

**O'Dwyer v Jewish Home Lifecare - Manhattan**

2022 NY Slip Op 30843(U)

March 10, 2022

Supreme Court, New York County

Docket Number: Index No. 805156/2018

Judge: Erika M. Edwards

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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. ERIKA EDWARDS PART 10M**

*Justice*

-----X

DIANE O'DWYER, as Administratrix of the Estate of  
DANIEL O'CONNELL,

Plaintiff,

- v -

JEWISH HOME LIFECARE - MANHATTAN D/B/A THE  
NEW JEWISH HOME and LENOX HILL HOSPITAL,

Defendants.

-----X

INDEX NO. 805156/2018

MOTION DATE 01/05/2022

MOTION SEQ. NO. 004

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 004) 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138

were read on this motion to/for REARGUMENT/RECONSIDERATION.

Upon the foregoing documents, the court denies Defendant Jewish Home Lifecare-Manhattan d/b/a The New Jewish Home's ("Jewish Home") motion to reargue the portion of its previous summary judgment motion seeking dismissal of Plaintiff Diane O'Dwyer, as Administratrix of the Estate of Daniel O'Connell's ("Plaintiff") claims seeking punitive damages against Defendant Jewish Home for alleged Public Health Law violations, which was previously denied in the court's decision and order, dated October 26, 2021.

Plaintiff brought this action involving allegations of medical malpractice, negligence and violation of Public Health Law against Defendants Jewish Home and Lenox Hill Hospital ("Lenox Hill") (collectively, "Defendants") alleging in substance that Defendants caused the Deceased Plaintiff O'Connell to suffer damages including several pressure ulcers. Plaintiff's claims for punitive damages involve alleged violations of Public Health Law. Defendant Jewish Home moved for summary judgment dismissal of Plaintiff's complaint under motion sequence

number 002. The court denied the motion in its combined Decision and Order, dated October 26, 2021, on motion sequences 002 and 003.

Defendant Jewish Home now moves to reargue the portion of its summary judgment motion seeking dismissal of Plaintiff's claims for punitive damages pursuant to CPLR 2221(d). Defendant Jewish Home argues that the court overlooked relevant facts and/or misapplied a controlling principle of law when it denied Defendant Jewish Home's motion and upon reconsideration, the court should vacate its previous denial and grant dismissal of Plaintiff's claims for punitive damages against Defendant Jewish Home. Specifically, Defendant Jewish Home argues in substance that the court failed to address this portion of the motion in its decision and the court improperly denied Defendant Jewish Home additional time during oral argument to address this issue. Defendant Jewish Home further argues that Plaintiff failed to establish its claims for punitive damages pursuant to Public Health Law § 2801-d(2) which requires Plaintiff to demonstrate that the Deceased Plaintiff was deprived of a right or benefit, that he was injured as a result of such deprivation, and that any such violation was willful or in reckless disregard of the Deceased Plaintiff's lawful rights.

Plaintiff opposes Defendant Jewish Home's motion and argues in substance that Defendant Jewish Home failed to demonstrate that the court overlooked a relevant issue of fact or misapprehended the law when it denied dismissal of Plaintiff's punitive damages claim. During oral argument it was apparent that the court gave full consideration to the underlying motion papers, which included extensive discussion of Plaintiff's claims for punitive damages and the court gave Defendant Jewish Home ample opportunity to argue its motion, but Jewish Home failed to raise this issue. Plaintiff further argues that should the court grant the motion,

then upon reconsideration it should continue to deny dismissal of these claims as material issues of fact remain based upon the opinions set forth in Plaintiff's expert affidavit.

Pursuant to CPLR 2221(d)(2), a motion for leave to reargue is left to the sound discretion of the court and may be granted only where the moving party contends that an issue of law or fact had been overlooked or misapprehended by the court when deciding the original motion (CPLR §2221[d][2]). It is not designed to provide the unsuccessful party successive opportunities to reargue issues previously decided by the court or to present new evidence or different arguments than previously raised (*William P. Pahl Equip. Corp. v Kassis*, 182 AD2d 22, 27 [1<sup>st</sup> Dept 1992] [internal citations and quotation marks omitted]).

Here, the court denies Defendant Jewish Home's motion to reargue and finds that Defendant Jewish Home failed to demonstrate that the court overlooked or misapprehended an issue of law or fact regarding Plaintiff's punitive damages claims. Based upon a review of the underlying papers for Defendant Jewish Home's previous summary judgment motion, the transcript from the oral argument and the court's decision, it is clear that the court reviewed the papers, considered all arguments and properly denied this portion of Defendant Jewish Home's motion. The punitive damages issue was discussed at length in the motion papers and expert affidavits. Based upon the court's summary of the facts, questions and discussion during the oral argument, it was clear that the court thoroughly reviewed the submissions.

Additionally, whether the court permits oral argument, the manner and length of oral argument and the nature of the issues discussed during oral argument is left to the sound discretion of the court. There is no right to an unlimited amount of time to argue an issue or to an opportunity to rebut issues raised by another party. Here, it is clear that the court provided Defendant Jewish Home ample opportunity to argue its motion at the beginning of the oral

argument without interruption, but Defendant Jewish Home failed to include dismissal of Plaintiff's punitive damages claims in its oral argument. After the other parties argued their positions, the court gave Defendant Jewish Home additional opportunities to reply to Plaintiff's arguments and discuss various issues. Again, Defendant Jewish Home failed to discuss Plaintiff's punitive damages claims. It was not until the end of the argument, when the court discussed the status of settlement and closed the record, that Defendant Jewish Home asked for additional time to complete its arguments in reply to Plaintiff's opposition. The court declined to permit additional argument. As such Defendant Jewish Home had several opportunities to raise this issue, but failed to do so.

Furthermore, as the unsuccessful party, Defendant Jewish Home now seeks to renew its same arguments which were set forth at length in its underlying motion papers which were previously denied by the court.

Therefore, since Jewish Home failed to demonstrate that the court overlooked or misapprehended an issue of law or fact, the court denies its motion to reargue.

Alternatively, even if the court had found that Defendant Jewish Home met its burden and the court granted reargument, then upon reconsideration, the court would still deny Defendant Jewish Home's motion as questions of fact remain to be determined by the trier of fact on the issue of Plaintiff's punitive damages claims based upon the conflicting opinions set forth in the expert affidavits.

The court has considered all arguments raised by the parties not specifically discussed herein and the court denies all additional requests for relief not expressly granted herein.

As such, it is hereby

ORDERED that the court denies Defendant Jewish Home Lifecare-Manhattan d/b/a The New Jewish Home's motion to reargue filed under motion sequence 004.

This constitutes the decision and order of the court.

*Erika M. Edwards*  
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3/10/2022  
DATE

ERIKA EDWARDS, J.S.C.

CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	
APPLICATION:	<input type="checkbox"/> GRANTED		<input type="checkbox"/> GRANTED IN PART	<input type="checkbox"/> OTHER
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