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| Taussi v City of New York |
| 2019 NY Slip Op 32535(U) |
| July 15, 2019 |
| Supreme Court, Richmond County |
| Docket Number: 150359/2015 |
| Judge: Thomas P. Aliotta |
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND: PART C2

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ERAN TAUSSI,

Plaintiff,

DECISION AND ORDER

-against-

Index No.: 150359/2015
Motion No.: 1870-003

THE CITY OF NEW YORK, THE NEW YORK CITY
POLICE DEPARTMENT, POLICE OFFICER MICHAEL
USTICK, TAX ID NO 948518 OF THE 121ST PRECINCT,
in his personal and official capacity, ALL POLICE
OFFICERS INVOLVED IN THE INCIDENTS CLAIMED
HEREIN, AND ALL SUPERVISORY POLICE
OFFICERS VESTED AND CHARGED WITH
COMMANDING AUTHORITY OVER THE POLICE
OFFICERS AS CLAIMED HEREIN, all in their individual
and official capacity,

Defendants.

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The following papers numbered "1" through "3" were marked submitted on the 5th day of
June 2019:

Notice of Motion for Leave to Reargue
By Plaintiff, with Supporting Papers and Exhibits
(dated April 29, 2019) 1

Affirmation in Opposition
By Defendants the City of New York and Police Officer Michael Ustick,
with Supporting Papers and Exhibits
(dated May 29, 2019)..... 2

Reply Affirmation
(dated June 4, 2019)..... 3

Upon the foregoing papers, Plaintiff's motion for leave to reargue is denied.

The facts of this matter are set forth in the Court's Decision and Order dated April 1, 2019. Therein, the motion for summary judgment by defendants, City of New York and Police Officer Michael Ustick, was granted as to plaintiff's claims of false arrest, false imprisonment and negligence. The Court did not dismiss plaintiff's claims of assault and battery.

A motion for leave to reargue 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 (CPLR 2221[d][2]). While the determination to grant leave to reargue a motion lies within the sound discretion of the court, a motion for leave to reargue is not designed to provide an unsuccessful party with successive opportunities to reargue issues previously decided (*see Williams v. Abiomed, Inc.*, __AD3d__, 2019 NY Slip Op 4990 [2nd Dept 2019]).

Here, in support of his motion for leave to reargue, rather than point out matters of fact or law allegedly overlooked or misapprehended, plaintiff merely sought to restate his earlier arguments pertaining to the non-party affidavit of his former spouse (*see Williams v. Abiomed, Inc.*, __AD3d__, 2019 NY Slip Op 4990 [2nd Dept 2019]). In the prior decision and order, the Court had considered the affidavit of Plaintiff's former spouse, Ms. Shari Bobchin. In this regard, the following facts were not disputed by Ms. Bobchin: (1) an order of protection had been previously issued against the plaintiff; (2) Plaintiff was loitering in the vicinity of her house; (3) Plaintiff contacted the police officers alleging that Ms. Bobchin had stolen his vehicle and upon their arrival, informed the police officers that a restraining order was in effect against him; and (4) Plaintiff appeared belligerent towards the police officers while he was being questioned about the subject vehicle (*see Defendants' Exhibit "F", Affidavit of Shari Bobchin*). In fact, the statements made in Ms. Bobchin's affidavit correspond with the deposition testimony

of Police Officer Ustick. Under these circumstances, the Court determined that Ms. Bobchin's statement that she "did not call the police and ask that [Plaintiff] be arrested", sworn to 15 months post-incident, was insufficient to counter defendant's showing that probable cause existed at the time of the arrest (*see Silverstein v. New York City Police Dept*, 167 AD3d 961, 963 [2nd Dept 2018]).

Accordingly, it is hereby

ORDERED that plaintiff's motion for leave to reargue is denied; and it is further

ORDERED that the parties report to the SCMP Part located at 18 Richmond Terrace, Staten Island, NY Room 114 on July 23, 2019 at 9:30 A.M. for a pre-trial conference; and it is further

ORDERED that the Clerk shall mark his records accordingly.

Dated: July 15, 2019

ENTER,



HON. THOMAS P. ALIOTTA, J.S.C.