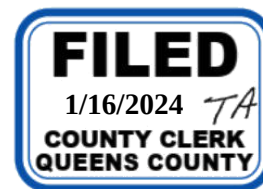


Ibragimova v Yakubova
2024 NY Slip Op 35220(U)
January 12, 2024
Supreme Court, Queens County
Docket Number: Index No. 703049/2021
Judge: Denise N. Johnson
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Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE DENISE N. JOHNSON IAS Part 11
Justice



-----X

NEKADAM IBRAGIMOVA, ILYA IBRAGIMOV		Index No.: 703049/2021
	Plaintiff(s),	
		Motion Date: 10/23/23
- and -		Motion Cal. No.: 7&8
LARISA YAKUBOVA		Motion Seq. No: 2 & 3
	Defendant(s).	

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The following papers numbered EF 68-97 read on this motion by Plaintiffs NEKADAM IBRAGIMOVA, ILYA IBRAGIMOV for an order pursuant to CPLR § 2221, granting Plaintiff leave to reargue Plaintiff's prior motion seeking leave to Amend Plaintiff's Bill of Particulars to include a strict liability dog attack claim against the defendants and on this motion by Defendant LARISA YAKUBOVA pursuant to CPLR § 2221 renewing defendant's motion for summary judgment.

Papers
Numbered

Mot. Seq. 2

Notice of Motion – Affirmation – Exhibits – Service EF 68-73
Affirmation in Opposition – Exhibits-Service EF 89
Reply Affirmation EF 90

Mot. Seq. 3

Notice of Motion – Affirmation – Statement of Material Facts – Exhibits – Service EF 76-88
Affirmation in Opposition – Exhibits-Service EF 91-95
Reply Affirmation EF 96-97

Upon the foregoing papers it is **ORDERED** that as follows:

This is action to recover for personal injuries allegedly sustained from an accident on the premises known as 188-16 Aberdeen Road, Jamaica, New York ("subject premises"). The action was commenced with the filing of a summons and complaint on February 9, 2021. Plaintiff now moves an order pursuant to CPLR § 2221, granting Plaintiff leave to reargue Plaintiff's prior motion seeking leave to Amend Plaintiff's Bill of Particulars to include a strict liability dog attack claim against the defendants. Defendant moves for an order pursuant to CPLR § 2221 renewing defendant's motion for summary judgment.

A motion for reargument allows a party to establish that the court "overlooked or misapprehended the relevant facts" or "misapplied any controlling principle of law" (See CPLR §2221 [d] [2]; see also *Delgrosso v 1325 Limited Partnership*, 306 AD2d 241 [2003]; *Foley v Roche*, 68 AD2d 558 [1979]). This does not include any matters of fact not offered on the prior motion. Movant asserts that this court erred when it denied Plaintiff's motion for summary judgment. Plaintiff argues that the court misapplied the law in deciding the underlying Summary Judgement motion. Plaintiff erroneously argues that the Court misapprehended the law by denying the motion because the court required that there be physical contact with plaintiff for a dog attack to have occurred. This Court was explicit in the reasons as to why the prior motion was denied and did not indicate in the prior decision that it relied on a finding that physical contact was required to sustain an action for a dog attack.

It is well-settled that a motion to reargue is not a vehicle to permit an unsuccessful party to merely reiterate and argue once again the very questions previously decided (*see, Foley v. Roche, supra*, at 567, *see also, Pahl Equip, v. Kassis*, 182 A.D.2d 22 [1st Dept. 1992], *leave dismissed in part, denied in part* 80 N.Y.2d 1005 [1992])). That is precisely what Plaintiff has done

in the instant motion. As such, movant has failed to meet their burden in demonstrating that the court misapprehended facts or misapplied the law as required by CPLR § 2221(d). Accordingly, the motion is DENIED in its entirety.

Defendant moves for an order pursuant to CPLR § 2221 renewing defendant's motion for summary judgment. CPLR §3212 requires that for a court to grant summary judgment the court must determine that the proponent of a summary judgment motion has made a *prima facie* showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case. (*See Zuckerman v. City of New York*, 49 N.Y.2d 557, 562 [1980]; *Sillman v. Twentieth Century-Fox Film Corp.*, 3 N.Y.2d 395, 404 [1957]). The evidence submitted in support of the movant must be viewed in the light most favorable to the non-movant (*see, Grivas v. Grivas*, 113 A.D.2d 264, 269 [2d Dept. 1985]; *Airco Alloys Division, Airco Inc. v. Niagara Mohawk Power Corp.*, 76 A.D.2d 68 [4th Dept. 1980]; *Parvi v. Kingston*, 41 N.Y.2d 553, 557 [1977]). For a court to grant summary judgment the court must determine whether the movant's papers justify holding as a matter of law, "that the cause of action or defense has no merit." Summary judgment shall be granted only when there are no issues of material fact and the evidence requires the court to direct judgment in favor of the movant as a matter of law (*see, Friends of Animals, Inc., v. Associated Fur Mfrs.*, 46 N.Y.2d 1065 [1979]; *Orwell Bldg. Corp. v. Bessaha*, 5 A.D.3d 573 [2d Dept. 2003]). In support of the motion Defendant offers the pleadings, EBT Transcripts from Plaintiff NEKADAM IBRAGIMOVA and Defendant LARISA YAKUBOVA and Photographs (which are dark and blurry). Defendant's submission of EBT transcripts with conflicting testimony from each party is insufficient to establish entitlement to judgment as a matter of law and failed to eliminate all triable issues of fact. "Resolving questions

of credibility, determining the accuracy of witnesses, and reconciling the testimony of witnesses are for the trier of fact (*Bykov v Brody*, 150 AD3d 808, 809 [2d Dept 2017])". Therefore, it is

ORDERED, that Plaintiff's Motion for an order pursuant to CPLR § 2221, granting Plaintiff leave to reargue is DENIED. It is further,

ORDERED, that Defendant's motion for pursuant to CPLR § 3212 for summary judgment in favor of the Defendant and dismissal of the complaint is DENIED.

The foregoing shall constitute the decision and order of this court.

Dated: January 12, 2024

Denise N. Johnson

DENISE N. JOHNSON
J.S.C.

