

SUPREME COURT - STATE OF NEW YORK

PRESENT: HON. JACK L. LIBERT,
Justice.

NATIONWIDE AFFINITY INSURANCE COMPANY OF AMERICA,

Plaintiff,

-against-

INDIVIDUAL CLAIMANT DEFENDANTS

**SHERRY ANN LAYNE,
EARL JASON BROOKS,
RON CALLISTE,
ARIEL HUGGINS**

HEALTHCARE PROVIDER DEFENDANTS

**WAHID MUHAMMAD, L.L.C.,
MEDISYS MANAGEMENT, L.L.C.,
THE JAMAICA HOSPITAL MEDICAL CENTER
DIAGNOSTIC AND TREATMENT CENTER
CORPORATION,
LIBERTY MEDICAL SERVICES, P.C.,
MEDICAL DIAGNOSTIC SERVICES, P.C.,
RADIOLOGY WORKS, P.C.,
TJH MEDICAL SERVICES, P.C.,
IVAN LAM, D.C.,
JHMC HOSPITAL CO. BETZ MITCHELL,
PHILLIP BALDERO, M.D.,
YOELI GIDEON, M.D.**

Defendants.

**TRIAL PART 29
NASSAU COUNTY**

**MOTION # 02
INDEX # 601765/17
MOTION SUBMITTED:
OCTOBER 25, 2017**

XXX

The following papers having been read on this motion:

- Notice of Motion/Order to Show Cause.....1**
- Cross Motion/Answering Affidavits.....2**
- Reply Affidavits.....3**

Defendants, Sherry Ann Layne and Earl Jason Brooks, (the "Individual Defendants"), seek to renew or reargue an order of this court, dated August 14, 2017. That order granted a default judgment against the Individual Defendants.

Motion to Reargue

CPLR 2221(d)(1), (2) requires that a motion to reargue be “identified specifically as such;” and “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.” “[M]otions for reargument are 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 mistakenly arrived at its earlier decision (*Viola v. City of New York*, 12 AD3d 439, 440 [2d Dept 2004]; *Ito v. 324 East 9th Street Corp.*, 49 AD3d 816 [2d Dept. 2008]). Notably, the remedy is not designed to provide an unsuccessful party with successive opportunities to make repetitious applications, rehash questions already decided, or present arguments different from those originally presented. (*V. Veeraswamy Realty v. Yenom Corp.*, 71 AD3d 874 [2d Dept. 2010]).

The Individual Defendants aver that they submitted a meritorious defense to plaintiff’s motion for a default judgment. The Individual Defendants turn the courts attention to plaintiff’s original motion which cited the testimony of each of the Individual Defendants during their respective examinations under oath (EUO). Defendants allege that the EUO testimony of the Individual Defendants described the accident and the events that preceded it in the same manner. The Individual Defendants argue that the testimony established that Sherry Ann and Earl Jason were passengers in the vehicle. All of that evidence was considered by the court in making its decision of August 14, 2017. It was not misapprehended or overlooked.

Motion to Renew

A motion to renew is based upon newly discovered facts, unknown, but existing at the time of the original motion, and for which there is a reasonable excuse for not having been raised in the original motion. It is not governed by the same 30-day time limit as is a motion to reargue. In *Foley v. Roche*, 68 AD2d 558, 418 NYS2d 588 (Second Dept., 1979) the court addressed the issues of reargument and renewal. As to renewal, the Court stated:

An application for leave to renew must be based upon additional material facts which existed at the time the prior motion was made, but were not then known to the party seeking leave to renew, and, therefore, not made known to the court. Renewal should be denied where the party fails to offer a valid excuse for not submitting the additional facts upon the original application. (*Ecco High Frequency Corp v Amtorg Trading Corp.*, 81 NYS2d 897, affd 274 App Div 982, rearg and app den 274 App Div 1056; *Matter of Holad v MVAIC*, 53

Misc 2d 952; *American Trading Co. v Fish, supra*) Nor should the remedy be available where a party has proceeded on one legal theory on the assumption that what has been submitted is sufficient, and thereafter sought to move again on a different legal argument merely because he was unsuccessful upon the original application. . . *Foley v. Roche, supra* at. 568

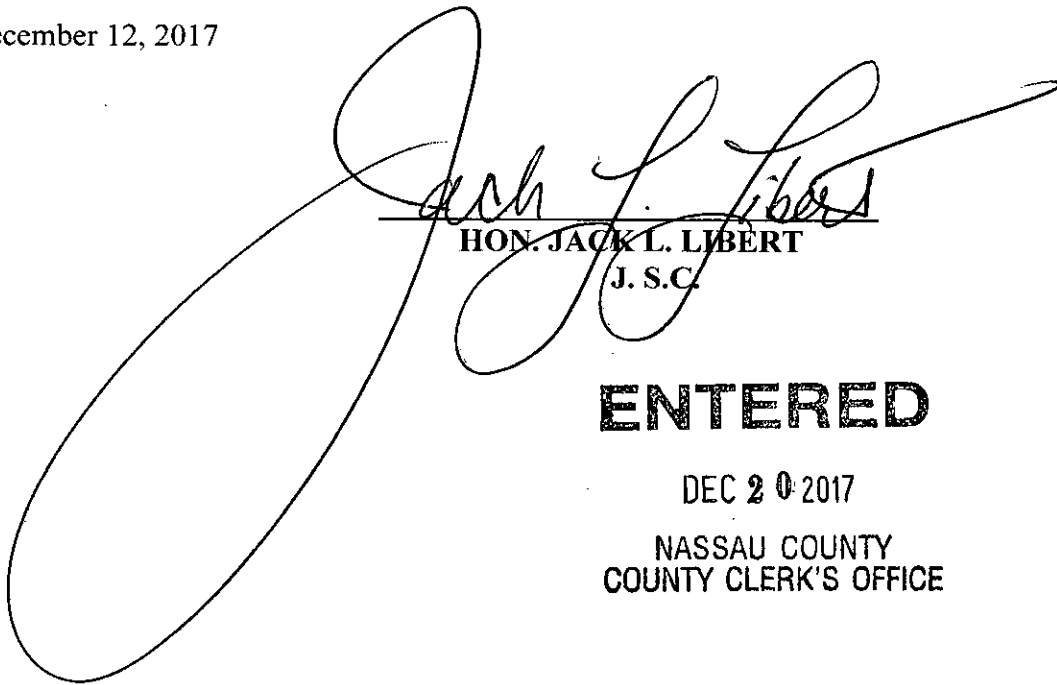
Defendants submitted the affidavit of defendant Ron Calliste, which they argue provides additional substantiation that Individual Defendants Sherry Ann Layne and Earl Jason Brooks were present in the subject vehicle on the date and time of the accident. Mr. Calliste states that he moved and due to his change in address defendants Sherry Ann and Earl Jason were not able to timely locate and contact Mr. Calliste to include his affidavit. Whether this constitutes a reasonable excuse for not submitting this affidavit with the original motion is irrelevant. The information provided by Mr. Calliste contains no newly discovered facts.

Defendant motion to renew or reargue is **denied**.

This constitutes the decision and order of the court.

ENTER

DATED: December 12, 2017

A large, stylized handwritten signature in black ink, appearing to read "Jack L. Libert", is written over a horizontal line. The signature is highly cursive and extends significantly to the left and right of the line.

**HON. JACK L. LIBERT
J. S.C.**

ENTERED

DEC 20 2017

**NASSAU COUNTY
COUNTY CLERK'S OFFICE**