

Ward v City of New York
2022 NY Slip Op 33039(U)
September 9, 2022
Supreme Court, New York County
Docket Number: Index No. 400564/2013
Judge: Erika M. Edwards
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SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: HON. ERIKA M. EDWARDS

PART 10M

Justice

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JANE WARD,

Plaintiff,

- v -

THE CITY OF NEW YORK, THE NEW YORK CITY
HEALTH AND HOSPITAL CORPORATION, BELLEVUE
HOSPITAL CENTER, CARLINE DREWES-PELSEL, M.D.,
MING TSAI, M.D., JUDITA B. BAUTISTA, M.D., MARIE
WERNER, M.D., ALLISON WEBB, M.D., DEBORAH B.
DYSON, RPA, and John Doe and Jane Doe 1 through 6
other unknown and unnamed defendants,

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 007) 8, 9, 10, 11, 12, 13,
14, 16, 17, 18, 19, 20, 21

were read on this motion to/for

RENEW/REARGUE/RESETTLE/RECONSIDER

Upon the foregoing documents, the court denies Plaintiff Jane Ward's ("Plaintiff")
motion to reargue Plaintiff's prior motion to compel Defendants Ming Tsai, M.D. ("Dr. Tsai")
and Judita B. Bautista, M.D. ("Dr. Bautista") to answer questions that they were directed not to
answer at their previous depositions and upon reargument, for continued depositions and
additional relief.

This matter involves Plaintiff's allegations of medical malpractice in 2011, for
Defendants The City of New York's, The New York City Health and Hospital Corporation's,
Bellevue Hospital Center's, Carline Drewes-Pessel, M.D.'s, Dr. Tsai's, Dr. Bautista's, Marie
Werner, M.D.'s, Allison Webb, M.D.'s and Deborah B. Dyson, RPA's (collectively,
"Defendants") alleged negligence in their care and treatment of Plaintiff regarding her vaginal
hysterectomy and cystoscopy for menorrhagia and symptomatic uterus fibroids.

Plaintiff previously moved under motion sequence 006 to direct Drs. Tsai and Bautista to answer the questions which they were directed not to answer and to re-depose them. In a Decision and Order, dated March 22, 2021, the court denied Plaintiff's motion in its entirety. The court found such additional depositions to be unnecessary and determined that Plaintiff's counsel's questions were palpably improper and argumentative at times, which warranted objections by defense counsel.

Plaintiff now moves to reargue Plaintiff's prior motion to compel Defendants Drs. Tsai and Bautista to answer questions that they were directed not to answer at their previous depositions and upon reargument, for an order directing them to appear and answer such questions and related questions, for a continuation of Dr. Tsai's deposition and for sanctions, costs and additional relief as the court deems proper.

Plaintiff argues in substance that the court overlooked or misapprehended numerous facts regarding Dr. Tsai, including that Dr. Tsai's deposition was not complete, that Plaintiff is entitled to a continuation of his deposition until completion, that he was Plaintiff's attending physician, the Chief of Defendant Bellevue Hospital Center's OBGYN department, and a corporate witness and Plaintiff argues that the questions posed were appropriate and should have been answered. Plaintiff further argues in substance that the court overlooked or misapprehended numerous facts related to Dr. Bautista's deposition, that the questions asked were not improper and that they should have been answered. Additionally, Plaintiff argues that the court overlooked or misapprehended the law regarding discovery, depositions and objections to alleged improper questions at a deposition. Plaintiff also argues that Drs. Tsai and Bautista failed to demonstrate that they would be significantly prejudiced if they were instructed to answer the questions.

Defendants New York City Health and Hospitals Corporation s/h/a The New York City Health and Hospital Corporation, Bellevue Hospital Center, Dr. Tsai and Dr. Bautista oppose the motion and argue in substance that the court did not overlook or misapprehend any issue of fact or law. They argue that the court correctly denied Plaintiff's motion to compel Drs. Tsai and Bautista to return for further depositions and that such decision should not be disturbed on reargument. Defendants further argue that Dr. Tsai's name was erroneously listed as the attending physician and other designations and the evidence clearly demonstrated that he had no involvement in Plaintiff's care. Additionally, Defendants argue in substance that the questions were improper and many were not material and necessary or reasonably calculated to lead to admissible evidence related to the material issues in this case. Therefore, Defendants maintain that their objections were warranted and proper.

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 [1st Dept 1992] [internal citations and quotation marks omitted]).

Here, the court agrees with Defendants that Plaintiff failed to demonstrate that the court misapprehended or overlooked an issue of law or fact in its previous decision denying Plaintiff's motion. Therefore, the court denies Plaintiff's motion to reargue.

In the alternative, even if Plaintiff had demonstrated that reargument was warranted, then the court would still deny the motion on reargument because the court's decision demonstrated

that the court did not misapprehend or overlook an issue of fact or law. In its decision, the court accurately set forth the law pertaining to disclosure, depositions and objections to questions and answers at depositions. Although the court did not address each question specifically, it provided several examples of questions, it determined that Plaintiff's counsel's questions were improper for various reasons and ruled that Defense counsel's objections were warranted. Therefore, the court properly determined that additional depositions of Dr. Tsai and Dr. Bautista would be unnecessary.

Here, the court finds Plaintiff's arguments to the contrary to be unpersuasive.

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

As such, it is hereby

ORDERED that the court denies Plaintiff Jane Ward's motion to reargue the court's previous decision.

This constitutes the Decision and Order of the court.


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9/9/2022

DATE

CHECK ONE:

APPLICATION:

CHECK IF APPROPRIATE:

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CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

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DENIED

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NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

☐

OTHER

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REFERENCE

ERIKA M. EDWARDS, J.S.C.