of Setters v AI Props. & Devs. (USA) Corp.*, 139 AD3d 492, 492 (1st Dept 2016); *Matter of Carter v Carter*, 81 AD3d 819, 820 (2d Dept 2011); *McGill v Goldman*, 261 AD2d 593, 594 (2d Dept 1999); *Foley*, 68 AD2d at 567-568.

“A motion to renew under CPLR 2221, on the other hand, is intended to draw the court's attention to new or additional facts which, although in existence at the time of the original motion, were unknown to the party seeking renewal and therefore not brought to the court's

attention.” *William P. Pahl Equip. Corp.*, 182 AD2d at 27. “Renewal should be denied where the party fails to offer a valid excuse for not submitting the additional facts upon the original application. Nor should the remedy be available where a party has proceeded on one legal theory on the assumption that what has been submitted is sufficient, and thereafter sought to move again on a different legal argument merely because he was unsuccessful upon the original application.” *Foley*, 68 AD2d at 568 (citations omitted).

Here, defendants’ argument, that Anastasia Damianakos and Maria Damianakos cannot be liable because they received no health care services from plaintiff, presents no “new facts or information which could not have been readily and with due diligence made part of the original motion” (*V. Veeraswamy Realty v Yenom Corp.*, 71 AD3d 874, 874 [2d Dept 2010]), and, in any event, “would not have altered the outcome on the underlying motion.” *Ford v Lasky*, 300 AD2d 536, 537 (2d Dept 2002). There is no dispute that, as alleged in the complaint, Phaedra Damiankos received services from plaintiff, and the allegations against Anastasia Damianakos and Maria Damianakos are not based on their receipt of services but on their receipt of funds to which plaintiff alleges it is entitled as payment for services provided.

Defendants also fail to demonstrate a reasonable justification for their failure to make this argument on the prior motion. *See Professional Offshore Opportunity Fund, Ltd. v Braider*, 121 AD3d 766, 769 (2d Dept 2014); *Farahmand v Dalhousie Univ.*, 96 AD3d 618, 619-620 (1st Dept 2012). Their contention that their recently retained attorney did not have time, in preparing opposition to the prior motion, to review the allegations of the complaint, is not an adequate excuse.

Further, defendants have “merely advanced arguments that had not been presented in its previous motion” (*V. Veeraswamy Realty*, 71 AD3d at 874), and have failed “to establish that the

court overlooked or misapprehended the facts or the law, or was otherwise mistaken in its earlier decision.” *Hernandez*, 72 AD3d at 595, citing *William P. Pahl Equip. Corp.*, 182 AD2d 22.

Notably, defendants do not address their failure on the prior motion to offer a reasonable excuse for their default in answering or provide a meritorious defense, the bases for the court’s decision on the prior motion.

Accordingly, it is

ORDERED that defendants’ motion for leave to renew and reargue is denied.

Dated: 6/4/19

ENTER:



ARTHUR ENGORON, J.S.C.