

**Wang v LSUC**

2022 NY Slip Op 31040(U)

March 29, 2022

Supreme Court, New York County

Docket Number: Index No. 653250/2013

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*

-----X

FRED SIMCHA WANG,

Plaintiff,

- v -

LSUC, DR. JOEL JEFFRIES, CAMH, DR. STEPHEN R.  
SWALLOW, DR. LANCE HAWLEY, OCCT, JOHN DOES 1-  
10, and JANE DOES 1-8,

Defendants.

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INDEX NO. 653250/2013

MOTION DATE 01/31/2022

MOTION SEQ. NO. 012

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 012) 405, 406, 407, 408, 409, 410, 411, 412, 413, 414

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

This is an action to recover damages for fraud, negligence, gross negligence, and medical and professional malpractice, that had been dismissed for lack of jurisdiction pursuant to a series of orders dated September 4, 2014 (Rakower, J.) (SEQ 001, 002, 003, 004). The plaintiff thereafter unsuccessfully moved for leave to serve and file an amended complaint, which was denied in a series of three orders (Rakower, J.), dated October 24, 2017 (SEQ 005), March 13, 2018 (SEQ 006), and June 15, 2018 (SEQ 007), respectively. The June 15, 2018 order also granted the defendants' cross motion to have the plaintiff deemed a vexatious litigator, and thereupon to enjoin him from filing any further motions in connection with the instant action without prior court approval.

Notwithstanding the injunction, the plaintiff moved for leave to reargue the motions and cross motion that resulted in those orders, which were denied by a series of orders (Rakower, J.), dated March 7, 2019 (SEQ 008), November 20, 2019 (SEQ 009), November 23, 2020 (SEQ 010), and June 15, 2021 (SEQ 011), respectively. The June 15, 2021 order also denied so much of his motion as sought permission to move for leave to reargue.

The plaintiff now moves pursuant to CPLR 2221(d) for leave to reargue his four prior reargument motions and his prior motions for leave to amend the complaint, as well as his opposition to the defendants' cross motion to deem him a vexatious litigator.

Although the defendants do not oppose the motion, the motion is denied, and the plaintiff is cautioned that his submission of any further motions without prior written court approval of shall result in the imposition of monetary sanctions. He is directed that any such application for permission to file any further papers in this action must be submitted to, and approved in writing by, the Administrative Judge of the Civil Division of the Supreme Court, New York County.

In the first instance, this court is competent to consider the instant motion. 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."

CPLR 2221(b) establishes an exception to that general rule where the Rules of the Chief Administrator of the Courts provide otherwise. Those Rules currently provide that "[a]ll motions," including those governed by CPLR 2221, "shall be returnable before the assigned judge" (22 NYCRR202.8[a]). Thus, "[b]y the adoption of the [I]ndividual [A]ssignment [S]ystem, the CPLR 2221 requirement of referral of motions to a Judge who granted an order on a prior motion has been modified to provide for consistency with the mandate of the [IAS] that all motions in a case shall be addressed to the assigned Judge" (*Matter of New York State Urban Dev. Corp. [Fallsite, LLC]*, 85 AD3d 1723, 1724 [4th Dept 2011]; see *Matter of Quattrone v Erie 2-Chautauqua-Cattaraugus Bd. of Coop. Educ. Servs.*, 148 AD3d 1553, 1554 [4th Dept 2017]; *Billings v Berkshire Mut. Ins., Co.*, 133 AD2d 919, 919-920 [3d Dept 1987]).

Justice Rakower, who had determined the prior motions, has since retired from the bench. Upon reassignment of the action to this court under the rules of the Individual Assignment System, this court thus 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 at 1554; *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 at 920).

The motion must be denied, in the first instance, because the plaintiff, in violation of Justice Rakower's prior orders, did not obtain prior court approval for making this motion. In fact, he was enjoined from making this motion. Hence, the motion is a nullity. In any event, successive motions for leave to reargue are improper (*see McGill v Goldman*, 261 AD2d 593, 594 [2d Dept 1999]).

The court notes that the plaintiff is an attorney licensed to practice law by the Law Society of Ontario in the Province of Ontario, Canada, under identification number 39838N. The court is providing the Law Society of Ontario with a copy of this order for its records. Should the plaintiff further violate the injunction imposed by Justice Rakower, or the restrictions imposed by this court, the court shall refer the matter to the Law Society of Ontario with a recommendation that discipline be imposed upon the plaintiff.

Accordingly, it is

ORDERED that the motion is denied as a nullity; and it is further,

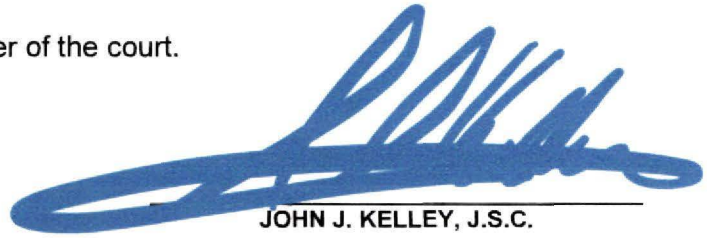
ORDERED that the plaintiff be, and hereby is, enjoined from filing any further motions or papers in this action without the prior written approval the Administrative Judge of the Civil Division of the Supreme Court, New York County, and any application for permission to file any such motion, or any further papers in this action, must be submitted to, and approved in writing by, the Administrative Judge of the Civil Division of the Supreme Court, New York County; and it is further,

ORDERED that the plaintiff's filing of any more motions or papers in this action without prior court approval, as set forth above, shall result in the imposition of a monetary sanction.

This constitutes the Decision and Order of the court.

3/29/2022

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