

**Maikish v Good Samaritan Hosp. Med. Ctr.**

2023 NY Slip Op 31746(U)

May 23, 2023

Supreme Court, New York County

Docket Number: Index No. 805030/2016

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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CHARLES MAIKISH,

Plaintiff,

- v -

GOOD SAMARITAN HOSPITAL MEDICAL CENTER,  
PATRICK REID, STEVEN CAGEN, M.D., LONG ISLAND  
ANESTHESIOLOGISTS PLLC, STEVEN BLAU, M.D.,  
JOSEPH A. BONAFEDE, M.D., AUGUSTO DA SILVA, M.D.,  
KATHLEEN O'HARA, M.D., KHALID A. NOORI, M.D.,  
ANDREA BAIERLEIN, PATRICK NORTON and IRAM  
AHSANUDDIN,

Defendants.

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INDEX NO. 805030/2016

MOTION DATE 12/06/2022

MOTION SEQ. NO. 012

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 012) 439, 440, 441, 442, 443, 444, 445, 446, 447, 448

were read on this motion to/for REARGUE.

Upon the foregoing documents, the court denies Plaintiff Charles Maikish's ("Plaintiff") motion to reargue portions of the court's decision and order, dated November 3, 2022, granting the summary judgment motions of Defendants Good Samaritan Hospital Medical Center ("Good Sam"), Steve Cagen, M.D. ("Dr. Cagen"), Long Island Anesthesiologists PLLC ("LIA"), Steven Blau, M.D. (Dr. Blau"), Kathleen O'Hara, M.D. ("Dr. O'Hara"), Patrick Naughton, RT s/h/a Patrick Norton ("RT Naughton") and Iram Ahsanuddin, RPA-C s/h/a Iram Ahsanuddin ("PA Ahsanuddin").

Now, under motion sequence 012, Plaintiff moves for leave to reargue the above-mentioned summary judgment motions and upon reargument, for an order reversing the court's decision to grant the motions and to deny the motions. Plaintiff argues in substance that the defense experts acknowledged the causative link between the endotracheal tube and the

Plaintiff's vocal cord injuries and the cuff inflation to Plaintiff's laryngeal nerve injury. Plaintiff further argues that Defendants failed to demonstrate their entitlement to summary judgment in their favor regarding causation, as their experts' opinions regarding the placement of the endotracheal tube were conclusory since they were based on certain x-rays at isolated moments. Additionally, Plaintiff argues in substance that many of Defendants' experts' opinions were broad and conclusory, they failed to explain what caused Plaintiff's vocal cord injury and the court should not have considered them. Plaintiff further argues that Plaintiff's expert created issues of fact, so the court should have denied Defendants' summary judgment motions.

Defendants Good Sam, RT Naughton, PA Naughton, Dr. Blau, Dr. Cagen, LIA and Dr. O'Hara oppose Plaintiff's motion to reargue. They argue in substance that Plaintiff failed to demonstrate any issue of fact or law that the court overlooked or misapprehended. Additionally, they argue in substance that the court correctly determined Plaintiff's expert's affidavit to be insufficient to rebut Defendants' experts' claims because it was too general, conclusory, speculative and unsupported by the record. They also argue that Plaintiff failed to address the issue of liability and that the court correctly dismissed the complaint because Defendants demonstrated their prima facie entitlement to it and Plaintiff failed to rebut their arguments.

Defendants Good Sam, RT Naughton and PA Naughton also argue in substance that the court's decision and order was properly reasoned and correctly decided, so the dismissal should remain. They argue that the court correctly found that RT Naughton and PA Ahsanuddin were carrying out the orders and recommendations of attending physicians which were appropriate and in accordance with the standard of care.

Defendant Dr. Blau also argues in substance that Dr. Blau never placed, inflated, or repositioned the endotracheal tube and Dr. Blau did not observe it in a position in which it could

have injured Plaintiff. He argues that Plaintiff ignores many of the conclusions included in Dr. Blau's expert's affirmation and deliberately excludes portions of the opinion. Dr. Blau further argues that his expert opined that the risk of laryngeal nerve injury was inherent in the type of surgery performed on Plaintiff and that the injuries could have been caused by the preceding trauma that led to the need for the surgery. However, Plaintiff failed to mention these opinions.

Dr. Cagen also argues in substance that he had nothing to do with inflating the pressure cuff, which Plaintiff claims caused his injuries, as it was not used during the surgery when he was attending to Plaintiff. Therefore, Plaintiff failed to rebut his entitlement to summary judgment in his favor.

Dr. O'Hara also argues in substance that Plaintiff failed to address the court's finding that Dr. O'Hara established a prima facie case for liability and proximate causation and that Plaintiff failed to rebut these elements and failed to address her expert's specific opinions. Dr. O'Hara also argues in substance that Plaintiff improperly raised a new argument in his motion to reargue and claims that Dr. O'Hara's expert affidavit was conclusory.

In reply, Plaintiff argues in substance that Defendants' experts' affidavits were conclusory in nature because they were predicated on the x-rays and that the court erred by overlooking or misapprehending the facts and law pertaining to what constitutes a conclusory opinion in this matter. Additionally, he argues in substance that he is not imposing a new burden on Defendants, nor is he making a new argument in his motion to reargue. Plaintiff maintains that the court erred by granting dismissal because Plaintiff raised an issue of fact as to each element of the medical malpractice cause of action and that the court should have denied the motions.

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 [1<sup>st</sup> Dept 1992] [internal citations and quotation marks omitted]).

Here, the court finds that Plaintiff failed to meet his burden because he failed to demonstrate any issue of fact or law that the court overlooked or misapprehended. Here, Plaintiff attempts to repeat arguments which were previously considered and rejected by the court. Plaintiff simply attempts to reargue the alleged deficiencies in Defendants' expert reports which were previously addressed in his opposition and he claims that certain statements made by one or more expert actually supports his arguments and others should not have been considered by the court. Plaintiff's arguments regarding the conclusory nature of Defendants' experts' affidavits are inappropriate in a motion to reargue as they were not raised in the prior motion and such affidavits are not new evidence and were available to Plaintiff at the time his opposition papers were filed.

Additionally, as noted by the Defendants, Plaintiff failed to raise an issue regarding Defendants' liability. Therefore, he fails to raise any issue of fact or law that the court misapprehended or overlooked as to its determination regarding liability.

Therefore, Plaintiff failed to meet his burden of demonstrating that the court misapprehended or overlooked an issue of law or fact and the court denies the motion in its entirety without costs to any party.

The court has considered all additional arguments raised by the parties which were not specifically discussed herein and the court denies any additional request for relief, which was not expressly granted herein.

As such, it is hereby

ORDERED that the court denies Plaintiff Charles Maikish’s motion to reargue portions of the court’s decision and order, dated November 3, 2022, without costs to any party.

This constitutes the decision and order of the court.

  
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<u>5/23/2023</u> DATE		<u>ERIKA M. EDWARDS, J.S.C.</u>
CHECK ONE:	<input checked="" type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> NON-FINAL DISPOSITION
	<input type="checkbox"/> GRANTED <input checked="" type="checkbox"/> DENIED	<input type="checkbox"/> GRANTED IN PART <input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT <input type="checkbox"/> REFERENCE