SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. DAVID B. COHEN** **PART 58**

Justice

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JOAN DECOLLIBUS

Plaintiff,

- v -

BARRY SCHIMMEL,

Defendant.

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INDEX NO. 160127/2019

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53

were read on this motion to/for RENEW/REARGUE/RESETTLE/RECONSIDER.

In this negligence and strict liability action, plaintiff Joan Decollibus moves, pursuant to CPLR 2221(d), for leave to reargue defendant Barry Schimmel's motion for summary judgment seeking dismissal of the complaint (Seq. 001) and, upon reargument, for denial of defendant's underlying motion. Defendant opposes the motion. After consideration of the parties' contentions, as well as a review of the relevant statutes and case law, the motion is decided as follows.

Factual and Procedural Background

This Court assumes familiarity with the facts and allegations in this case as set forth in the Court's order filed on January 20, 2022 (Doc No. 38). Briefly, plaintiff commenced this action against defendant for negligence and strict liability after defendant's dog ("Lola") ran into a bicycle lane in Central Park and caused plaintiff to fall off of her bike (Doc No. 1 at 2-4). Following joinder of issue (Doc No. 3) and discovery, defendant moved, pursuant to CPLR

3212, for summary judgment dismissing the complaint (Doc No. 13). Defendant argued that New York does not allow ordinary negligence claims for injuries caused by domestic animals such as dogs, and that a claim of strict liability cannot succeed herein because there was no evidence that Lola had vicious propensities (Doc No. 14). Plaintiff opposed the motion, arguing that the New York rule barring ordinary negligence claims in cases involving injuries caused by domestic animals was incorrect and that triable questions of fact existed concerning Lola's alleged vicious propensities (Doc Nos. 25, 27).

This Court granted the underlying motion and dismissed the complaint in its entirety (Doc No. 38). In so holding, this Court determined that a claim of ordinary negligence could not be brought against defendant as the dog's owner (Doc No. 38 at 3). Additionally, this Court concluded that defendant was entitled to summary judgment dismissing the strict liability claim and that plaintiff failed to raise an issue of fact in opposition (Doc No. 38 at 3-4).

Plaintiff now moves, pursuant to CPLR 2221(d), for leave to reargue defendant's underlying motion and, upon reargument, for the denial of the motion (Doc No. 43). In so moving, plaintiff reiterates her argument that this Court should reject the well-established law in New York barring ordinary negligence claims against dog owners in domestic animal personal injury cases (*see generally Doerr v Goldmith*, 25 NY3d 1114 [2015]; *Bard v Jahnke*, 6 NY3d 592 [2006]) (Doc No. 44 at 18). She further asserts that this Court improperly concluded that defendant demonstrated that he was entitled to judgment as a matter of law because it overlooked evidence that defendant was aware of Lola's vicious propensities (Doc No. 44 at 11-17).

Legal Conclusions

"A motion for leave to reargue is addressed to the sound discretion of the court and is properly granted upon a showing that the facts . . . or law were overlooked or misapprehended by the court in determining the prior motion" (*Cascade Bldrs. Corp. v Rugar*, 154 AD3d 1152, 1154 [3d Dept 2017] [citation omitted]; *see* CPLR 2221 [d] [2]; *Mendez v Queens Plumbing Supply, Inc.*, 39 AD3d 260, 260 [1st Dept 2007]). However, "[r]eargument is not designed to afford the unsuccessful party successive opportunities to reargue issues previously decided" (*Matter of Setters v AI Props. & Devs. (USA) Corp.*, 139 AD3d 492, 492 [1st Dept 2016] [internal quotation marks and citations omitted]; *see Mangine v Keller*, 182 AD2d 476, 477 [1st Dept 1992]; *Foley v Roche*, 68 AD2d 558, 567 [1st Dept 1979]).

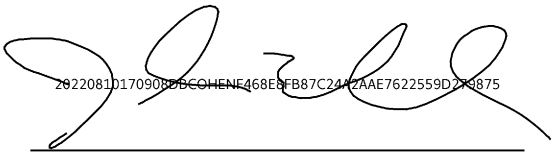
Plaintiff's contentions in support of her motion for reargument are identical to those she asserted in opposition to the underlying motion (Doc No. 27 at 10-17; Doc No. 44 at 11-18).[1] The order granting the underlying motion either directly addressed plaintiff's contentions or denoted that any unaddressed contention was without merit (Doc No. 38 at 2-4). Although plaintiff maintains, among other things, that this Court overlooked evidence of Lola's past behavior mentioned in an email between plaintiff and one of defendant's neighbors because the email was not expressly mentioned in this Court's order granting the underlying motion (Doc No. 44 at 17), "[i]t is a mistake for [a party] to assume that any particular portion of his [or her] argument, which has not been the subject of express reference in the opinion, has been overlooked" (*see Fosdick v Town of Hempstead*, 126 NY 651, 652-653 [1891]). Thus, the issues

[1] More specifically, plaintiff argues that this Court overlooked evidence of Lola's alleged vicious propensities, and defendant's knowledge thereof, as demonstrated by Lola's frequent barking at other dogs, defendant's use of a dog trainer, complaints from defendant's neighbors, statements made by defendant's building management, and plaintiff's expert testimony from dog trainer Eric Albert (Doc No. 44 at 11-17). She also reiterates her assertion that this Court abandon the Court of Appeals precedent prohibiting ordinary negligence claims against dog owners (Doc No. 44 at 18).

in the instant matter have been "carefully considered and decided by [this Court]," and plaintiff's request for leave to reargue is denied (*id.* at 653).

Accordingly, it is hereby:

ORDERED that plaintiff's motion for leave to reargue defendant's motion for summary judgment is denied.



8/10/2022
DATE

DAVID B. COHEN, J.S.C.

CHECK ONE:	X	CASE DISPOSED			NON-FINAL DISPOSITION		
		GRANTED	X	DENIED	GRANTED IN PART		OTHER
APPLICATION:		SETTLE ORDER			SUBMIT ORDER		
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN			FIDUCIARY APPOINTMENT		REFERENCE