

4-15-11

PART 29

SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF BRONX

Case Disposed
 Settle Order
 Schedule Appearance

CINTRON, CARMEN

Index No. 0021705/2005

-against-

Hon. ROBERT E. TORRES

MONTEFIORE MEDICAL CENTER

Justice.

The following papers numbered 1 to 3 Read on this motion, REARGUE/RENEW/RESETTLE/RECONSIDER
 Noticed on November 19 2010 and duly submitted as No. _____ on the Motion Calendar of 11/19/2011

| | PAPERS NUMBERED | |
|--------------------------------------------------------------------------|-----------------|--|
| Notice of Motion - Order to Show Cause - Exhibits and Affidavits Annexed | 1 | |
| Answering Affidavit and Exhibits | 2 | |
| Replying Affidavit and Exhibits | 3 | |
| _____ Affidavits and Exhibits | | |
| Pleadings - Exhibit | | |
| Stipulation(s) - Referee's Report - Minutes | | |
| Filed Papers | | |
| Memoranda of Law | | |

Upon the foregoing papers this motion is denied

in accordance with the
attached decision

Motion is Respectfully Referred to:
 Justice: _____
 Dated: _____

Dated: 4, 6, 2011

Hon. [Signature]
 ROBERT E. TORRES, J.S. **ROBERT E. TORRES**
 JUDGE

SUPREME COURT OF THE CITY OF NEW YORK
COUNTY OF BRONX, PART 29
PRESENT: HONORABLE ROBERT E. TORRES, J.S.C.

CARMEN CINTRON,

INDEX NUMBER: 21705/05

Plaintiff,

-against-

Present:
HON. **ROBERT E. TORRES**

MERCK & CO., INC.¹, and MONTEFIORE MEDICAL
CENTER,

Defendant.

Plaintiff moves for an Order granting leave to reargue the decision and order of this court dated September 7, 2010 in which this Court granted defendant's motion for summary judgment pursuant to C.P.L.R. §3212. In its decision, the Court held that no genuine issues of material fact existed. Defendant MONTEFIORE MEDICAL CENTER opposes the instant motion on the ground that this Court properly applied the facts to the law.

It is well settled that a motion for reargument is addressed to the sound discretion of the Court and may be granted upon a showing that the Court overlooked or misapplied the relevant facts or misapprehended the relevant facts or misapplied any controlling principles of law. Foley v. Roche, 58 AD2d 558 (1st Dept 1979).

In the case at bar, plaintiff herein has failed to articulate any basis for the relief sought. Plaintiff has failed to establish that the Court overlooked or misapprehended any fact or matter of law. Additional arguments can not be the basis for the instant motion. See, C.P.L.R. §2221(d)(2).

Assuming, *arguendo*, that the Court did grant the instant motion, it would, nevertheless,

¹ Merck & Co., Inc. Is no longer a defendant pursuant to stipulation of discontinuance "so ordered" on May 26, 2009.

adhere to its original decision. Defendant met its burden of demonstrating prima facie entitlement to judgment as a matter of law. Moreover, plaintiff failed to raise any triable issues of fact that would defeat said motion. Plaintiff's affidavit was inconsistent with her deposition testimony and Dr. Quigg's affidavit submitted in opposition was based solely on plaintiff's affidavit in opposition to the instant motion and did not address plaintiff's contradictory deposition testimony. Additionally, Dr. Quigg's affirmation was statutorily defective according to CPLR § 2309(c),

Accordingly, the motion to reargue is denied in its entirety and the Court adheres to its original decision.

The plaintiff shall serve a copy of this order with Notice of Entry within thirty (30) days of entry of this Order.

Dated: April 6, 2011



Hon. Robert E. Torres

ROBERT E. TORRES
JUDGE