

**Garloch v Siyuan Wang Do**

2020 NY Slip Op 33929(U)

July 20, 2020

Supreme Court, Orange County

Docket Number: EF005917-2017

Judge: Sandra B. Sciortino

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This opinion is uncorrected and not selected for official publication.

To commence the statutory time for appeals as of right (CPLR 5513 [a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ORANGE

-----X

**VICTORIA A. GARLOCH,**  
Plaintiff,

**DECISION AND ORDER**

**INDEX NO.: EF005917-2017**  
**Motion Date: 6/22/2020**  
Sequence No. 4

-against-

**SIYUAN WANG DO, BLESSIT GEORGE-VARGHESE DO, ORANGE EMERGENCY SERVICES P.C., ORANGE REGIONAL MEDICAL CENTER,**

Defendants.

-----X

**SCIORTINO, J.**

The following papers numbered 1 to 71 were read on the plaintiff's motion to renew and reargue:

PAPERS:

NUMBERED:

Notice of Motion/Affirmation (Smith)/ Exhibits A, B1-B52	1 - 54
Affirmation in Opposition (Daniel) Exhibits A-F	55-62
Affirmation in Opposition (McMillan) Exhibits 1-7	63-71

For the reasons set forth herein, plaintiff's application is denied.

**Background and Procedural History**

This action for medical malpractice arises out of medical treatment rendered to plaintiff while a patient at the Emergency Department of Orange Regional Medical Center ("ORMC"). On September 1, 2016, plaintiff was assessed and treated by defendants George-Varghese and Wang.

Wang performed a lumbar puncture under the supervision of Dr. George-Varghese. Plaintiff claims that, as a result of defendants' alleged negligence, she suffered an epidural hemorrhage; traumatic hematoma; anterior displacement of the thoracic spinal cord; bilateral lower limb neuropathy; headache; neck pain; back pain; difficult with ambulation; spinal infection; interference with activities of daily living; and diminution of quality and enjoyment of life.

By Decision and Order dated April 23, 2020, the Court granted summary judgment to defendants dismissing the complaint upon a finding that, in response to defendant's *prima facie* showing, plaintiff raised no issues of fact.

#### **Motion for Renewal and Reargument**

By Notice of Motion electronically filed on May 18, 2020, plaintiff seeks reargument of the April 23, 2020 Decision and Order. Plaintiff's counsel argues that the observations of plaintiff's mother, a physical therapy assistant who was physically present during the procedure, create a question of fact as to the veracity of the medical records.

Plaintiff's counsel also argues that the opinion and conclusion of Dr. David Nidorf, an Emergency Room Physician, were based on his review of the medical records, not solely on the photographs.

#### **Opposition (George-Varghese and OES)**

Defendants' counsel argues that plaintiff has failed to explain what facts or law the Court has overlooked and misapprehended. Instead, plaintiff attempts to reargue the same issues previously considered and rejected by the Court. Defendant's counsel essentially asserts the same arguments with respect to the deficiencies in the Nidorf affirmation which were previously considered in the underlying motion.

Defendants' counsel further argues that plaintiff's contention that plaintiff's mother "observed the spinal procedure occur at the wrong location" is belied by her affidavit and deposition. In both, she did not observe the needle enter the plaintiff's back. (Exhibit 6)

### **Opposition (Siyuan Wang and ORMC))**

Similarly, defendants' counsel argues that plaintiff has failed to explain what facts or law the Court has overlooked and misapprehended and instead attempts to reargue the same issues previously considered and rejected. Defendant's counsel also essentially asserts the same arguments with respect to the deficiencies in the Nidorf and affirmation the affidavit of plaintiff's mother which were previously considered in the underlying motion.

No reply papers were filed.

The Court has fully considered the submissions of the parties.

### **Discussion**

Civil Practice Law & Rules §2221(d) requires that a motion for reargument be specifically identified as such, and that it be based upon matters of law or fact allegedly overlooked or misapprehended by the Court on the original decision; it may *not* be based on any new matters of fact not presented to the Court originally. Here, the plaintiff has reiterated the arguments raised in her opposition to defendants' motions for summary judgment. However, she has not pointed to any facts presented on the original motion that the Court "overlooked." Plaintiff has failed to offer any legal support for any "misapprehension" of the law or the facts. A motion for leave to reargue is not designed to allow a litigant to propound the same arguments the court has already considered, but to point out controlling principles of law or fact that the court may have overlooked. (*Simon v. Mehryari*, 16 AD3d 664 [2d Dept 2005]) Nor may reargument be used to present arguments different

from those originally asserted. (*William P. Pahl Equipment Corp. v. Kassis*, 182 AD2d 22, 27 [1<sup>st</sup> Dept 1992]) Upon such a standard, the application to reargue must be denied.

Plaintiff appears to ignore the second part of the requirement for successful reargument or renewal: there must be a demonstration that overlooked law or fact, or new evidence, would have changed the original determination. (*Tsimbler v. Fell*, 123 AD3d 1011 [2d Dept 2014]) In the matter at bar, no such showing has been made.

The foregoing constitutes the Decision and Order of the Court.

Dated: July 20, 2020  
Goshen, New York

ENTER:

  
HON. SANDRA B. SCIORTINO, J.S.C.

TO: *Counsel of Record via NYSCEF*