

Brenner v Blackstock
2022 NY Slip Op 34091(U)
November 30, 2022
Supreme Court, Kings County
Docket Number: Index No. 518666/2016
Judge: Bernard J. Graham
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At an IAS Part 36 of the Supreme Court of The State of New York, held in and for the County of Kings, at the Courthouse located at 360 Adams Street, Borough of Brooklyn, City and State of New York, on the 30th day of November, 2022.

P R E S E N T :

Hon. Bernard J. Graham, J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

ROBIN BRENNER,

Plaintiffs,

Index No.: 518666/2016

DECISION / ORDER

-against-

UCHE BLACKSTOCK, M.D., JOSEPH RAHIMIAN, M.D., NYU LANGONE MEDICAL CENTER, NYU HOSPITAL CENTER and VILLIAGE MEDICAL CENTER, P.C.,

Defendants.

Recitation, as required by CPLR §2219(a), of the papers considered on the review of this motion to: grant defendants’ motion for leave to reargue the decision/order of this Court of April 12, 2022, pursuant to CPLR §2221(d).

Papers	NYSCEF Doc. #
Notice of Motion and Affidavits Annexed.....	55-57
Order to Show Cause and Affidavits Annexed.....	
Answering Affidavits.....	58
Replying Affidavits.....	59
Exhibits.....	
Other.....	

Upon the foregoing cited papers, the Decision/Order on this motion is as follows:

Defendants, Uche Blackstock, M.D. (“Dr. Blackstock”) and NYU Hospitals Center s/h/a NYU Langone Medical Center and NYU Hospital Center (“NYU”), have

moved (seq. 2) for an Order granting reargument of the Decision/Order of this Court dated April 12, 2022, and upon reargument awarding summary judgment and a dismissal of plaintiff's complaint against said defendants.

Counsel for plaintiff has opposed Dr. Blackstock and NYU's motion for reargument upon the grounds that this Court did not misapprehend the facts or law in rendering its Decision and Order.

Background:

Plaintiff commenced this action on or about October 21, 2016 by filing a summons and complaint. The plaintiff, Robin Brenner, had presented several times to NYU Emergency Department (February 15, 2016, February 20, 2016 and March 1, 2016), and ultimately underwent an aortic thromboendarterectomy and aorto-iliac bypass. In the verified complaint, plaintiff alleges that NYU and Dr. Blackstock deviated from good and accepted standards of care by failing to diagnose and treat plaintiff's arterial occlusion, thereby causing permanent damage to her lower extremities (left lower leg), difficulty walking/ambulating, inability to perform daily tasks, and the need for further treatments.

On June 1, 2021, counsel for defendants filed a motion for summary judgment seeking dismissal of plaintiff's action. Oral argument on defendant's motion was heard before the undersigned, and the Court issued a decision on April 12, 2022 in which the motion was granted to the extent that plaintiff's cause of action for lack of informed consent was dismissed¹, and in all other respects was denied.

Parties' Contentions:

Here the Court is presented with the issue of whether defendants Dr. Blackstock and NYU should be granted leave to reargue their motion to dismiss plaintiff's complaint against said defendants.

¹ Plaintiff did not submit opposition to the portion of defendant's motion seeking dismissal of their claim for lack of informed consent.

In support of the motion to reargue, counsel asserts that the Court did not address all the elements of a medical malpractice claim, and specifically did not rule on the issue of causation. Counsel for defendant argues that plaintiff's expert was not qualified to comment on causation issues and offered no opinion as to whether the delay in diagnosing plaintiff's arterial occlusion caused any specific injury to the plaintiff.

In opposition, counsel for plaintiff argues that plaintiff's expert was qualified to opine on the standards of practice surrounding the diagnosis and treatment of cardiovascular diseases and events, as well as the standards of practice of emergency medicine. In addition, counsel asserts that the expert opined to a reasonable degree of medical certainty that, as a result of the delay in diagnosis of plaintiff's arterial occlusion, plaintiff sustained total arterial occlusion, loss of chance of a cure or treatment, deprivation of a better medical outcome, total arterial obstruction, blood clot, dermatitis, the need for further surgery including an aortic bifemoral bypass and open aortoiliac endarterectomy, significant pain and suffering including her lower extremities, left lower leg, feet, left lower foot numbness difficulty walking/ambulating, etc. (See Plaintiff's Expert Affirmation, NYSCEF Doc. #51).

Discussion:

A motion for reargument is addressed to the sound discretion of the court and may be granted upon a showing that the court overlooked or misapprehended the relevant facts or misapplied any controlling principle of law. CPLR §2221(d), McGill v Goldman, 261 AD2d 593 [2d Dep't 1999]. It is not designed to provide an unsuccessful party with successive opportunities to reargue issues previously decided, or to present arguments different from those originally presented. McGill v Goldman, 261 AD2d at 594.

This Court has considered defendant's assertion that this Court misapprehended the law by not addressing the issue of causation. However, this Court finds that the issue of causation was adequately addressed in the April 12, 2022 decision. (See Decision, NYSCEF Doc. #53). In rendering its decision, this Court considered the opinion of plaintiff's expert, which did address the defendants' delays in the diagnosis and treatment

of plaintiff and opined that said delays allowed plaintiff's condition to worsen and contributed to the injuries enumerated above. Plaintiff's expert opined that the delay in correctly diagnosing the plaintiff caused the artery at issue to progress from obstructed to totally occluded, which is a vascular emergency. Plaintiff's expert stated that lack of blood flow to the affected limbs causes muscle necrosis, which results in permanent mobility limitations.

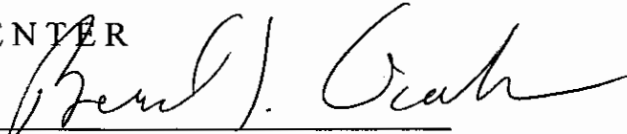
Conclusion:

The motion by plaintiff for an order granting reargument of the April 12, 2022 decision is denied.

This shall constitute the decision and order of this Court.

Dated: November 30, 2022
Brooklyn, NY

ENTER


Hon. Bernard J. Graham, Justice
Supreme Court, Kings County

HON. BERNARD J. GRAHAM