

**Assad v New York-Presbyt. Hosp.**

2021 NY Slip Op 33934(U)

September 24, 2021

Supreme Court, New York County

Docket Number: Index No. 106127/2006

Judge: John J. Kelley

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. JOHN J. KELLEY PART 56M

Justice

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RAGGA ASSAD, AS ADMINISTRATOR AD
PROSEQUENDUM OF BISHOY ASSAD, DECEASED,

Plaintiff,

INDEX NO. 106127/2006

MOTION DATE 06/15/2021

MOTION SEQ. NO. 008

- v -

NEW YORK-PRESBYTERIAN HOSPITAL, formerly known
as COLUMBIA PRESBYTERIAN MEDICAL CENTER,
COLUMBIA PRESBYTERIAN MEDICAL GROUP, GWEN
NICHOLS, M.D., SANDRA RUSSO, M.D., MEMORIAL
SLOAN-KETTERING CANCER CENTER, and ESPERANZA
PAPADOPOULOS, M.D.,

Defendants.

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DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 008) 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21

were read on this motion to/for REARGUMENT/RECONSIDERATION

In this action to recover damages for medical malpractice and wrongful death, the defendants New York-Presbyterian Hospital, formerly known as Columbia Presbyterian Medical Center, Gwen Nichols, M.D., and Sandra Russo, M.D., together move pursuant to CPLR 2221(d) for leave to reargue that branch of their prior motion seeking summary judgment dismissing the wrongful death causes of action insofar as asserted against them, which had been denied by order dated October 27, 2020 (Madden, J.). The plaintiff opposes the motion. The motion is denied.

With certain exceptions not relevant here, CPLR 2221(a) provides that

"[a] motion for leave to renew or to reargue a prior motion, for leave to appeal from, or to stay, vacate or modify, an order shall be made, on notice, to the judge who signed the order, unless he or she is for any reason unable to hear it."

Inasmuch as Justice Joan Madden retired after she issued the order under consideration here, but before she could decide the instant reargument motion, she is thus “unable to hear” this motion within the meaning of the statute (*see Williams v Georgopoulos*, 184 AD3d 608, 609 [2d Dept 2020]). In any event, upon reassignment of the action to this court under the rules of the Individual Assignment System, this court is competent to consider and decide the pending motion (*see Totaram v Gibson*, 179 AD3d 451, 452 [1st Dept 2020]; *Matter of Quattrone v Erie 2-Chautauqua-Cattaraugus Bd. of Coop. Educ. Servs.*, 148 AD3d 1553, 1554 [4th Dept 2017]; *C & N Camera & Elecs. v Public Serv. Mut. Ins. Co.*, 210 AD2d 132, 133 [1st Dept 1994]; *Billings v Berkshire Mut. Ins., Co.*, 133 AD2d 919, 920 [3d Dept 1987]).

In her October 27, 2020 decision and order, Justice Madden concluded that the movants failed to satisfy their burden of demonstrating, prima facie, that the plaintiff’s decedent did not sustain any pecuniary losses sufficient to support a wrongful death cause of action. She also reasoned that, in any event, the plaintiff submitted facts that would have raised a triable issue of fact as to whether her decedent sustained pecuniary losses as a consequence of his death.

The plaintiffs’ motion for leave to reargue is denied, inasmuch as the initial motion court did not overlook or misapprehend any facts or relevant law that were presented to it in connection with the prior applications (*see CPLR 2221[d] [2]*; *William P. Pahl Equip. Corp. v Kassis*, 182 AD2d 22 [1st Dept 1992]). The purpose of a motion to reargue is not “to serve as a vehicle to permit the unsuccessful party to argue once again the very questions previously decided” (*Pro Brokerage, Inc. v Home Ins. Co.*, 99 AD2d 971, 971 [1st Dept 1984], quoting *Foley v Roche*, 68 AD2d 558, 567 [1st Dept 1979]).

Accordingly, it is

ORDERED that the motion of the defendants New York-Presbyterian Hospital, formerly known as Columbia Presbyterian Medical Center, Gwen Nichols, M.D., and Sandra Russo, M.D., for leave to reargue is denied.

This constitutes the Decision and Order of the court.

9/24/2021

DATE

  
JOHN J. KELLEY, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE