

Riccio v Incorporated Vil. of Freeport
2025 NY Slip Op 35619(U)
March 12, 2025
Supreme Court, Nassau County
Docket Number: Index No. 611774/2022
Judge: Thomas Rademaker
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU – IAS/TRIAL PART II

PRESENT: HON. THOMAS RADEMAKER

_____X

ARTHUR J. RICCIO,

Plaintiff,

Index No.: 611774/2022

Mot. Seq 002

Submitted: 3/7/2025

-against-

DECISION AND
ORDER

INCORPORATED VILLAGE OF FREEPORT,
INCORPORATED VILLAGE OF
FREEPORT POLICE DEPARTMENT
and "JOHN DOE", a fictitious name for
a person believed to be the operator
of the Freeport Police Department Vehicle

Defendants.

_____X

INCORPORATED VILLAGE OF FREEPORT,

Third Party Plaintiff,

-against-

FRANK CAMIDGE,

Third Party Defendant.

_____X

UPON DUE DELIBERATION AND CONSIDERATION BY THE COURT of the foregoing papers, including e-filed documents/exhibits numbered 67 - 71, 73 - 79, this motion is decided as follows:

The Defendants, INCORPORATED VILLAGE OF FREEPORT, INCORPORATED VILLAGE OF FREEPORT POLICE DEPARTMENT and P.O. CHRISTOPHER FREY

("Defendants") move the Court by Notice of Motion for an Order pursuant to CPLR § 2221[d][2] seeking leave to reargue Defendants' motion and upon the granting of re-argument by the Court, a determination of summary judgment on the issue of liability in favor of Defendants and against the Plaintiff, dismissing the Complaint.

This is an action for personal injuries sustained by the Plaintiff's claim for personal injury arising out of a motor vehicle accident which occurred on July 9, 2021, at approximately 7:20 PM. The Plaintiff is a Nassau County Police Officer and was a passenger in a vehicle operated by Frank Camidge, who filed a companion lawsuit which was joined for discovery and trial with the action herein. (*Camidge v. Freeport Police Department, et al*, Sup. Ct., Nassau County, Index No. 614639/2021).

A motion for leave to reargue is addressed to the sound discretion of the court which decided the prior motion and may be granted upon a showing that the court overlooked or misapprehended the facts or law, or for some reason mistakenly arrived at its earlier decision. (*Beverage Marketing USA, Inc. v. South Beverage Co., Inc.*, 58 A.D.3d 657 [2d Dept., 2009]); See CPLR § 2221. A motion for leave to reargue "shall not include any matters of fact not offered on the prior motion" and "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." (*Muzinov v. Rella*, 79 A.D.3d 979, 980 [2d Dept. 2010]; quoting *McGill v. Goldman*, 261 A.D.2d 593, 594 [2d Dept., 1999]; CPLR § 2221).

Specifically, CPLR § 2221 sets forth as follows:

(d) A motion for leave to reargue:

1. Shall be identified specifically as such;

2. Shall be based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion, but shall not include any matters of fact not offered on the prior motion; and
3. Shall be made within thirty days after service of a copy of the order determining the prior motion and written notice of its entry. This rule shall not apply to motions to reargue a decision made by the appellate division or the court of appeals.

After a close reading of the evidence and facts presented to the Court in this motion and in the initial moving papers, the Court did not overlook or misapprehend any facts or law in reaching its Decision. In moving for summary judgment, the Defendants characterize the incident at bar as a "single car accident" in which the Plaintiff had operated the Nassau County Police Vehicle in an imprudent manner and at an excessive speed, had not maintained control of his vehicle, and had ultimately been the sole proximate cause of his own injuries. In contrast, the Plaintiff contends that Defendant Frey violated New York State Vehicle and Traffic Law §1104 and police training protocol by not having his lights and sirens activated. The Plaintiff testified at his deposition that the proper procedure for a vehicle in Defendant Frey's position would be to pull to the right side of the roadway when emergency vehicles are proceeding with lights. It is the Plaintiff's position that Defendant Frey's actions were reckless "when he pulled in front of three police vehicles that were traveling with their lights and sirens to an emergency," and that Defendant Frey "inhibited [the Nassau County Officers] from responding to assist other officers and directly put his fellow officers in danger, causing the accident. Similarly, officer Ricco observed that the vehicle operated by Officer Frey pulled over to the right side of the road

and then made an immediate U-turn, blocking the entire roadway. (Riccio 50h at p. 30, lines 13-16).

Ultimately, the Court concluded that the moving papers presented with questions of credibility which could not be resolved as matters of law, and which must be referred to the trier of fact. Similarly, the Court determined that a question of fact is presented as to whether the operation of the Defendants' police car was a substantial cause of the Plaintiff's accident or whether Officer Camidge's operation of his motor vehicle was a superseding or intervening act which caused Officer Riccio's injuries. (*Derdiarian v. Felix Contractor Corp.* 51 NY2d 308 [1980]).

Accordingly, in the exercise of the Court's discretion, the Defendants' request for leave to reargue the Decision and Order are **DENIED** in all respects.

A motion for leave to renew must be based upon new facts not offered on the prior motion that would change the prior determination or demonstrate that there has been a change in the law that would change the prior determination. (CPLR § 2221[e][2]). The motion for leave to renew shall contain reasonable justification for the failure to present such facts on the prior motion. (CPLR § 2221[e][3]). "The Supreme Court lacks discretion to grant renewal where the moving party omits a reasonable justification for failing to present the new facts on the original motion." (*Sabin v. Tylutki*, 59 AD3d 701, 702 [2nd Dept 2009]).

The Court finds it to be a provident exercise of discretion to deny the Defendants' motion to renew as they failed to offer a reasonable justification as to why the alleged new facts were not submitted earlier. (*Renna v. Gullo*, 19 AD3d 472 [2nd Dept 2005]).

Accordingly, the Defendants' motion for leave to renew the Decision is **DENIED**.

All other requested relief, not specifically addressed herein, is hereby **DENIED**.

The foregoing constitutes the Decision and Order of the Court.

Dated: March 12, 2025
Mineola, N.Y.



Hon. Thomas Rademaker, J. S. C.**ENTERED****Mar 13 2025****NASSAU COUNTY
COUNTY CLERK'S OFFICE**