

Dixon v New York City Health & Hosps. Corp.

2023 NY Slip Op 31617(U)

May 10, 2023

Supreme Court, New York County

Docket Number: Index No. 805079/2021

Judge: Erika M. Edwards

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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. ERIKA M. EDWARDS

PART 10M

Justice

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CHARMAINE DIXON, as Administratrix of the Estate of
TAMEL DIXON, Deceased, and CHARMAINE DIXON,
Individually,

Plaintiff,

- v -

NEW YORK CITY HEALTH AND HOSPITALS
CORPORATION, HARLEM HOSPITAL CENTER, MICHAEL
ANTHONY DEVITA, M.D., CHIAGOZIE NWAKANMA, M.D.,
CHRISTIAN BENJAMIN BOAMAH, JR., M.D., and ADEL
HANANDEH, M.D.,

Defendants.

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INDEX NO. 805079/2021

MOTION DATE 12/21/2022

MOTION SEQ. NO. 003

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 003) 73, 74, 75, 76, 77, 78, 79, 80, 81, 82

were read on this motion to/for RENEW/REARGUE/RESETTLE/RECONSIDER.

Upon the foregoing documents, the court denies Plaintiff Charmaine Dixon, as Administratrix of the Estate of Tamel Dixon, Deceased’s, and Charmaine Dixon, Individually’s (“Plaintiff”) motion to reargue and renew this court’s Decision and Order, dated November 22, 2022, denying Plaintiff’s motion for a default judgment as to Defendant Adel Hanandeh, M.D. (“Dr. Hanandeh”) and for alternative relief.

Under motion sequence 001, Plaintiff previously moved for an extension of time to serve Dr. Hanandeh with the summons and complaint or for an order deeming service upon him as timely *nunc pro tunc*. In a decision and order, dated February 14, 2022, the court granted in part Plaintiff’s motion by granting Plaintiff a 30-day extension of time to serve Dr. Hanandeh. The court denied Plaintiff’s request to deem Plaintiff’s purported service on him at his last known address in Ohio, which was his parents’ home, as timely *nunc pro tunc*.

Plaintiff previously moved under motion sequence 002 for an order granting a default judgment in favor of Plaintiff as against Defendant Dr. Hanandeh and scheduling an inquest to assess damages, or in the alternative, Plaintiff moved to renew his previous motion for an order extending time to serve Dr. Hanandeh with the summons and complaint for good cause shown and in the interest of justice, directing defense counsel to provide Plaintiff's counsel with Dr. Hanandeh's current residential, work and email addresses and granting Plaintiff leave to serve Dr. Hanandeh by alternate means via email.

In a decision and order, dated November 22, 2023, the court denied Plaintiff's motion and found that Plaintiff failed to demonstrate her entitlement to the relief requested. The court determined that Plaintiff failed to properly serve Dr. Hanandeh with the summons and complaint and failed to demonstrate diligent efforts to locate and serve Dr. Hanandeh during the additional 30-day extension provided by the court. Therefore, the court denied Plaintiff's requests to enter a default judgment against Dr. Hanandeh and to schedule an inquest for the assessment of damages, to grant another extension of time to serve Dr. Hanandeh, to direct defense counsel to provide Plaintiff's counsel with Dr. Hanandeh's current residential, work and email addresses and to grant Plaintiff leave to serve Dr. Hanandeh by alternate means via email.

Plaintiff now moves under motion sequence 003 for leave to reargue and renew the court's decision and order. Upon reargument, Plaintiff moves for an order reversing the court's previous ruling and granting Plaintiff's relief requested in her motion, pursuant to CPLR 2221(d) and (e), respectively. Plaintiff argues in substance that the court overlooked critical facts and matters of law and Plaintiff provided an affidavit, dated November 22, 2022, from Aslinan Turan, the Operations Manager of Lexitas, also known as PM Legal, LLC, which was the process server retained by Plaintiff, as new evidence for the court's consideration.

Defendants New York City Health and Hospitals Corporation and Dr. Hanandeh oppose Plaintiff's motion and argue in substance that Plaintiff repeated the same arguments that Plaintiff previously raised in her prior two motions and that such arguments were previously considered and rejected by the court.

Pursuant to CPLR 2221(d)(2), a motion for leave to reargue is left to the sound discretion of the court and may be granted only where the moving party contends that an issue of law or fact had been overlooked or misapprehended by the court when deciding the original motion (CPLR 2221[d][2]).

Pursuant to CPLR 2221(e)(2), a motion for leave to renew shall be based on new facts not offered in the prior motion that would change the court's prior determination or it shall demonstrate that there has been a change in the law that would change the court's prior determination (CPLR 2221[e][2]). Additionally, a motion to renew shall contain reasonable justification for failure to present such facts on the prior motion (CPLR 2221[e][3]).

Motions to reargue or renew are not designed to provide the unsuccessful party successive opportunities to reargue issues previously decided by the court or to present new evidence or different arguments than previously raised (*William P. Pahl Equip. Corp. v Kassis*, 182 AD2d 22, 27 [1st Dept 1992] [internal citations and quotation marks omitted]).

Here, the court finds that Plaintiff failed to demonstrate her entitlement to any of the relief requested. Plaintiff's motion to reargue includes the same arguments raised in Plaintiff's previous motions and Plaintiff failed to establish that the court overlooked or misapprehended the facts or law. As noted by the court in its prior decision, dated November 22, 2022, "[t]he court considered any additional arguments raised by the parties which were not specifically

addressed herein and the court denies all additional requests for relief not expressly granted herein.”

As to Plaintiff’s motion to renew, the court finds that Plaintiff failed to demonstrate that the affidavit from the process service contains any new information. It simply recounts the previous searches and attempts to serve Dr. Hanandeh, which occurred prior to the filing of Plaintiff’s reply on her previous motion and the exhibits include updated searches conducted after the reply was filed in an apparent attempt to create “new” information. Such information was readily available to Plaintiff and most of it was included in the exhibits submitted to the court which were previously considered by the court. Additionally, such purported “new” information does not include new facts that would change the court’s prior decision.

As to Defendant Dr. Hanandeh’s request for the court to dismiss the complaint against him, the court declines to exercise its discretion at this time based on Defense counsel’s request in the opposition papers. However, pursuant to CPLR 306-b, the court continues to find that service was not timely made upon Dr. Hanandeh, so the court would consider dismissal upon motion and an opportunity to be heard.

Therefore, the court denies Plaintiff’s motion in its entirety.

The court considered any additional arguments raised by the parties which were not specifically addressed herein and the court denies all additional requests for relief not expressly granted herein.

As such, it is hereby

ORDERED that the court denies Plaintiff Charmaine Dixon, as Administratrix of the Estate of Tamel Dixon, Deceased’s, and Charmaine Dixon, Individually’s motion to reargue and

renew this court’s Decision and Order, dated November 22, 2022, filed under motion sequence 003.

This constitutes the decision and order of the court.

Erika M. Edwards
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5/10/2023

DATE

ERIKA M. EDWARDS, 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