

**Stanley v City of New York**

2023 NY Slip Op 33348(U)

September 29, 2023

Supreme Court, New York County

Docket Number: Index No. 151098/2020

Judge: Judy H. Kim

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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. JUDY H. KIM **PART** **05RCP**

*Justice*

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NAKEMIA STANLEY,

Plaintiff,

- v -

THE CITY OF NEW YORK, OFFICE OF THE CHIEF  
MEDICAL EXAMINER, OFFICE OF THE CHIEF MEDICAL  
EXAMINER DEPUTY DIRECTOR OF FORENSIC  
INVESTIGATIONS ADEN NAKA, OFFICE OF THE CHIEF  
MEDICAL EXAMINER SPECIAL COUNSEL, LITIGATION  
AND POLICY LESLIE KAMELHAR,

Defendants.

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**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 007) 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148

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

The following e-filed documents, listed by NYSCEF document number (Motion 008) 149, 150, 151

were read on this motion to/for SEAL.

In motion sequence 007, defendants move to reargue this Court’s decision dated November 7, 2022 (the “Prior Decision”) which granted plaintiff’s motion for partial summary judgment on her loss of sepulcher claim and denied defendants’ cross-motion for an order precluding plaintiff from introducing evidence at trial. Defendants also assert that the Prior Decision failed to address that portion of defendants’ cross-motion which sought an order declaring plaintiff’s July 20, 2021 notice to admit a nullity and, on that basis, excusing defendants’ failure to respond to same.

Plaintiff opposes defendants’ reargument motion and, in motion sequence 008, moves for an order sealing certain documentary evidence plaintiff seeks to submit (but has not yet submitted) in support of her opposition to defendants’ reargument motion, i.e., personal photos which

document her pregnancy during the time period at issue in this action. For the reasons set forth below, the City's motion is granted in part and plaintiff's motion is denied.

### DISCUSSION

A motion to reargue “shall be based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion ...” (CPLR § 2221[d][2]). “Reargument is not designed to afford the unsuccessful party successive opportunities to reargue issues previously decided ... or to present arguments different from those originally asserted” (Setters v AI Properties and Developments (USA) Corp., 139 AD3d 492, 492 [1st Dept 2016] [internal citations and quotations omitted]).

That branch of defendants' motion to reargue plaintiff's motion for partial summary judgment on her loss of sepulcher claim is granted and, upon reargument, plaintiff's motion is denied as to the individual defendants, Aden Naka and Leslie Kamelhar. Defendants note—for the first time in connection with the present motion<sup>1</sup>—that plaintiff's evidence on her underlying motion was directed entirely toward establishing OCME's liability for the improper release of the decedent's remains and failed to establish what role, if any, Naka and Kamelhar played in the release of these remains such that an award of partial summary judgment against them was warranted. Plaintiff's argument in opposition, that Naka and Kamelhar's liability was established by defendants' failure to dispute statements in plaintiff's Statement of Material Facts that “[d]efendants did not release Mr. Frederick's body to Ms. Stanley or her designated funeral home until December 18, 2018” and “Ms. Stanley was aware that [d]efendants released Mr. Frederick's

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<sup>1</sup> Although not raised in the underlying motion, the Court does not view this argument, outlining fundamental deficiencies in plaintiff's proof, as violating the principle that a motion for reargument is not a vehicle to “present arguments different from those originally asserted” (Setters v AI Properties and Developments (USA) Corp., 139 AD3d 492, 492 [1st Dept 2016] [internal citations and quotations omitted]). Even if this were not the case, the Court would entertain this argument in the interest of justice (See Ruggiero v Long Is. R.R., 161 AD2d 622 [2nd Dept 1990]; see also Carman v Abter, 5 Misc 3d 1025(A) [Sup Ct, NY County 2004])

body [to the wrong person]” (See NYSCEF Doc. No. 49 [Statement of Material Facts at ¶¶17-18]) is without merit.

However, to the extent that defendants also seek an order denying plaintiff’s motion for partial summary judgment as to defendants the City of New York and its Office of the Chief Medical Examiner (“OCME”), the Court declines to do so. The arguments defendants raise in support of this branch of their motion were either previously raised and rejected in connection with the underlying motion or do not establish any fact or law overlooked or misapprehended in granting partial summary judgment against the City and OCME<sup>2</sup>.

That branch of defendants’ motion to reargue that branch of its cross-motion seeking an order deeming plaintiff’s July 20, 2021 notice to admit null and void is granted and, upon reargument, the Court grants the relief sought. The Court agrees with defendants that this notice to admit improperly sought to compel the “admission of fundamental and material issues or ultimate facts...” (MTGLQ Inv’rs, LP v Collado, 183 AD3d 414, 415 [1st Dept 2020] [internal citations omitted]; see also Zohar v Hair Club for Men Ltd., 200 AD2d 453, 454 [1st Dept 1994]) and defendants had no obligation to respond to same.

That branch of defendants’ motion to reargue the Court’s denial of their cross-motion to preclude plaintiff from offering evidence at trial (based upon defendants’ failure to produce certain evidentiary material in discovery, including medical records related to her pregnancy) is denied. Defendants fail to identify any questions of fact or law misapprehended or overlooked in the Court’s denial of this motion.

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<sup>2</sup> Defendants request that, should the Court deny this branch of its reargument motion, it nevertheless “clarify” the time period that may be considered in determining the damages resulting from plaintiff’s loss of sepulcher claim and whether plaintiff’s stillbirth falls within this window. In essence, defendants seek a ruling from this Court that the emotional distress caused by the release of the decedent’s remains is so distant, temporally, from plaintiff’s stillbirth that the stillbirth may not be considered in assessing plaintiff’s damages. This issue is well beyond the scope of the Prior Decision and, as such, is inappropriate to raise on a reargument motion.

Finally, in light of the Court's adherence to its denial of defendants' cross-motion to preclude, plaintiff's motion to seal documentary submissions she wishes to file in opposition to that branch of defendants' motion is denied as moot (and as, in any event, procedurally improper).

Accordingly, it is

**ORDERED** that defendants' motion to reargue the Court's Prior Decision granting plaintiff's motion for partial summary judgment against all defendants is granted and, upon reargument, the Court modifies the Prior Decision to the extent that plaintiff's motion for partial summary judgment is granted as to defendants the City of New York and New York City Office of Chief Medical Examiner and denied as to defendants Aden Naka and Leslie Kamelhar; and it is further

**ORDERED** that defendants' motion to reargue the Court's defendants' cross-motion for an order deeming plaintiff's July 20, 2021 notice to admit a nullity is granted and, upon reargument, the Court's grants that branch of defendants' cross-motion; and it is further

**ORDERED** that defendants' motion to reargue the Court's denial of defendants' cross-motion to preclude is denied; and it is further

**ORDERED** that plaintiff's motion to seal is denied; and it is further

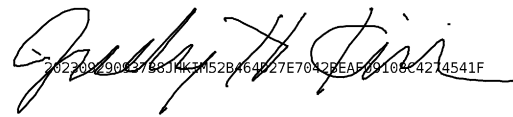
**ORDERED** that, within ten days of the date of this decision and order, counsel for plaintiff shall serve a copy of this decision and order, with notice of entry, upon defendants as well as the Clerk of the Court (60 Centre Street, Room 141B) and the Clerk of the General Clerk's Office (60 Centre Street, Room 119), who are directed to enter judgment accordingly; and it is further

**ORDERED** that such service upon the Clerk of the Court and the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the

“Efiling” page on this court’s website at the address [www.nycourts.gov/supctmanh](http://www.nycourts.gov/supctmanh)); and it is further

**ORDERED** that the Clerk of the Court is to set this matter down for a status conference in the Differentiated Case Management Part on the next available date.

This constitutes the decision and order of the Court.



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9/29/2023

DATE

HON. JUDY H. KIM, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE