

Khan v New York City Health & Hosps. Corp.

2022 NY Slip Op 33900(U)

November 17, 2022

Supreme Court, New York County

Docket Number: Index No. 805214/2019

Judge: Erika 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

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MOHAMED KHAN

Plaintiff,

- v -

NEW YORK CITY HEALTH & HOSPITALS
CORPORATION,

Defendant.

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INDEX NO. 805214/2019

MOTION DATE 09/09/2022

MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 65, 66, 67, 68, 69, 70, 71

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

Upon the foregoing documents, the court denies Plaintiff Mohamed Khan’s (“Plaintiff”) motion to reargue/renew the court’s decision on Defendant New York City Health & Hospitals Corporation’s (“NYCHHC”) summary judgment motion.

Plaintiff now moves under motion sequence 002 for leave to reargue Defendant NYCHHC’s summary judgment motion and upon reargument for an order denying NYCHHC’s motion for summary judgment, vacating the court’s prior Amended Decision and Order, dated July 29, 2022, dismissing Plaintiff’s complaint and restoring this matter to the court’s trial calendar. Plaintiff argues in substance that the court overlooked/misapprehended substantial questions of fact raised by Plaintiff’s expert and failed to appreciate that Plaintiff’s expert set forth the applicable standard of care required of NYCHHC’s employees. Plaintiff argues in substance that the court incorrectly stated that Plaintiff’s expert opined that continuous administration of Marcaine throughout the post-operative period was, in and of itself, a deviation from the standard of care. Plaintiff argues in substance that his expert did not claim that the

continuous administration of Marcaine was a departure, but that he or she merely explained that it contributed to making the deviation of failing to protect the ulnar nerve problematic because it caused Plaintiff's arm/elbow to be paralyzed with decreased sensation. Therefore, Plaintiff could not feel the pressure of his arm on his elbow and could not feel any discomfort or pain. Plaintiff further argues that the court overlooked the fact that Plaintiff's expert stated that the standard of care was to protect the ulnar nerve by cushioning the elbow. Additionally, Plaintiff argues that the court overlooked/misapprehended the law by incorrectly weighing the evidence in favor of NYCHHC and by failing to view all of the evidence in the light most favorable to Plaintiff.

Defendant NYCHHC opposes the motion and argues in substance that Plaintiff's claims lack merit and that Plaintiff failed to demonstrate that the court misapprehended or overlooked the facts or law.

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 finds that Plaintiff failed to demonstrate that the court overlooked or misapprehended an issue of law or fact when deciding NYCHHC's summary judgment motion. Although the court agrees with Plaintiff that the court was incorrect in stating that Plaintiff's expert alleged that the continuous administration of Marcaine was a deviation instead of an explanation for how it contributed to making the alleged deviation "problematic," such error was

only made in the review of Plaintiff's arguments and was not relied upon by the court in reaching its ultimate decision to grant NYCHHC's motion for summary judgment. As such, the court agrees with NYCHHC and finds that the court's statement was not material and did not contribute to the decision to grant summary judgment in NYCHHC's favor.

Additionally, the court did not misapprehend or overlook any other issues of fact or law. The court considered Plaintiff's expert's opinion regarding departures from the standard of care and found it to be lacking and insufficient to raise any material issues of fact. In its decision, the court determined that "Plaintiff's expert failed to sufficiently detail how Defendant's failure to use a donut-shaped pillow or an altered Carter block with a cut out underneath Plaintiff's elbow to relieve the pressure on the ulna nerve was a departure from the accepted standard of medical practice at the time of Plaintiff's post-operative treatment." Additionally, the court stated that "it is simply insufficient for Plaintiff to allege that Defendant failed to protect Plaintiff's ulnar nerve and failed to prevent the injury to the ulnar nerve without stating what the applicable standard of care was and how the use of such pillow or alteration was within that standard of care. Plaintiff failed to do so and thus, failed to dispute the evidence in support of Defendant's arguments that there were no departures from the accepted standard of care."

Despite Plaintiff's arguments to the contrary, the court did not overlook or misapprehend this issue of fact or law. The court found and continues to find that Plaintiff's expert's opinion that the standard of care was to protect the ulnar nerve from injury is too general and insufficient to raise an issue of fact.

Finally, the court applied the correct summary judgment standard in making its decision and did not impermissibly weigh the evidence.

Therefore, Plaintiff failed to meet his burden of demonstrating that the court overlooked or misapprehended an issue of law or fact and the court denies the motion.

The court considered any additional arguments raised by the parties, but not specifically addressed herein and the court denies any additional request for relief that was not expressly granted herein.

As such, it is hereby

ORDERED that the court denies Plaintiff Mohamed Khan’s motion to reargue/renew the court’s decision on Defendant New York City Health & Hospitals Corporation’s summary judgment motion.

This constitutes the decision and order of the court.

Erika M. Edwards
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11/17/2022
DATE

ERIKA EDWARDS, J.S.C.

CHECK ONE:

<input checked="" type="checkbox"/>	CASE DISPOSED	
<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/> DENIED

<input type="checkbox"/>	NON-FINAL DISPOSITION	
<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/> OTHER

APPLICATION:

<input type="checkbox"/>	SETTLE ORDER
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<input type="checkbox"/>	SUBMIT ORDER
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CHECK IF APPROPRIATE:

<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN
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<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE
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