

**Latorre v Rahman**

2022 NY Slip Op 32044(U)

July 1, 2022

Supreme Court, New York County

Docket Number: Index No. 154970/2017

Judge: Adam Silvera

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. ADAM SILVERA PART 13**

*Justice*

-----X

TIFFANY LATORRE,

Plaintiff,

- v -

LUTHFUR RAHMAN, P&D CAB CORP., WOODSIDE  
MANAGEMENT INC.

Defendant.

-----X

INDEX NO. 154970/2017

MOTION DATE 02/15/2022

MOTION SEQ. NO. 006

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 006) 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283

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

Upon the foregoing documents, it is ordered that defendants Luthfur Rahman and P&D Cab Corp.’s (hereinafter referred to as the “Moving Defendants”) motion to reargue this Court’s prior Decision and Order dated September 28, 2021 (hereinafter referred to as the “Prior Order”), and to modify such order, is denied for the reasons set forth below. Plaintiff’s cross-motion for sanctions is decided below.

Plaintiff commenced this action against defendants, by summons and complaint seeking monetary damages for personal injuries resulting from a motor vehicle accident. After numerous discovery conferences, and after oral arguments, the Court’s Prior Order decided two prior motions (mot. seq. no. 003 and 005) which, respectively, sought to dismiss the instant action and sought sanctions for filing the motion to dismiss.

Here, Moving Defendants move to reargue seeking to modify the Prior Order and deny the granting of sanctions, arguing that Moving Defendants never acted willfully or

contumaciously. Rather, according to Moving Defendants, they complied with the Part Rules in expeditiously moving for judicial intervention to resolve discovery disputes, in mot. seq. no. 002, and successfully arguing such motion. Moving Defendants rely upon the discovery order dated December 23, 2019, which resolves mot. seq. no. 002 and the cross-motion therein, to argue that such order granted Moving Defendants the right to further move for compliance of the order. Moving Defendants argue that it is bound to zealously defend its client. Prior to the next discovery conference date set in the December 23, 2019 order, Moving Defendants filed yet another motion (mot. seq. no. 003). Due to the COVID-19 pandemic, conferences and oral arguments for mot. seq. no. 003 and 005 were held virtually. After unsuccessful attempts to resolve the discovery disputes raised in Moving Defendants' second motion to strike, the Prior Decision was issued by the Court.

CPLR 2221(d)(2) permits a party to move for leave to reargue a decision upon a showing that the court misapprehended the law in rendering its initial decision. "A motion for leave to reargue pursuant to CPLR 2221 is addressed to the sound discretion of the court and may be granted only upon a showing that the court overlooked or misapprehended the facts or the law or for some reason mistakenly arrived at its earlier decision." *William P. Pahl Equip. Corp. v Kassis*, 182 AD2d 22, 27 (1<sup>st</sup> Dep't 1992), *appeal denied in part, dismissed in part* 80 NY2d 1005 (1992) (internal quotations omitted).

Preliminarily, the Court notes that Moving Defendants failed to establish that the Court, in the Prior Order, misapprehended or overlooked the facts or the law in determining that Moving Defendants failed to comply with the Part Rules which were in effect at the time. As stated in the Prior Decision, "[t]he Part Rules explicitly states that '[i]f the dispute cannot be resolved at the conference, then the issue(s) will be narrowed and the DCM Order will

specifically allow a motion to be brought and must set forth a briefing schedule.’ Part Rules (Part 22 – Motor Vehicle Part).” Decision/Order on Motion, dated September 28, 2021, p. 1. Contrary to Moving Defendants’ arguments, the December 23, 2019 discovery order did not grant permission to file additional motions. In fact, such order is entirely silent as to filing additional motions to compel. Notably, despite such argument, Moving Defendants did not even file a motion to compel. Such motion sought, *inter alia*, not to resolve or compel the discovery issues but rather to strike the complaint or to preclude plaintiff. The Part Rules were abundantly clear that discovery issues would first be discussed during a discovery conference and, should the dispute be unable to be resolved, the discovery order would specifically allow for a motion. This did not occur here. Instead, Moving Defendants filed its first motion to strike (mot. seq. no. 002) without first conferencing the issues. Such motion was resolved during a discovery conference and discovery was ordered on December 23, 2019. Again, prior to discussing any discovery issues with the Court that may have arisen from the December 23, 2019 order, Moving Defendants chose to file another motion to strike (mot. seq. no. 003). Thus, the Court did not overlook the facts or the law in the Prior Order as Moving Defendants clearly failed to comply with the Part Rules.

Moreover, even following court conferences attempting to resolve the second motion to strike, Moving Defendants continued to make numerous allegations that plaintiff failed to comply with discovery which Moving Defendants previously conceded were already done. As stated on page 2 of the Prior Order, “this Court’s December 23, 2019 discovery conference order specifically states that defendant acknowledges receipt of plaintiff’s medical records by plaintiff’s correspondence dated 12/9/19.’ Discovery order dated Dec. 23, 2019.” Yet, through Moving Defendants’ second motion to strike and through numerous correspondence with the

Court, Moving Defendants still represented and argued that plaintiff was ordered to provide medical records and failed to comply. This Court did not err in the Prior Order in taking note of such blatant misrepresentations by Moving Defendants. Having considered the arguments raised herein, Moving Defendants have failed to establish that the Court misapprehended the facts or the law in ordering sanctions. Thus, Moving Defendants' instant motion to reargue is denied.

As to plaintiff's cross-motion for additional sanctions, such cross-motion is also denied. Here, the Court will give defense counsel the benefit of the doubt that the instant motion to reargue was a fervent attempt in serving its client. However, defendants and its counsel are warned that there is a fine line between zealous advocacy and frivolous, sanctionable conduct. Further delays in discovery, further misrepresentations, and further disregard for the Part Rules will not be tolerated.

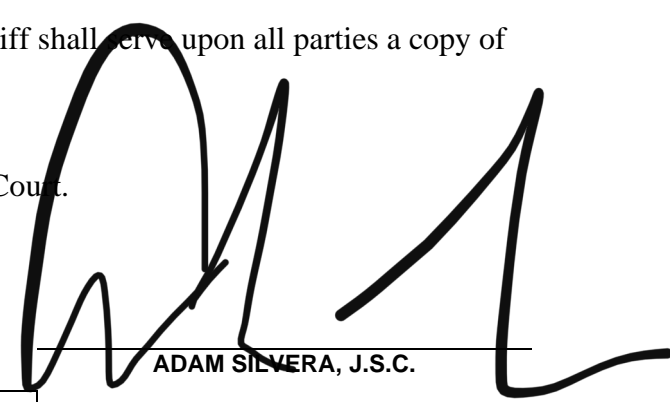
Accordingly, it is

ORDERED that the Moving Defendants' motion to reargue is denied in its entirety; and it is further

ORDERED that plaintiff's cross-motion for sanctions is denied in its entirety; and it is further

ORDERED that, within 30 days of entry, plaintiff shall serve upon all parties a copy of this decision and order, together with notice of entry.

This constitutes the Decision and Order of the Court.



7/1/2022  
DATE

ADAM SILVERA, J.S.C.

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