Vorobeychik v Herzog
2018 NY Slip Op 33402(U)
November 16, 2018
Supreme Court, Richmond County
Docket Number: 150735/2013
Judge: Jr., Orlando Marrazzo

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND

LYUBA VOROBEYCHIK,

Plaintiff(s),

-against-

DAVID M. HERZOG, M.D., JILL M. MATTERN, M.D., and DAVID M. HERZOG, M.D., P.C.

Defendant(s).

DECISION/ORDER

DCM PART 21

HON. ORLANDO MARRAZZO, JR.

Index No.: 150735/2013

Motion No. 7,8

The following numbered 1 to 8 were fully submitted on 13th day of November 2018

	Papers Numbered
Notice of motion to compel discovery, with Supporting papers and Exhibits, dated July 2, 2018	1
Notice of Cross-Motion to renew and reargue, with Supporting papers and Exhibits, dated July 10, 2018,	2
Affirmation in Opposition, with Supporting papers and Exhibits, dated September 24, 2018	3
Reply, dated November 12, 2018	4

Defendant David M. Herzog, M.D. and David M. Herzog, M.D., P.C. moves for an order to renew and reargue the court's June 4, 2018 order precluding from discovery the portion of the medical records related to plaintiff's abortion.

Defendant Jill M. Mattern, M.D. cross-moves for an order to renew and reargue the court's June 4, 2018 order precluding from discovery the portion of the medical records related to plaintiff's abortion.

As is set forth below both the motion and cross-motion are denied. And the court adheres to its June 4, 2018, decision and order precluding from discovery plaintiff's medical records as they pertain to her abortion.

According to CPLR § 2221(d), A motion to reargue must be so designated, shall be based upon an assertion that the court overlooked or misapprehended matters of law or fact when it decided the prior motion and shall be made within 30 days of service of the order with notice of entry from which rearmament is sought.

A motion to reargue is addressed to the discretion of the court and may be granted upon a showing that the court overlooked relevant facts or misapplied or misapprehended the applicable law or for some other reason improperly decided the prior motion (see, *Singleton v. Lenox Hill Hosp.*, 61 AD3d 956 [App Div, 2nd Dept, 2009]; and *Mazzei v. Liccardi*, 47 AD3d 774 [App Div, 2nd Dept, 2008]; *Carrillo v. PM Realty Group*, 16 AD3d 611 [App Div, 2nd Dept, 2005]; *Hoey-Kennedy v. Kennedy*, 294 AD2d 573 [App Div, 2nd, Dept, 2003]; *Foley v. Roche*, 68 AD2d 558 [App Div, 1st Dept, 1979].)

On a motion to reargue the movant can only rely upon the papers submitted in connection with the prior motion. New facts may not be submitted or considered

by the court (see, *James v. Nestor*, 120 AD2d 442 [App Div, 1st Dept, 1986]; *Philips v. Village of Oriskany,* 57 AD2d 110 [App Div, 4th Dept.1997].)

A motion to reargue is not a means by which the unsuccessful party can obtain a second opportunity to argue issues decided in the prior motion or to present new and different arguments relating to the previously decided issues (see, *Gellert & Rodner v. Gem Community Mgt., Inc.*, 20 AD3d 388 [App Div, 2nd Dept, 2005]; *McGill v. Goldman*, 261 AD2d 593 [App Div, 2nd Dept, 1993].)

According to CPLR § 2221 (e), A motion to renew shall be so designated. A motion to renew shall be based upon new facts not presented to the court in connection with the prior motion that would change the court's prior determination or upon a change in the law that would change the prior determination. The party moving for renewal must provide a reasonable justification for its failure to present the new facts on the prior motion. CPLR 2221(e).

The party moving to renew must provide the court with a reasonable excuse for its failure to present the new facts on the prior motion (see, *Kornblum v. Blank Rome Tenzer Greenblatt*, 39 AD3d 482 [App Div, 2nd Dept, 2007]; *Kaufman v. Kunis*, 14 AD3d 542 [App Div, 2nd Dept, 2005].) A reasonable excuse exists when the facts existed but were not known to the party when the prior motion was made (see, *Carbajal v. Bobo Robo, Inc.*, 38 AD3d 820 [App div, 2nd Dept, 2007]; Johnson *v. Marques*, 2 AD3d 786 [App div, 2nd Dept, 2003].)

Here, both Defendant David M. Herzog, M.D. and David M. Herzog, M.D., P.C. in their motion and Defendant Jill M. Mattern, M.D. in their cross-motion do not present a legal basis for this court to disrupt its June 4, 2018 decision and order precluding from discovery the portion of plaintiff's medical records as they pertain to her abortion. The court adheres and affirms its June 4, 2018 decision and order precluding from discovery the portion of the medical records as they pertain to plaintiff's abortion.

Accordingly, both the motion and cross-motion are denied.

This constitutes the decision and order of the court.

Dated: November 16, 2018
Staten Island, New York

Orlando Marrazzo, Jr.,
Justice, Supreme Court

Hon. Orlando Marrazzo, Jr.
Acting Supreme Court Justice