NY CLS CPLR R 2221

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New York

Consolidated Laws Service **>**

Civil Practice Law And Rules (Arts. 1 — 100) **>**

Article 22 Stay, Motions, Orders and Mandates (§§ 2201 — 2223)

R 2221. Motion affecting prior order.

(a) A motion for leave to renew or to reargue a prior motion, for leave to appeal from, or to stay, vacate or modify, an order shall be made, on notice, to the judge who signed the order, unless he or she is for any reason unable to hear it, except that:

1. if the order was made upon a default such motion may be made, on notice, to any judge of the court; and

2. if the order was made without notice such motion may be made, without notice, to the judge who signed it, or, on notice, to any other judge of the court.

(b) Rules of the chief administrator of the courts. The chief administrator may by rule exclude motions within a department, district or county from the operation of subdivision (a) of this rule.

(c) A motion made to other than a proper judge under this rule shall be transferred to the proper judge.

(d) A motion for leave to reargue:

1. shall be identified specifically as such;

2. 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; and

3. shall be made within thirty days after service of a copy of the order determining the prior motion and written notice of its entry. This rule shall not apply to motions to reargue a decision made by the appellate division or the court of appeals.

(e) A motion for leave to renew:

1. shall be identified specifically as such;

2. shall be based upon new facts not offered on the prior motion that would change the prior determination or shall demonstrate that there has been a change in the law that would change the prior determination; and

3. shall contain reasonable justification for the failure to present such facts on the prior motion.

(f) A combined motion for leave to reargue and leave to renew shall identify separately and support separately each item of relief sought. The court, in determining a combined motion for leave to reargue and leave to renew, shall decide each part of the motion as if it were separately made. If a motion for leave to reargue or leave to renew is granted, the court may adhere to the determination on the original motion or may alter that determination.

History

Add, L 1962, ch 308, § 1; amd, L 1986, ch 355, § 5; L 1999, ch 281, § 1, eff July 20, 1999.

Annotations

Notes

Derivation Notes

Earlier statutes: CPA §§ 118, 131; CCP §§ 772, 776, 778; Code Proc §§ 324, 402; 2 RS 173 §§ 32–34; 2 RS 281 §§ 27, 28.

Commentary

PRACTICE INSIGHTS:

MOVING FOR LEAVE TO RENEW OR REARGUE

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General Editor, David L. Ferstendig, Esq.

INSIGHT

Motions to reargue are based upon matters of fact or law overlooked or misunderstood, and the practitioner must move for such relief within 30 days after service of the order with notice of entry. When making a motion to renew, the party must establish a reasonable justification for the failure to present the new facts on the prior motion. Although prior case law did not always require such a showing of reasonable justification, CPLR 2221, as amended in 1999 appears to have overruled these cases. As a practical matter, a party should critically evaluate whether to move to reargue and assess the chances that the same judge that just denied the party's motion is going to have an epiphany and find in the movant’s favor. Regardless of counsel's decision about whether to proceed with the motion to reargue, counsel should also appeal the underlying order, if that appeal has merit.

ANALYSIS

30-day requirement for making motion for leave to reargue is strict.

A motion for leave to reargue is to be based upon matters of fact or law allegedly overlooked or misunderstood by the court in determining the prior motion. The motion is to be made within 30 days after service of a copy of the order determining the prior motion, together with written notice of entry. CPLR 2221(d)(2), (3). The 1999 amendment codified prior case law with respect to the 30-day requirement. However, some cases had also held timely a motion made after the 30-day period, if a notice of appeal had been timely filed and the motion for leave to reargue

was made before the appeal had been submitted or, at the latest, determined. The codification of the 30-day requirement casts doubt on whether the prior case law is still valid. *Compare Itzkowitz v. King Kullen Grocery Co. Inc.*, 22 A.D.3d 636, 804 N.Y.S.2d 350 (2d Dep't 2005); *Leist v. Goldstein*, 305 A.D.2d 468, 760 N.Y.S.2d 191 (2d Dep't 2003); *Dugas v. Bernstein*, 5 Misc. 3d 818, 786 N.Y.S.2d 708 (Sup. Ct. New York County 2004) (permitting later filing); *Williams v. Church of the Transfiguration*, 7 Misc. 3d 553, 794 N.Y.S.2d 781 (Sup. Ct. Queens County 2004); *Kern v. City of Rochester*, 3 Misc. 3d 948, 775 N.Y.S.2d 505 (Sup. Ct. Monroe County 2004); *Commissioners of the State Ins. Fund v. Brooklyn Barber Beauty Equip. Co., Inc.*, 2002 N.Y. Misc. LEXIS 1971 (Civ. Ct. New York County 2002), appeal denied, 2 Misc. 3d 14, 773 N.Y.S.2d 184 (1st Dep't 2003) (30-day requirement a strict one). *See also Liss v. Trans Auto Systems, Inc.*, 68 N.Y.2d 15, 20, 505 N.Y.S.2d 831, 834, 496 N.E.2d 851, 854 (1986) ("regardless of statutory time limits concerning motions to reargue, every court retains continuing jurisdiction to reconsider its prior interlocutory orders during the pendency of the action."); *Garcia v. Jesuits of Fordham*, 6 A.D.3d 163, 165, 774 N.Y.S.2d 503, 505 (1st Dep't), rearg. denied, 2004 N.Y. App. Div. LEXIS 9834 (1st Dep't 2004) (citing Leist, court held that "although plaintiff's motion for reargument was technically untimely pursuant to CPLR 2221(d), it was not an improvident exercise of the court's discretion to have reconsidered its prior ruling"). Until the Court of Appeals rules, practitioners should assume that the prior case law no longer applies and that the 30-day period is strict.

Motions to renew require showing of reasonable justification for failing to present facts earlier.

Motions for leave to renew are to be based on new facts not offered on the prior motion that would affect the prior determination. In addition, notwithstanding the fact that prior case law had suggested that where there had been a change in the law a motion to reargue should be made, the proper vehicle under such circumstances is now a motion for leave to renew.

Significantly, prior to the amendment, some case law had held that with respect to a motion for leave to renew, a party was not always required to establish "reasonable justification." It has

been held, however, that the 1999 amendment overrules that prior case law, and that a showing of reasonable justification is mandatory. *See, e.g., Ulster Savings Bank v. Goldman*, 183 Misc. 2d 893, 895-896, 705 N.Y.S.2d 880, 882 (Sup. Ct. Rensselaer County 2000). *See also Delvecchio v. Bayside Chrysler Plymouth Jeep Eagle, Inc.*, 271 A.D.2d 636, 706 N.Y.S.2d 724 (2d Dep't 2000); *Greene v. New York City Hous. Auth.*, 283 A.D.2d 458, 724 N.Y.S.2d 631 (2d Dep't 2001); *Cippitelli v. County of Schenectady*, 307 A.D.2d 658, 762 N.Y.S.2d 841 (3d Dep't 2003); *Giardina v. Parkview Court Homeowner's Ass'n, Inc.*, 284 A.D.2d 953, 730 N.Y.S.2d 585 (4th Dep't 2001)*, lv dismissed,* 97 N.Y.2d 700, 765, 739 N.Y.S.2d 99, 765 N.E.2d 302 (2002). *But see Mejia v. Nanni*, 307 A.D.2d 870, 871, 763 N.Y.S.2d 611, 612 (1st Dep't 2003) ("Although renewal motions generally should be based on newly discovered facts that could not be offered on the prior motion (*see* CPLR 2221(e)), courts have discretion to relax this requirement and to grant such a motion in the interest of justice").

For a more in-depth discussion of the reasonable justification "requirement", *see* Hamm, Practice Insight, *Availability of Discretion under Amended Statute*, New York Consolidated Laws Service, CPLR 2221(e) (LexisNexis 2006).

Specifically identify motion in motion papers.

A motion for leave to reargue or renew should be specifically identified in the movant's notice of motion as such.

Resort to motion to reargue judiciously and file notice to appeal at same time as moving to reargue.

Good practice requires service and filing of a notice of appeal at the same time that the motion to reargue is served. Indeed, the practitioner should analyze whether the motion to reargue is a realistic vehicle, because the motion seeks to have the same judge who decided the original motion change his or her mind. As a result, the cautious practitioner will resort to this motion judiciously and avoid relying solely on a motion to reargue where an appeal also has merit.

It is also important to note that no appeal lies from an order denying leave to reargue. However, where the court purports to deny the motion, but considers the merits of the arguments, the court, in effect, has granted reargument, but adhered to its original decision. In that circumstance, the order "denying" reargument results in an appealable paper. *See Lewis v. Rutkovsky*, 153 A.D.3d 450, 58 N.Y.S.3d 391 (1st Dep't 2017).

2014 amendment to CPLR 2214(c) simplifies method of "attaching" prior motion papers in e-filed case.

On a motion to renew or reargue, the movant must include copies of papers submitted on the prior order, which can be voluminous. To alleviate this problem, in electronically filed actions and in response to the decision in *Biscone v. Jet-Blue Airway Corp.*, 103 A.D.3d 158, 957 N.Y.S.2d 361 (2d Dep't 2012), appeal dismissed, 20 N.Y.3d 1084, 965 N.Y.S.2d 72, 987 N.E.2d 632 (2013), CPLR 2214(c) was amended (L. 2014, Ch. 109, eff 7/2/2014), to permit, a party in an e-filed action to refer to previously e-filed documents by docket number:

Except when the rules of the court provide otherwise, in an e-filed action, a party that files papers in connection with a motion need not include copies of papers that were filed previously electronically with the court, but may make reference to them, giving the docket numbers on the e-filing system.

See further discussion in *Weinstein, Korn & Miller, New York Civil Practice: CPLR* ¶¶ 304.02, 2102.09, 2214.03, 2221.00, (David L. Ferstendig, 2d Ed. 2024); David L. Ferstendig, *Weinstein, Korn & Miller CPLR Manual* ¶¶ 15.03, 15.08 (3d Ed. LexisNexis Matthew Bender); and Ferstendig *LexisNexis AnswerGuide New York Civil Litigation* ¶¶ 7.05, 7.17 (2024 Ed. Matthew Bender).

Should motions for leave to renew or reargue be made using an order to show cause?

Both motions seek "leave," suggesting a two-step approach by the court. It is first to determine whether it will entertain the motion and address its merits (grant leave). If the court grants leave, it is then to decide whether to adhere to its original decision or change it. This distinction can be

significant because, as noted above, no appeal lies from an order denying a motion for leave to reargue. Using an order to show cause provides the court with the opportunity to deny leave (by not signing the order to show cause), thereby removing any ambiguity as to whether the court has denied leave or granted leave and then adhered to its original decision. (Some decisions "denying" motions to reargue are unclear to say the least.) Note that the Uniform Rules provide that an order to show cause should be used only where there is a "genuine urgency," a stay is required, or a statute requires it. *See* 22 NYCRR § 202.8-d, 202.70, Rule 19. *See* David L. Ferstendig, *Should Motion for Leave To Reargue Be Made Via Order To Show Cause?,* 759 N.Y.S.L.D. 4 (2024) ("It is true that the statute does not use the magical language associated with a statute requiring the use of an order to show cause. See e.g., CPLR 5015(a) ('on motion of any interested person with such notice as the court may direct, …'). An interesting question, however, is whether a CPLR 2221(a) motion should be made via an order to show cause. … [U]tilizing an order to show cause enables the court at the outset to declare without ambiguity that it is denying leave: it can refuse to sign it.").

WHAT CONSTITUTES THE DECIDING JUDGE BEING "UNABLE TO HEAR" A MOTION AFFECTING A PRIOR ORDER

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INSIGHT

In certain circumstances, the judge who originally decided a motion will be "unable to hear" an application to renew or reargue, for leave to appeal from, or to stay, vacate, or modify an order. Those circumstances are limited to when (1) the deciding judge has since recused him or herself from the case; (2) the deciding judge retires; (3) following the issuance of an order, a new judge is assigned to the case under the Individual Assignment System; or (4) the deciding judge is out of the country.

ANALYSIS

Judge is "unable to hear" subsequent motion affecting prior order in four circumstances.

Under the Individual Assignment System ("IAS"), a case is assigned to one judge at the outset and remains with that judge at least until the note of issue is filed. Having a single, assigned judge for the case makes the requirement in CPLR 2221(a) that motions affecting a prior order must be made to the judge who signed that order largely redundant. In certain instances, however, the motion cannot be made before the same judge because that judge fits the "unable to hear" exception of CPLR 2221(a).

First, if the deciding judge recuses him or herself from the case following the issuance of an order, then such a judge is unable to hear a subsequent application. Second, if the deciding judge retires after issuing an order, the "unable to hear" exception will be triggered. The third circumstance where a judge has been deemed "unable to hear" an application is when a new IAS judge has been assigned to the case. Fourth, where a judge is simply "out of the country." *See Ferdinand v. Ferdinand*, 56 A.D.3d 604, 867 N.Y.S.2d 335 (2d Dep't 2008); *Sparks v. Essex Homes of WNY, Inc.*, 20 A.D.3d 905, 798 N.Y.S.2d 293 (4th Dep't 2005); *Friends of Keuka Lake, Inc. v. DeMay*, 206 A.D.2d 850, 615 N.Y.S.2d 203 (4th Dep't 1994); *Billings v. Berkshire Mutual Insurance Co.*, 133 A.D.2d 919, 520 N.Y.S.2d 463 (3d Dep't 1987).

Reassignment of IAS judge typically leads to reassignment of each pending case.

The most controversial exception, and the one most prone to the judge shopping the IAS system and CPLR 2221 were intended to avoid, is the situation where the IAS judge is reassigned to a special part, such as criminal or matrimonial, by an administrative judge. Typically such an assignment leads to reassignment of all pending cases to other IAS judges so that the reassigned judge is free to take on the work of the new assignment. Whether this reassignment itself makes the reassigned judge "unable to hear" a motion affecting a prior order under CPLR

2221 has not been decided. CPLR 2221, however, allows the chief administrator of the courts to exclude certain motions from operation of the rule.

Administrative judge may provide in reassignment that applications affecting prior orders should be made to newly assigned judge.

Accordingly, as part of a judicial reassignment, and if the chief administrator so provides by rule, the administrative judge can determine that any application affecting a prior order should be made to the newly assigned judge. *See Williams v Georgopoulos,* 184 A.D.3d 608, 122 N.Y.S.3d 922 (2d Dep't 2020); *Matter of Quattrone v. Erie 2-Chautauqua-Cattaraugus Bd. of Coop. Educ. Servs.*, 148 A.D.3d 1553, 50 N.Y.S.3d 208 (4th Dep't 2017) (reasoning that "by the adoption of the IAS, the CPLR 2221 requirement of referral of motions to a Judge who granted an order on a prior motion has been modified to provide for consistency with the mandate of the IAS that all motions in a case shall be addressed to the assigned Judge"). Absent inclusion of such a provision in the reassignment, the plain text of CPLR 2221 suggests that the reassigned judge is not "unable to hear" a motion affecting the prior order, and such a motion should be addressed to the reassigned judge. This would help achieve the goals underlying CPLR 2221, such as promoting efficiency, avoiding judge shopping, and reducing instances of judges of equal jurisdiction passing on the orders of their colleagues.

AVAILABILITY OF DISCRETION UNDER AMENDED STATUTE

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INSIGHT

CPLR 2221, as amended in 1991, provides definitive directives: a motion to reargue "shall" be based on facts or law allegedly overlooked, and "shall" be made within 30 days of service of the prior order with notice of entry; a motion to renew "shall" be based on new facts not offered on the prior motion or on a change in the law and "shall contain reasonable justification for the

failure to present such facts on the prior motion." Notwithstanding these legislative pronouncements, post-amendment appellate court decisions are in flux as to whether courts have discretion to ignore one or more of these provisions, most notably the requirement to show "reasonable justification" for not earlier adducing the evidence upon which the movant relies.

However, the statute was amended precisely to eliminate disparate decisions and piecemeal development of the law in this area, a result attainable only through strict application of the statutory requirements.

ANALYSIS

Pre-amendment cases reflect broad judicial discretion.

Under prior law, many judges exercised discretion - apparently without any identifiable parameters - to accept motions for renewal based on "new" evidentiary facts which, in fact, were known and available to movant but not submitted on the first motion, often without any justification, let alone "reasonable justification." *See* *Pinto v. Pinto*, 120 A.D.2d 337, 501 N.Y.S.2d 835 (1st Dep't 1986).

Among the excuses accepted were the attorney's "inadvertent" failure to obtain necessary information from the client, *Martinez v. Hudson Armored Car & Courier, Inc.*, 201 A.D.2d 359, 607 N.Y.S.2d 644 (1st Dep't 1994), and, even, that the attorney mistakenly believed that the now-proffered evidence "was not required to withstand [the prior] motion." *Seagall v. Heyer*, 161 A.D.2d 471, 555 N.Y.S.2d 738, 740 (1st Dep't 1990).

Post-amendment cases are split as to whether codification eliminated discretion.

CPLR 2221(e), as amended, provides a definitive statutory criterion: A motion for leave to renew "shall contain a reasonable justification for the failure to present such facts on the prior motion." Many appellate courts throughout the state have indeed held that the mandatory language used by the Legislature was intended to eliminate the lower court's discretion to grant a motion to renew, absent proof of reasonable justification for the failure to present the new

evidence on the original motion. *See* *Joseph v. Simmons*, 114 A.D.3d 644, 979 N.Y.S.2d 675 (2d Dep't 2014); *Aha Sales, Inc. v. Creative Bath Prods., Inc.*, 110 A.D.3d 1020, 973 N.Y.S.2d 793 (2d Dep't 2013); *Empire State Conglomerates v. Mahbur*, 105 A.D.3d 898, 963 N.Y.S.2d 330 (2d Dep't 2013); *Cippitelli v. County of Schenectady*, 307 A.D.2d 658, 762 N.Y.S.2d 841 (3d Dep't 2003) ("Because 'renewal is not a second chance freely given to parties who have not exercised due diligence in making their first factual presentation,' a party seeking that relief must provide a reasonable justification for the earlier failure to present such facts"); *Turner v. Turner*, 305 A.D.2d 1087, 759 N.Y.S.2d 421 (4th Dep't 2003) (failure to provide a reasonable justification for failure to submit documents in a timely fashion requires denial of the motion to renew); *Anthoine v. Lord, Bissell & Brook*, 295 A.D.2d 293, 744 N.Y.S.2d 666 (1st Dep't 2002) (same); *Greene v. New York City Housing Auth.*, 283 A.D.2d 458, 459, 724 N.Y.S.2d 631 (2d Dep't 2001) ("In light of the mandatory language used by the Legislature in CPLR 2221(e)(3) we reject the plaintiffs' contention that the supreme court had discretion to grant renewal, notwithstanding their omission of a reasonable justification for their failure to present the new facts upon which their motion for leave to renew was based to the supreme court on their prior motion to vacate their default").

Unfortunately, in a number of decisions, primarily out of the Appellate Division, First Department, the court purports to exercise the same discretion as it had prior to the amendment, and has allowed renewal — without reference to the amendatory language and often relying on cases decided under the old statute — despite the absence of any palpable excuse for the failure to submit the "new" material earlier. *See, e.g.,* *QBE Ins. Corp. v. Hudson Specialty Inc. Co.*, 82 A.D.3d 595, 920 N.Y.S.2d 27 (1st Dep't 2011); *Trinidad v. Lantigua*, 2 A.D.3d 163, 767 N.Y.S.2d 618 (1st Dep't 2003) despite "inexplicable" failure to earlier submit evidence; *Mejia v. Nanni*, 307 A.D.2d 870, 763 N.Y.S.2d 611 (1st Dep't 2003); *Garner v. Latimer*, 306 A.D.2d 209, 761 N.Y.S.2d 657 (1st Dep't 2003); *cf.* *Castor v. Cuevas*, 137 A.D.3d 734, 26 N.Y.S.3d 564 (2d Dep't 2016) (unidentified "law office failure" sufficient excuse).

Court of Appeals may need to step in with literal application of statute.

It is difficult to conceive of how the legislature could have more definitively stated the mandatory nature of the statutory criteria. If its resolution is thwarted – and confusion reigns again — it may be necessary for the Court of Appeals to weigh in with a firm, literal application of the statute.

Advisory Committee Notes

Matters such as resettlement, amendment, vacation and modification of orders were formerly governed by case law (see 1 Carmody-Wait, Cyclopedia of New York Practice 717–726 (1952) except for the provisions of CPA §§ 131 and 132).

CPA § 132, authorizing the Appellate Division, an appellate term, or a justice thereof to vacate ex parte Supreme Court orders, originally appeared in § 1348 of the Throop Code, together with the forerunner of CPA § 66, which allows the Appellate Division to grant ex parte orders refused by the Supreme Court.

CPA § 131 applies only to orders made out of court and without notice, since the word “such” refers to order specified in subd 2 of § 130. These provisions appeared consecutively in § 772 of the Throop Code. The purpose of § 131 is apparently to allow a greater latitude in making motions to vacate ex parte orders, since such orders cannot be appealed and vacatur is the only remedy. The notice requirement applies only if the motion to vacate is made to the court, in which case a judge other than the one who made the order may hear the motion.

The substance of CPA § 131 is retained by subparagraph 2 of the new rule. For the sake of completeness, the new rule states the general case law doctrine that all motions to vacate or modify must be heard by the judge who made the order or presided at the term where it was made. See, e.g., Platt v New York & Sea Beach Ry. 170 NY 451, 63 NE 532 (1902); 1 Carmody-Wait, Cyclopedia of New York Practice 719 (1952). “By a long-continued course of practice, recognized and enforced by the courts, it is settled as a rule of law that one judge should not vacate an order made by a court held by another judge except in cases expressly provided for . . . .” Willard v Willard, 194 App Div 123, 125, 185 NY Supp 569, 571 (2d Dept 1920). This doctrine is sometimes overlooked in exceptional cases, such as “[w]here new

elements, like fraud or collusion, are shown and it is not possible to send the matter to the judge who made the original order." Ibid. The new rule is not intended to inhibit the courts in such exceptional cases.

Subparagraph 1 of the new rule expressly covers the exception for orders made upon a default which is made by the decisions. See 1 Carmody-Wait, Cyclopedia of New York Practice 720 (1952).

Another exception relates to orders made without jurisdiction, but these are not covered by the rule; such orders may not only be set aside by any judge but may be attacked collaterally or disregarded entirely, since they are void. See ibid; see also Kamp v Kamp, 59 NY 212 (1874).

The provison in CPA § 131, that an order granting a provisional remedy may be vacated only in the mode specially prescribed by law, is unnecessary. Throughout the new CPLR such specific provisions govern general ones.

1999 Recommendations of the Advisory Committee on Civil Practice:

The Committee, in response to a suggestion from the Suffolk County Bar Association, recommends the amendment of CPLR 2221 and 5701(a)(2) to clarify confusing provisions of law governing motions addressed to prior orders.

Currently, the law governing motions to reargue and renew is based primarily on court decisions, which address the area piecemeal and do not provide a coherent structure for the treatment of these motions. There is much confusion among bench and bar as to the nature of these motions, their purpose, when they are appropriate and when appeals can be taken. The Committee recommends that the CPLR contain provisions to govern these motions that will distinguish clearly between motions for leave to reargue and leave to renew, and that will specify time limitations for the making of these motions and rights of appeal. See also, Pahl Equipment Corp. v. Kassis 182 A.D.2d 22 (1st Dept. 1992); Schneider v. Solowey, 141 A.D.2d 813 (2d Dept. 1988) This measure would implement its recommendation.

Previously, the Committee's recommendations included changes to CPLR 2221 requiring motions to renew and to reargue to be assigned to the judge who determined the prior order. Various groups expressed their concern that such language might conflict with judicial assignment practices around the state.

This year the Advisory Committee has decided to eliminate any change in the current language of Rule 2221 relating to the judge to whom such motions are made. This modified proposal sets forth only the parameters of motions to reargue and renew in the trial court context, what they are, when they are appropriate, and the proper time frames for their use. Last year's proposal has also been amended to make the bill effective immediately upon its passage.

Notes to Decisions

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I. Under CPLR

1. In general

While prior order denying renewed motion of plaintiff to compel defendant to accept verified complaint filed well beyond 20-day time limitation imposed by statute was not res judicata when no judgment was entered, practice followed by plaintiff in case of thereafter commencing a second action by service of a new summons and complaint and, upon dismissal of action, on moving to discontinue action without prejudice in order to bring suit de novo and, thus, circumvent requirement that he seek leave of court to cure his default resulted in one judge overruling a judge of coordinate jurisdiction and, as such, so violated concepts of orderly procedure that subsequent order granting plaintiff's motion to cure his default in service of complaint was subject to being reversed. Begler v Saltzman, 53 A.D.2d 578, 385 N.Y.S.2d 60, 1976 N.Y. App. Div. LEXIS 13218 (N.Y. App. Div. 1st Dep't 1976).

In a plenary action against defendant, who was awarded summary judgment against plaintiffs six years prior in an action for specific performance of a contract for the sale of real property which judgment was previously affirmed without opinion, the instant reviewing court would search the record pursuant to CPLR § 3212(b) and award summary judgment against the moving party since no plenary action lies to set aside a prior judgment, which can only be affected by a proper and timely motion to vacate under CPLR § 2221. James v Shave, 97 A.D.2d 927, 471 N.Y.S.2d 17, 1983 N.Y. App. Div. LEXIS 20715 (N.Y. App. Div. 3d Dep't 1983), aff'd, 62 N.Y.2d 712, 476 N.Y.S.2d 532, 465 N.E.2d 39, 1984 N.Y. LEXIS 4311 (N.Y. 1984).

Neither CPLR § 2217(a) nor CPLR § 2221 required the judge hearing a motion for summary judgment to transfer the hearing to the judge who had before him a previously filed motion for a permanent injunction in the same proceeding where there had been no decision on the motion for permanent injunction. People v United Funding, Inc., 106 A.D.2d 846, 484 N.Y.S.2d 245, 1984 N.Y. App. Div. LEXIS 21748 (N.Y. App. Div. 3d Dep't 1984), app. denied, 64 N.Y.2d 609, 489 N.Y.S.2d 1026, 1985 N.Y. LEXIS 18846 (N.Y. 1985).

Under CLS CPLR § 2221(1), any judge of court is permitted to stay, vacate or modify order made on default; vacation of default order is appropriate where petitioner failed to apprise court of facts having direct bearing on jurisdiction and appropriateness of default judgment. Coburn v Coburn, 109 A.D.2d 984, 486 N.Y.S.2d 467, 1985 N.Y. App. Div. LEXIS 47484 (N.Y. App. Div. 3d Dep't 1985).

There was no error where defendant’s motion to amend its answer by adding affirmative defense was initially denied by Special Term, but then granted after defendant filed motion to “reargue,” which Special Term deemed motion to “renew,” and where first decision was never reduced to formal order; regardless of proper term for motion, until entry of formal order Special Term had inherent power to reconsider or correct its decision. Levinger v General Motors Corp., 122 A.D.2d 419, 504 N.Y.S.2d 819, 1986 N.Y. App. Div. LEXIS 59730 (N.Y. App. Div. 3d Dep't 1986).

Even though plaintiff did not technically meet requirements for renewal or reargument, it was proper exercise of discretion to grant such relief where it was apparent from record that court was unclear concerning parties’ precise arguments, and plaintiff’s motion was brought on or before order was entered on court’s earlier decision. Vinciguerra v Jameson, 153 A.D.2d 452, 551 N.Y.S.2d 691, 1990 N.Y. App. Div. LEXIS 1883 (N.Y. App. Div. 3d Dep't 1990).

Supreme Court has inherent power to set aside, correct or modify its own orders. Halloran v Halloran, 161 A.D.2d 562, 555 N.Y.S.2d 139, 1990 N.Y. App. Div. LEXIS 5330 (N.Y. App. Div. 2d Dep't 1990).

Court abused its discretion in granting plaintiff's motion for renewal or reargument of decision which precluded her from offering expert witness testimony at trial due to her noncompliance with CLS CPLR § 3101(d)(1)(i), where she asserted that her failure to comply resulted from her delay in obtaining experts, but she failed to offer justifiable excuse for not placing such facts before court at time defendants' oral preclusion motion was made. Grassel v Albany Medical Ctr. Hosp., 223 A.D.2d 803, 636 N.Y.S.2d 154, 1996 N.Y. App. Div. LEXIS 23 (N.Y. App. Div. 3d Dep't), app. denied in part, app. dismissed, 88 N.Y.2d 842, 644 N.Y.S.2d 683, 667 N.E.2d 333, 1996 N.Y. LEXIS 1054 (N.Y. 1996).

Seven-year statute of limitations in CLS CPLR § 213-b did not apply to action for damage to plaintiffs' professional reputations allegedly caused by defendant's false naming of them as beneficiaries of meals and entertainment on his income tax return in violation of CLS Tax § 1804(b), for which he was convicted, where plaintiffs were not "victims" of that crime, as defined in CLS CPL § 440.50(2), because their injuries were not direct result of false statements in defendant's tax return but of his entirely separate act of completing false expense vouchers; plaintiffs' reliance on authority interpreting CLS CPLR § 215(8) was misplaced, because § 213-b, unlike § 215(8), is expressly limited to actions brought by victims of particular crime of which defendant was convicted. Boice v Burnett, 245 A.D.2d 980, 667 N.Y.S.2d 100, 1997 N.Y. App. Div. LEXIS 13634 (N.Y. App. Div. 3d Dep't 1997).

Court has inherent power, on its own motion or on party's motion, to reconsider and vacate its prior decision before issuing order thereon. Scritchfield v Perry, 245 A.D.2d 1054, 667 N.Y.S.2d 584, 1997 N.Y. App. Div. LEXIS 13806 (N.Y. App. Div. 4th Dep't 1997).

Laid-off tailor in men's clothing store was not entitled to have case reopened to allow introduction of union contract that had been in effect before union was voted out where motion to reopen was made at close of proof, tailor did not explain his failure to act more expeditiously, and denial of motion was not prejudicial in light of undisputed testimony regarding layoff provision of union contract. Orlando v Rubersi Sales, Inc., 255 A.D.2d 802, 680 N.Y.S.2d 310, 1998 N.Y. App. Div. LEXIS 12499 (N.Y. App. Div. 3d Dep't 1998).

Plaintiffs' motion for renewal and reargument of prior cross motion for summary judgment should have been denied in its entirety, where only new medical evidence submitted by them was physician's affidavit concluding that plaintiff's injuries were "probably permanent in nature," without indicating when physician had last examined plaintiff and upon what facts he relied other than his examination of her more than 3 years before. Zmich v Hirsch, 261 A.D.2d 541, 688 N.Y.S.2d 896, 1999 N.Y. App. Div. LEXIS 5433 (N.Y. App. Div. 2d Dep't 1999).

In legal malpractice action, court erred in treating plaintiff's motion to vacate dismissal of action as one for reargument or renewal, where no prior motion had been made and plaintiff demonstrated criteria necessary to warrant vacatur of dismissal under CLS CPLR § 3404. Lieber v Vitelli, 270 A.D.2d 396, 704 N.Y.S.2d 892, 2000 N.Y. App. Div. LEXIS 2955 (N.Y. App. Div. 2d Dep't 2000), overruled in part, Lopez v Imperial Delivery Serv., 282 A.D.2d 190, 725 N.Y.S.2d 57, 2001 N.Y. App. Div. LEXIS 5038 (N.Y. App. Div. 2d Dep't 2001)).

Fact that the purchasers were proceeding pro se did not allow the purchasers to have "greater leeway" in their motion to renew or reargue and the purchasers were required to produce available evidence at the motion for summary judgment. Johnson v Title N., Inc., 31 A.D.3d 1071, 820 N.Y.S.2d 345, 2006 N.Y. App. Div. LEXIS 9634 (N.Y. App. Div. 3d Dep't 2006).

Shareholder's motion to vacate a judgment which dissolved a corporation was properly denied because, if available, it had to be made under N.Y. C.P.L.R. 5015, not N.Y. C.P.L.R. 2221; a decedent's estate was entitled to enforce the judgment "in such manner" as the decedent might have, regardless of the fact that, had the decedent died before pronouncement of the judgment, the shareholder had the right to buy the decedent's shares for book value, rendering the proceeding moot. Matter of Neville v Martin, 38 A.D.3d 386, 832 N.Y.S.2d 192, 2007 N.Y. App. Div. LEXIS 3676 (N.Y. App. Div. 1st Dep't), app. dismissed, 9 N.Y.3d 906, 843 N.Y.S.2d 534, 875 N.E.2d 26, 2007 N.Y. LEXIS 2643 (N.Y. 2007).

Because the property owners failed to submit proof that would change a prior determination dismissing their affirmative defenses to a town's action to enforce its zoning laws, the trial court properly denied their N.Y. C.P.L.R. 2221(e)(2) motion to renew as untimely. Town of Kinderhook

v Slovak, 47 A.D.3d 1093, 849 N.Y.S.2d 707, 2008 N.Y. App. Div. LEXIS 293 (N.Y. App. Div. 3d Dep't 2008).

Even plaintiff's motions to renew and/or reargue were made in a timely fashion, there was no appeal from the denial of a motion to reargue and plaintiff failed to satisfy the standard for renewal as she did not point to "any new facts or change in the law that would require a different determination. Gonzalez v L'Oreal USA, Inc., 92 A.D.3d 1158, 940 N.Y.S.2d 328, 2012 N.Y. App. Div. LEXIS 1354 (N.Y. App. Div. 3d Dep't 2012).

Trial court erred by awarding costs and attorney fees to defendants because the mere fact that the cover page of plaintiff's order to show cause directed the renewal/vacatur motion to all defendants did not rise to the level of frivolous conduct and the order to show cause, along with the accompanying affirmation and memorandum of law, made clear that plaintiff sought relief only as to one defendant and not the remaining defendants. Gordon Group Invs., LLC v Kugler, 127 A.D.3d 592, 8 N.Y.S.3d 115, 2015 N.Y. App. Div. LEXIS 3389 (N.Y. App. Div. 1st Dep't 2015).

Trial court properly granted the motions by a town board members and a consultant to dismiss a taxpayer's General Municipal Law action and denied his motion to reargue and/or renew because the taxpayer did not make allegations of fraud or illegality that would support the action where the consultant was not a municipal officer or employee subject to the statutory disclosure requirements, the taxpayer did not allege any interest that the consultant failed to disclose to the town, the town's payment to the consultant for services rendered was not made in reliance upon any representation that a valid contract existed, and the taxpayer did not identify any new facts or change in the law that required a different determination. Budin v Davis, 172 A.D.3d 1676, 101 N.Y.S.3d 487, 2019 N.Y. App. Div. LEXIS 3838 (N.Y. App. Div. 3d Dep't 2019).

Rule 2221 of the CPLR refers to applications to renew or reargue prior motions. Blumenstock v Weissman, 47 Misc. 2d 266, 262 N.Y.S.2d 405, 1965 N.Y. Misc. LEXIS 1634 (N.Y. County Ct. 1965), aff'd, 50 Misc. 2d 119, 269 N.Y.S.2d 507, 1966 N.Y. Misc. LEXIS 2033 (N.Y. App. Term 1966).

Even though People had filed notice of appeal of prior order suppressing evidence and even though prayer for relief should have been made earlier. People's request for explanation of certain language in order, made four months after order was entered, would be viewed as a motion for settlement and was an appropriate remedy, in view of advantages of resettlement prior to consideration of matter on appeal, including prevention of possible mistaken interpretation of ruling, better understanding of decision by reviewing court and parties, avoidance of remand later for clarification, and possible saving of time, work and expenses incurred in perfecting appeal. People v Simmons, 86 Misc. 2d 737, 384 N.Y.S.2d 367, 1976 N.Y. Misc. LEXIS 2510 (N.Y. Sup. Ct.), aff'd, 54 A.D.2d 624, 387 N.Y.S.2d 398, 1976 N.Y. App. Div. LEXIS 14105 (N.Y. App. Div. 1st Dep't 1976).

In tax refund case, plaintiffs' request for reargument or renewal of their previous motion for class certification would be denied where time in which to seek reargument had expired, plaintiffs offered no new evidence in support of request for renewal, court's previous denial of class certification had been affirmed on appeal, doctrine of stare decisis had provided relief to nonparties, and to extent that some individuals contested amount of refunds they had received, their remedy lay in administrative process. Duffy v Wetzler, 175 Misc. 2d 231, 668 N.Y.S.2d 869, 1997 N.Y. Misc. LEXIS 624 (N.Y. Sup. Ct. 1997).

Pro se claimant's motion was deemed by the court to be a motion to reargue or to renew the court's prior order, in which the court denied the claimant's application to proceed as a poor person and ordered the claimant to pay a filing fee, because the claimant stated that the relief that she sought by the motion was relief from mistake of law or fact. Further, a review of the claimant's moving papers made it very clear that the mistake to which the claimant refered was the court's alleged mistake in denying the claimant's application for waiver of a filing fee. Frasier v State, 810 N.Y.S.2d 818, 11 Misc. 3d 497, 2005 N.Y. Misc. LEXIS 3075 (N.Y. Ct. Cl. 2005).

Pro se claimant's motion was deemed to be one for both re-argument and renewal because the claimant both presented argument in support of the relief sought and submitted one piece of documentary evidence. The court did not require that the claimant identify separately and

support separately each item of relief sought, under N.Y. C.P.L.R. 2221(f), in light of her pro se status. Frasier v State, 810 N.Y.S.2d 818, 11 Misc. 3d 497, 2005 N.Y. Misc. LEXIS 3075 (N.Y. Ct. Cl. 2005).

Because there was an issue of fact as to whether a subcontractor stacked certain I-beams in a manner that violated N.Y. Lab. Law § 200 and the common law, and because the facts alleged by a worker did not make out a violation of N.Y. Comp. Codes R. & Regs. tit. 12, § 23-1.7(e)(2) that would support a claim under N.Y. Lab. Law § 241(6), neither the worker nor the subcontractor were entitled to renewal or reargument under N.Y. C.P.L.R. 2221. DeGabriel v Strong Place Realty, LLC, 907 N.Y.S.2d 633, 29 Misc. 3d 908, 2010 N.Y. Misc. LEXIS 4463 (N.Y. Sup. Ct. 2010).

Motion which sought renewal was properly denied where plaintiff did not establish either a reasonable excuse for his failure to present the new facts or that such new facts warranted a different determination with respect to his motion for partial summary judgment. Charnis v Shohet, 195 Misc. 2d 188, 757 N.Y.S.2d 671, 2002 N.Y. Misc. LEXIS 1784 (N.Y. Sup. Ct. 2002), aff'd, 2 A.D.3d 663, 768 N.Y.S.2d 638, 2003 N.Y. App. Div. LEXIS 13875 (N.Y. App. Div. 2d Dep't 2003).

Inmate’s motion for reconsideration of the dismissal of his claim against the State, which sought damages due to the imposition of a disciplinary measure whereby he was only allowed to have no-contact visitation due to an assault upon a prison staff member, was not procedurally flawed because after trial, such motion was governed by N.Y. C.P.L.R. 4404(b), rather than N.Y. C.P.L.R. 2221, which applied only to reargument after a prior order. Dawes v State, 194 Misc. 2d 617, 755 N.Y.S.2d 221, 2003 N.Y. Misc. LEXIS 68 (N.Y. Ct. Cl. 2003).

Appeals court concluded motion court properly viewed defendant’s motions to reargue and reinstate as motions to vacate their default under N.Y. C.P.L.R. art. 5015(a) (rather than under N.Y. C.P.L.R. art. 2221(a) for leave to reargue); collateral estoppel was generally not available where a judgment in a prior action was obtained on default, but defendants had the opportunity to fully litigate the similar claims in the Massachusetts action (and chose not to) and failed to

demonstrate the requisite reasonable excuse for vacating their default in this action. Kanat v Ochsner, 301 A.D.2d 456, 755 N.Y.S.2d 371, 2003 N.Y. App. Div. LEXIS 648 (N.Y. App. Div. 1st Dep't 2003).

Trial court properly granted an injured party's motion to vacate, pursuant to N.Y. C.P.L.R. 2221, a judgment entered in favor of defendants upon the injured party's failure to appear for oral argument in the injured party's personal injury action, but the trial court erred in denying defendants' motion for summary judgment pursuant to N.Y. C.P.L.R. 3212, as defendants established their entitlement to judgment as a matter of law by demonstrating that they neither created nor had actual or constructive notice of the substance on which the injured party allegedly slipped and fell, and in opposition to the motion, the injured party did not contend that defendants had actual or constructive notice of the substance, and failed to submit evidence sufficient to raise a triable issue of fact as to whether they created the alleged condition. Feuer v Vernon Manor Coop. Apts., Sec. I, Inc., 303 A.D.2d 448, 755 N.Y.S.2d 898, 2003 N.Y. App. Div. LEXIS 2379 (N.Y. App. Div. 2d Dep't 2003).

Trial court properly granted a patient's motion to vacate a stipulation of settlement, pursuant to N.Y. C.P.L.R. 2221, in a medical malpractice action against a hospital corporation and a hospital center, as the patient showed that a mutual mistake existed at the time the stipulation was entered based on the fact that none of the parties considered a possible Medicaid lien when considering the issue of damages; under the circumstances of the case, the trial court also properly denied the cross motion by the hospital center for an extension of time to move for summary judgment pursuant to N.Y. C.P.L.R. 3212(a). Mahon v N.Y. City Health & Hosps. Corp., 303 A.D.2d 725, 756 N.Y.S.2d 875, 2003 N.Y. App. Div. LEXIS 3342 (N.Y. App. Div. 2d Dep't 2003).

Where a trial court struck a personal injury case from the trial calendar a second time rather than dismissing the complaint pursuant to N.Y. Comp. Codes R. & Regs. tit. 22, 202.27, and where the challenged determination was not properly appealed pursuant to N.Y. C.P.L.R. 2221, 5701(a)(3), the case was properly restored to the trial calendar pursuant to N.Y. C.P.L.R. 3404.

Egwuonwu v Simpson, 4 A.D.3d 500, 771 N.Y.S.2d 725, 2004 N.Y. App. Div. LEXIS 1835 (N.Y. App. Div. 2d Dep't 2004).

Trial court's order properly denied a father's objections to a support magistrate's denial of his motion to renew and reargue because the father failed to present any newly discovered evidence or to demonstrate that the support magistrate overlooked or misapprehended the relevant facts, or misapplied any controlling principle of law. Dambrowski v Dambrowski, 8 A.D.3d 913, 778 N.Y.S.2d 733, 2004 N.Y. App. Div. LEXIS 8855 (N.Y. App. Div. 3d Dep't 2004).

Trial court improperly characterized a corporation's second motion in a foreclosure action as one for leave to renew where, by its first motion, the corporation sought to stay the foreclosure sale, that motion was denied, and the second motion, made approximately six months after the foreclosure sale, sought an order permitting the corporation to redeem; thus, the corporation sought completely different relief on its second motion, and it was error to characterize it as one for leave to renew its prior motion. Sodano v Faithway Deliverance Ctr., Inc., 18 A.D.3d 534, 795 N.Y.S.2d 313, 2005 N.Y. App. Div. LEXIS 5090 (N.Y. App. Div. 2d Dep't 2005).

Trial court erred denying a defendant's motion for summary judgment in an action for goods had and received, as the motion did not violate N.Y. C.P.L.R. 2221, as it was a second motion for summary judgment, based upon evidence and theories developed during discovery, and not a motion for leave to renew or reargue its prior motion, and the evidence showed that plaintiff had not sold any goods or submitted any invoices to the defendant. Newburgh Winnelson Co. v Baisch Mech., Inc., 30 A.D.3d 495, 817 N.Y.S.2d 359, 2006 N.Y. App. Div. LEXIS 7929 (N.Y. App. Div. 2d Dep't 2006).

Plaintiff's application seeking to renew and/or reargue a pendente lite decision and order was procedurally defective as under N.Y. C.P.L.R. 2221(f), a combined motion for leave to reargue and leave to renew had to identify separately each item of relief sought, and plaintiff's moving papers provided an assortment of jumbled arguments such that the trial court was unable to identify the portion of the pendente lite decision and order plaintiff sought to reargue and the

portion plaintiff sought to renew. LaFiosca v LaFiosca, 919 N.Y.S.2d 805, 31 Misc. 3d 973, 2011 N.Y. Misc. LEXIS 995 (N.Y. Sup. Ct. 2011).

Trial court erred in amending a prior order after the time to appeal or move in N.Y. C.P.L.R. 2221 had expired because no extraordinary circumstances existed to warrant a sua sponte dismissal of an injured plaintiff's complaint against an individual defendant, and the prior order implicitly determined that the individual defendant had been properly served. Menardy v Gladstone Props., Inc., 100 A.D.3d 840, 955 N.Y.S.2d 114, 2012 N.Y. App. Div. LEXIS 7921 (N.Y. App. Div. 2d Dep't 2012).

Because a corporation and its principal did not establish that the court misapprehended the facts presented, misapplied the law, or improperly decided a prior motion, and because a principal's affidavit constituted new facts, their N.Y. C.P.L.R. 2221(d), (e) motion for reargument or renewal was denied. Spearhead Inc. v Spearhead Sys. Consultants, 234 N.Y.L.J. 113, 2005 N.Y. Misc. LEXIS 3550 (N.Y. Sup. Ct. Dec. 13, 2005).

Amended statute now specifically provides that a motion based on a change in the law is a motion for leave to renew. The statute imposes no time limit for making such a motion; however, there is no indication in the legislative history of an intention to change the common law rule and its existing statute regarding the finality of judgments. Boreshesky v U.S. Bank Trust, N.A., 81 Misc. 3d 712, 199 N.Y.S.3d 860, 2023 N.Y. Misc. LEXIS 10313 (N.Y. Sup. Ct. 2023).

2. Renewal motions

Motion to "reargue" which was supported by additional affidavits containing information not before court on original motion was in effect motion to "review." Mindy's Wine Cellar, Inc. v American & Foreign Ins. Co., 51 A.D.2d 650, 378 N.Y.S.2d 540, 1976 N.Y. App. Div. LEXIS 11000 (N.Y. App. Div. 4th Dep't 1976).

Motion to renew should not be used to submit facts which could have been presented on first motion. Rosch v Milton Zoning Bd. of Appeals, 142 A.D.2d 765, 530 N.Y.S.2d 321, 1988 N.Y. App. Div. LEXIS 7901 (N.Y. App. Div. 3d Dep't 1988).

Motion is generally deemed renewal where facts available at time of prior motion were, for valid reasons, unknown to movant, but may sometimes encompass new matter that was not available prior to court's decision on prior motion. Haenel v November & November, 144 A.D.2d 298, 534 N.Y.S.2d 176, 1988 N.Y. App. Div. LEXIS 11246 (N.Y. App. Div. 1st Dep't 1988).

In mortgage foreclosure action, defendants' motion to renew their demand for jury was proper and should, on renewal, have been granted where original claims were settled and sole remaining issues involved counterclaims for money damages; in light of dismissal of foreclosure action, litigation no longer constituted action in equity but one in law. Central Federal Sav., F.S.B. v 583-587 Broadway Assoc., 147 A.D.2d 408, 538 N.Y.S.2d 6, 1989 N.Y. App. Div. LEXIS 1973 (N.Y. App. Div. 1st Dep't 1989).

Plaintiff was not entitled to retransfer of action to county in which it was commenced where, in plaintiff's original unsuccessful opposition to defendant's motion to change venue, he alleged that defendant maintained business in such county and was therefore deemed resident, but on renewal alleged that defendant operated property management business, and that action arose out of conduct of that business; plaintiff was not entitled to renewal of motion since he merely alleged new theory, rather than new facts which were unavailable at time of original motion. Venuti v Novelli, 179 A.D.2d 477, 578 N.Y.S.2d 179, 1992 N.Y. App. Div. LEXIS 251 (N.Y. App. Div. 1st Dep't 1992).

Motion to renew may be granted where moving party presents additional material facts which existed at time of prior motion, but were then not known to him or her, and party comes forward with justifiable excuse for not presenting facts before court; however, motion to renew is not available where party proceeds on one legal theory and then moves for renewal on different theory merely because he or she was unsuccessful on original motion. Albany Community Dev.

Agency v Abdelgader, 205 A.D.2d 905, 613 N.Y.S.2d 473, 1994 N.Y. App. Div. LEXIS 6299 (N.Y. App. Div. 3d Dep't 1994).

Plaintiff's failure to comply with requirements of CLS CPLR § 3215(e) did not warrant vacatur of order granting plaintiff default judgment where defendant failed to raise that issue until his second motion for renewal, made more than one year after denial of his motion to vacate order granting default judgment; motion to renew should not be granted to party who has proceeded on one legal theory on assumption that what has been submitted is sufficient, and thereafter seeks to move again on different legal argument merely because he was unsuccessful on original application. Matos v Blondet, 206 A.D.2d 968, 616 N.Y.S.2d 322, 1994 N.Y. App. Div. LEXIS 7677 (N.Y. App. Div. 4th Dep't 1994).

Court properly denied motion to renew made after final judgment, since such motion addresses prior motion, and when proceeding has been reduced to final judgment, proper procedural remedy is motion pursuant to CLS CPLR § 5015. Willard v Town Bd., 216 A.D.2d 861, 629 N.Y.S.2d 581, 1995 N.Y. App. Div. LEXIS 7165 (N.Y. App. Div. 4th Dep't 1995), app. denied, 1995 N.Y. App. Div. LEXIS 11095 (N.Y. App. Div. 4th Dep't Sept. 29, 1995), app. dismissed in part, app. denied, 87 N.Y.2d 917, 641 N.Y.S.2d 595, 664 N.E.2d 506, 1996 N.Y. LEXIS 76 (N.Y. 1996).

There was no basis to entertain motion for renewal so that court could amend its decision and order to reflect that default judgment, which court had vacated under CLS CPLR § 5015(a)(1), was vacated pursuant to grounds set forth in CLS CPLR § 5015(a)(3); defendants were not aggrieved parties seeking to change legal effect of court's order. Golden v Barker, 223 A.D.2d 769, 636 N.Y.S.2d 444, 1996 N.Y. App. Div. LEXIS 7 (N.Y. App. Div. 3d Dep't 1996).

Defendant's motion for reconsideration on ground that County Court had decided plaintiff's motion to dismiss appeal without benefit of defendant's opposition papers was not properly considered motion to renew. Quinn v County of Rensselaer, 242 A.D.2d 813, 661 N.Y.S.2d 870, 1997 N.Y. App. Div. LEXIS 8678 (N.Y. App. Div. 3d Dep't 1997).

Plaintiff's application for permission to file late notice of claim was untimely, despite his motion to renew, where his original application was denied without leave to renew, statute of limitations toll that runs from time plaintiff seeks leave to serve late notice of claim until order granting that relief did not apply to extend his time to move to renew, and motion to renew did not relate back to original motion for statute of limitations purposes. Mateo v City of New York, 245 A.D.2d 25, 664 N.Y.S.2d 449, 1997 N.Y. App. Div. LEXIS 12511 (N.Y. App. Div. 1st Dep't 1997).

In action by lake park commission against lodge owners to collect penalties for nonpayment of commercial dock fees, owners were not entitled to renewal of their previously denied cross motion to dismiss commission's motion for summary judgment where there was no merit in owners' claim that renewal was warranted in interest of justice because they proceeded pro se and thus were not adequately represented; pro se litigant acquires no greater rights than any other litigant. Lake George Park Comm'n v Salvador, 245 A.D.2d 605, 664 N.Y.S.2d 847, 1997 N.Y. App. Div. LEXIS 12557 (N.Y. App. Div. 3d Dep't 1997), app. dismissed in part, app. denied, 91 N.Y.2d 939, 670 N.Y.S.2d 402, 693 N.E.2d 749, 1998 N.Y. LEXIS 892 (N.Y. 1998).

Personal injury plaintiffs were not entitled to renewal and vacatur of prior order that had dismissed one action and precluded them from offering certain evidence in another action where plaintiffs exhibited willful and contumacious conduct, under CLS CPLR § 3126, in repeatedly failing to have injured plaintiff appear for deposition and in offering inadequate excuses for their failure. Castrignano v Flynn, 255 A.D.2d 352, 679 N.Y.S.2d 674, 1998 N.Y. App. Div. LEXIS 11841 (N.Y. App. Div. 2d Dep't 1998).

Minutes of Environmental Claims Reinsurance Group, inadvertently disclosed by defendants, were not protected by attorney-client privilege where communications contained in minutes pertained mainly to commercial concerns and were not primarily or predominantly of legal character. Aetna Cas. & Sur. Co. v Certain Underwriters at Lloyd's, 263 A.D.2d 367, 692 N.Y.S.2d 384, 1999 N.Y. App. Div. LEXIS 7800 (N.Y. App. Div. 1st Dep't 1999), app. dismissed, 94 N.Y.2d 875, 705 N.Y.S.2d 6, 726 N.E.2d 483, 2000 N.Y. LEXIS 6 (N.Y. 2000).

Court properly treated plaintiffs' order to show cause as motion to renew where defendant, in his answering papers, also treated plaintiffs' papers as motion to renew or to reargue, and thus he could not be heard to argue that he was prejudiced thereby. Quirici v Wassinger, 266 A.D.2d 926, 698 N.Y.S.2d 181, 1999 N.Y. App. Div. LEXIS 11737 (N.Y. App. Div. 4th Dep't 1999).

It was error to deny plaintiff's motion to renew and reargue motion to restore where she submitted affidavit of merit setting for details of accident, and court, in striking action from calendar, did not issue formal order setting forth its disposition of case, so that plaintiff's counsel's mistaken belief that case was only marked off was not unreasonable. Telep v Republic Elevator Corp., 267 A.D.2d 57, 699 N.Y.S.2d 380, 1999 N.Y. App. Div. LEXIS 12658 (N.Y. App. Div. 1st Dep't 1999).

Court's grant of renewal to third-party defendant employer was justified to avoid apparently inconsistent determination as to applicability of CLS Work Comp § 11, where court had denied employer's motion to dismiss third-party contribution and indemnification claims asserted by defendant contractor, while denying codefendants' motion to amend their pleadings to include third-party contribution and indemnification claims against employer on ground that § 11 barred such claims. Ellers v C. Raimondo & Son Constr. Co., 277 A.D.2d 156, 717 N.Y.S.2d 104, 2000 N.Y. App. Div. LEXIS 12485 (N.Y. App. Div. 1st Dep't 2000).

Defendants were not entitled to dismissal of action as to defendant foreign corporation, even though that corporation's training of its employees in New York was insufficient basis for long-arm jurisdiction over it, where corporation's close (apparently parental) relationship with defendant New York corporation raised issue as to whether foreign corporation took purposeful action to forge ties with New York and is so doing rendered its defense of New York action reasonably foreseeable prospect; however, foreign corporation could renew its motion to dismiss on completion of discovery. Hessel v Goldman, Sachs & Co., 281 A.D.2d 247, 722 N.Y.S.2d 21, 2001 N.Y. App. Div. LEXIS 2476 (N.Y. App. Div. 1st Dep't), app. denied, 97 N.Y.2d 625, 735 N.Y.S.2d 485, 760 N.E.2d 1280, 2001 N.Y. LEXIS 3222 (N.Y. 2001).

Defendants' unopposed motion for leave to renew should have been granted, and on renewal, that branch of plaintiffs' motion to strike defendants' answers should been denied where defendants showed that 2 additional depositions were completed while plaintiffs' motion to strike was still pending, defendants also showed that remaining depositions were completed shortly after order of preclusion was issued, and that plaintiffs entered into stipulation in which they agreed not to seek enforcement of order since all outstanding discovery had been completed, and defendant's failure to timely appear for depositions was not willful or contumacious. Patterson v N.Y. City Health & Hosps. Corp., 284 A.D.2d 516, 726 N.Y.S.2d 715, 2001 N.Y. App. Div. LEXIS 6769 (N.Y. App. Div. 2d Dep't 2001).

Where a patient failed to object to the caption within two days as required by N.Y. C.P.L.R. § 2101(f) and the complaint was sufficient to appraise the patient which hospital was the plaintiff and where the specific medical treatment provided under N.Y. C.P.L.R. 2221(e) was first placed at issue in the patient's affidavit in opposition to the initial summary judgment motion, the trial court did not err in granting the hospital's motion to renew. Mem'l Hosp. v Kligerman, 309 A.D.2d 1128, 766 N.Y.S.2d 451, 2003 N.Y. App. Div. LEXIS 11232 (N.Y. App. Div. 3d Dep't 2003).

Trial court properly denied a defendant's motion for leave to renew, as the facts showed that although the $100,000 settlement by the plaintiff occurred about six months after the trial granted its motion for summary judgment, this fact would not have changed the court's determination that the liquidated damages clause was not conspicuously disproportionate to the plaintiff's foreseeable losses. Jackson Hgts. Care Ctr., LLC v Bloch, 39 A.D.3d 477, 833 N.Y.S.2d 581, 2007 N.Y. App. Div. LEXIS 4198 (N.Y. App. Div. 2d Dep't 2007).

In a personal injury action, plaintiff's motion to renew under N.Y. C.P.L.R. § 2221(e) should have been granted as plaintiff demonstrated a justifiable excuse for her failure to timely file the note of issue under N.Y. C.P.L.R. § 3216(e) based on law office failure under N.Y. C.P.L.R. § 2005, which could include the ill physical or mental health of plaintiff's prior attorney as supported by that attorney's affidavit detailing, inter alia, two hospitalizations during the relevant time period.

Goldstein v Meadows Redevelopment Co Owners Corp. I, 46 A.D.3d 509, 846 N.Y.S.2d 384, 2007 N.Y. App. Div. LEXIS 12317 (N.Y. App. Div. 2d Dep't 2007).

Because defendants failed to submit any new facts in support of their N.Y. C.P.L.R. 2221(e)(2) motion to renew, and because they also failed to demonstrate that there was a change in the law, the trial court erred in granting their motion. McNerney v Fundalinski, 48 A.D.3d 1256, 851 N.Y.S.2d 813, 2008 N.Y. App. Div. LEXIS 1134 (N.Y. App. Div. 4th Dep't 2008).

Because an insured knew or should have known of a potential claim at the time of the occurrence, its notice provided to the insurer more than one year later was unreasonable; accordingly, the trial court should have granted the insurer’s N.Y. C.P.L.R. 2221(e) motion for leave to renew, and upon renewal, denied the insured’s motion for summary judgment and granted the insurer’s motion for summary judgment. Scordio Constr., Inc. v Sirius Am. Ins. Co., 51 A.D.3d 768, 858 N.Y.S.2d 283, 2008 N.Y. App. Div. LEXIS 4219 (N.Y. App. Div. 2d Dep't 2008), app. denied, 11 N.Y.3d 714, 873 N.Y.S.2d 269, 901 N.E.2d 763, 2009 N.Y. LEXIS 375 (N.Y. 2009).

Trial court improvidently denied the client’s motion in a legal malpractice case, in effect, for leave to renew its motion pursuant to N.Y. Comp. Codes R. & Regs. tit. 22, § 202.21(f) to reinstate the note of issue; the client’s motion was supported by a proper and sufficient certificate of readiness and by an affidavit by a person having first-hand knowledge showing that there was merit to the action, satisfactorily showing the reasons for the acts or omissions which led to the note of issue being vacated, stating meritorious reasons for its reinstatement, and showing that the case was ready for trial Suburban Restoration Co. v Viglotti, 54 A.D.3d 750, 863 N.Y.S.2d 724, 2008 N.Y. App. Div. LEXIS 6716 (N.Y. App. Div. 2d Dep't 2008).

Trial court’s finding that a corporation’s motion was a motion for leave to renew a prior motion for a default judgment was error because the corporation neither denominated the motion as one for leave to renew nor presented new facts; rather, the motion was a second motion for leave to enter a default judgment for a subsequent default in answering that occurred after the corporation’s first motion and a prior cross motion made by the restaurant, both of which had

been denied, and further, the corporation's submissions in support of the second motion satisfied N.Y. C.P.L.R. 3215(f), which allowed a verified complaint to be submitted in lieu of an affidavit but did not otherwise require the submission of a verified complaint. In any event, the trial court properly denied the corporation's motion but for different reasons. CPS Group, Inc. v Gastro Enters., Corp., 54 A.D.3d 800, 863 N.Y.S.2d 764, 2008 N.Y. App. Div. LEXIS 6808 (N.Y. App. Div. 2d Dep't 2008).

Denial of a contractor's N.Y. C.P.L.R. 2221 motion for leave to renew its opposition to owners' motion to compel arbitration was error because, although the motion was filed three weeks after the scheduling order's deadline, the contractor's attorney denied that he received a copy of the scheduling order, and denied that he was ever informed of a final deadline for motion practice; thus, the contractor's attorney established a lack of awareness of the deadline and good cause for the delay, and the failure to comply with the scheduling order in a timely manner was not the result of deliberately evasive, misleading, and uncooperative conduct or a determined strategy of delay that deserved the most vehement condemnation. Contrary to the mortgagee's contention, the contractor in fact submitted new evidence in support of the motion for leave to renew in that, by defaulting, the owners were deemed to have admitted that they fraudulently induced the contractor to enter into the contract which contained the arbitration clause. Chris Keefe Bldrs., Inc. v Hazzard, 71 A.D.3d 1599, 900 N.Y.S.2d 201, 2010 N.Y. App. Div. LEXIS 2553 (N.Y. App. Div. 4th Dep't 2010).

Plaintiff's 2007 motion to renew his 1999 motion to restore the case was barred by laches because plaintiff had a duty to inquire into the status of his 1999 motion, but offered no explanation as to why he waited so long; the 2007 application was not based on matters overlooked or misapprehended in the prior motion pursuant to N.Y. C.P.L.R. 2221(d)(2), nor was it based on new facts not offered on the prior motion, N.Y. C.P.L.R. 2221(e)(2), but, rather, the 2007 motion was an attempt to correct an error in the 1999 papers for which plaintiff was responsible. It was clear that, where a party made a timely motion to restore pursuant to N.Y. C.P.L.R. 3404, but was instructed by the court, after the one-year deadline has passed, to

resubmit the papers, the party should have to act diligently to timely rectify his or her error. Garcia v City of New York, 72 A.D.3d 505, 900 N.Y.S.2d 17, 2010 N.Y. App. Div. LEXIS 2938 (N.Y. App. Div. 1st Dep't), app. dismissed, 15 N.Y.3d 918, 913 N.Y.S.2d 644, 939 N.E.2d 810, 2010 N.Y. LEXIS 3894 (N.Y. 2010).

Inasmuch as the finding of ambiguity in a collective bargaining agreement was not affected by consideration of the facts presented by the town on its motion to renew, the town was not entitled to renewal. Williams v Village of Endicott, 91 A.D.3d 1160, 936 N.Y.S.2d 759, 2012 N.Y. App. Div. LEXIS 303 (N.Y. App. Div. 3d Dep't 2012).

Trial court properly denied that branch of appellant's motion which was for leave to renew, as it properly found that appellant did not offer a reasonable justification for her failure to submit her husband's affidavit and a report of a handwriting analyst in opposition to respondent's initial motion. Professional Offshore Opportunity Fund, Ltd. v Braider, 121 A.D.3d 766, 994 N.Y.S.2d 619, 2014 N.Y. App. Div. LEXIS 6770 (N.Y. App. Div. 2d Dep't 2014).

Trial court properly directed disclosure of the records at issue without redactions, awarded attorney's fee and costs, and denied a sheriff's department's motion for leave to renew because, while the department provided the requested records, it failed to proffer more than conclusory assertions supporting its claims for redaction of the signatures of the captains who approved overtime requests and failed to show that the information was exempt. Matter of Jaronczyk v Mangano, 121 A.D.3d 995, 996 N.Y.S.2d 291, 2014 N.Y. App. Div. LEXIS 7122 (N.Y. App. Div. 2d Dep't 2014).

Family court properly continued placement of the subject child in foster care and denied a maternal grandfather’s motion for leave to renew because, while the court erred in failing to conduct an age-appropriate consultation with the child, the court did not improperly delegate its authority to determine visitation to the child’s therapist, but rather, given the circumstances, it was a pragmatic approach specifically leaving open the ability for a further de novo petition by the grandfather in the event that he was not satisfied with the quality and quantity of visits, and with respect to the grandfather’s motion to renew, the grandfather raised the same argument

that he advanced at the permanency hearing, premised on the same facts. Matter of Sandra DD. (Kenneth DD.), 185 A.D.3d 1259, 128 N.Y.S.3d 666, 2020 N.Y. App. Div. LEXIS 4072 (N.Y. App. Div. 3d Dep't 2020).

In a motor vehicle negligence action arising from a collision with the city transit authority's bus, the supreme court properly denied defendant's motion for additional discovery beyond what was granted in an order by a different judge because the motion was in effect a reargument of a prior motion that had to be made to the judge who signed the initial order. Gelin v New York City Tr. Auth., 189 A.D.3d 789, 137 N.Y.S.3d 452, 2020 N.Y. App. Div. LEXIS 7436 (N.Y. App. Div. 2d Dep't 2020).

Petitioner's motion for leave to renew was properly denied because the proffered new facts would not change the original determination and the petitioner failed to provide a reasonable justification for failing to offer the new facts on the prior motions. Matter of Airport Parking Assoc., LLC v Town of N. Castle, NY, 200 A.D.3d 684, 154 N.Y.S.3d 839, 2021 N.Y. App. Div. LEXIS 6714 (N.Y. App. Div. 2d Dep't 2021).

Supreme court properly denied the motion of a purchaser of tax lien certificates for leave to renew his prior cross motion for summary judgment dismissing the complaint, since the purchaser failed to provide a reasonable justification for his failure to include the information in his affidavit with the information submitted in opposition to a bank's original motion for summary judgment and in support of the purchaser's original cross motion for summary judgment. BCB Community Bank v Zazzarino, 210 A.D.3d 847, 179 N.Y.S.3d 85, 2022 N.Y. App. Div. LEXIS 6384 (N.Y. App. Div. 2d Dep't 2022).

Supreme court did not abuse the court's discretion in denying appellant's motion for renewal because the affidavit from a retired college professor and environmental activist which appellant submitted to support appellant's claim of standing was essentially a recapitulation of the standing argument that appellant advanced in appellant's papers opposing a motion to dismiss and did not change the standing analysis. Matter of Vaughan v New York State Dept. of Transp., 223 A.D.3d 1010, 203 N.Y.S.3d 768, 2024 N.Y. App. Div. LEXIS 99 (N.Y. App. Div. 3d Dep't),

app. denied in part, 42 N.Y.3d 945, 243 N.E.3d 1246, 218 N.Y.S.3d 806, 2024 N.Y. LEXIS 1311 (N.Y. 2024).

Supreme court should have granted that unopposed branch of defendants' motion to vacate so much of the sealing order as, upon the plaintiffs' application to file their motion under seal, permanently sealed the entire court file, and upon vacatur, to seal only those documents that were designated by the plaintiffs for sealing. Lurie v Lurie, 226 A.D.3d 1001, 211 N.Y.S.3d 395, 2024 N.Y. App. Div. LEXIS 2202 (N.Y. App. Div. 2d Dep't 2024).

Supreme court erred in denying a mortgagor's cross-motion for leave to renew her opposition to a mortgagee's prior motion for summary judgment because the record was sufficient to establish that the mortgagor was a borrower for purposes of RPAPL 1304, and the mortgagee failed to serve the mortgagor with the requisite notice; the mortgagor thus established a change in the law that would change the supreme court's prior determination. Deutsche Bank Natl. Trust Co. v Cincu, 228 A.D.3d 825, 214 N.Y.S.3d 107, 2024 N.Y. App. Div. LEXIS 3479 (N.Y. App. Div. 2d Dep't 2024).

Plaintiff's motion to renew, which sought to equitably estop hospital defendants' reliance upon a statute of limitations defense, was properly denied, where plaintiff did not offer a reasonable justification for not submitting the medical records on the hospital defendants' original dismissal motion. Borek v Seidman, 231 A.D.3d 465, 218 N.Y.S.3d 55, 2024 N.Y. App. Div. LEXIS 5203 (N.Y. App. Div. 1st Dep't 2024), dismissed, 234 A.D.3d 430, 226 N.Y.S.3d 3, 2025 N.Y. App. Div. LEXIS 36 (N.Y. App. Div. 1st Dep't 2025).

A motion to reargue may not be made after the time to appeal has expired, but a motion to renew is not so limited and can be made within a reasonable time. On a motion to renew, the party must present new facts and must indicate the reason that the information was not brought to the court's attention on the previous motion. Liantonio v Baum, 95 Misc. 2d 636, 408 N.Y.S.2d 257, 1978 N.Y. Misc. LEXIS 2488 (N.Y. Sup. Ct. 1978).

In malpractice action, dentist’s motion to renew patient’s successful motion for protective order, on ground that patient’s later initiation of CLS CPLR § 3121 exchange of medical reports waived any objection to production of medical report protected by previous order, would be granted as matter of discretion although dentist waited approximately 4 months to move to renew, since there is no time limitation imposed upon motions to renew. Benedict v Pray, 134 Misc. 2d 984, 513 N.Y.S.2d 947, 1987 N.Y. Misc. LEXIS 2141 (N.Y. Sup. Ct. 1987).

Where an elderly tenant had limited communicative and cognitive aptitudes, had resided in rent-controlled premises for 36 years, and had substantially cured a cluttered premises nuisance within days of an order vacating a stay of the landlord’s warrant of eviction, the court found that the absence of meaningful assistance to cure the nuisance in the time period allowed by the trial court and the guardian ad litem’s failure to attend the proceedings brought by the landlord seeking vacatur of the stay was not harmless to the tenant’s interests; accordingly, the trial court erred in denying the tenant’s motion for renewal, pursuant to N.Y. C.P.L.R. 2221, of the order granting the landlord vacatur of the stay of the warrant of eviction. 4G Realty LLC v Vitulli, 773 N.Y.S.2d 776, 2 Misc. 3d 29, 2003 N.Y. Misc. LEXIS 1712 (N.Y. App. Term 2003).

In a personal injury case, a property owner’s motion for renewal and reargument under N.Y. C.P.L.R. 2221 was not in compliance with N.Y. C.P.L.R. 2221(f) since it did not identify and separately support each item of relief sought. Rosario v Ortiz Funeral Home Corp., 839 N.Y.S.2d 674, 16 Misc. 3d 739, 238 N.Y.L.J. 5, 2007 N.Y. Misc. LEXIS 4237 (N.Y. Civ. Ct. 2007), aff'd, 862 N.Y.S.2d 699, 20 Misc. 3d 12, 2008 N.Y. Misc. LEXIS 3179 (N.Y. App. Term 2008).

Trial court properly denied plaintiffs’ motion for leave to renew a motion for summary judgment in a personal injury action, because plaintiffs failed to offer a reasonable justification for their failure to submit the affidavit of their expert in opposition to the original motion for summary judgment, CPLR 2221. Daria v Beacon Capital Co., 299 A.D.2d 312, 749 N.Y.S.2d 79, 2002 N.Y. App. Div. LEXIS 10543 (N.Y. App. Div. 2d Dep't 2002).

Motion to renew is intended to draw the court’s attention to new or additional facts which, although in existence at the time of the original motion, were unknown to the party seeking renewal and therefore not brought to the court’s attention, but a motion to renew is properly denied for failure to show that the alleged new facts were unavailable at the time of the original motion. Alpert v Wolf, 194 Misc. 2d 126, 751 N.Y.S.2d 707, 2002 N.Y. Misc. LEXIS 1499 (N.Y. Civ. Ct. 2002).

Trial court properly denied defendants’ motion for leave to renew a motion to vacate a default judgment in plaintiffs’ legal malpractice action, as it was based on evidence that could have been discovered earlier with due diligence, N.Y. C.P.L.R. 2221(e), or would not have altered the outcome on the underlying motion. Ford v Lasky, 300 A.D.2d 536, 752 N.Y.S.2d 563, 2002 N.Y. App. Div. LEXIS 12774 (N.Y. App. Div. 2d Dep't 2002).

The trial court properly denied an injured party’s motion pursuant to N.Y. Gen. Mun. Law § 50-e to serve a late notice of claim on a board of education in a personal injury action, and properly adhered to that decision upon the injured party’s motion for leave to renew pursuant to N.Y. C.P.L.R. 2221 (2003); the injured party failed to show that the board timely acquired actual knowledge of the facts underlying the claim, and failed to show that the board would not be prejudiced by permitting the injured party to serve a late notice of claim, and did not establish the existence of a reasonable excuse for failing to timely serve the notice of claim as required by N.Y. Gen. Mun. Law § 50-e(5). Igneri v N.Y. City Bd. of Educ., 303 A.D.2d 635, 756 N.Y.S.2d 783, 2003 N.Y. App. Div. LEXIS 3160 (N.Y. App. Div. 2d Dep't 2003).

Trial court erred in denying plaintiff’s motion for leave to renew and reargue, pursuant to N.Y. C.P.L.R. 2221 (2003), a motion to restore plaintiffs’ personal injury action against defendants to the trial calendar pursuant to N.Y. C.P.L.R. 3404 (2003); a plaintiff seeking to restore a case within one year of it being marked off the calendar did not need to demonstrate a reasonable excuse, a meritorious action, lack of intent to abandon, and a lack of prejudice to defendants, and here, the trial court erred in denying restoration because the initial motion to restore was

made within one year after the action was marked off. Maragos v Getty Petroleum Corp., 303 A.D.2d 652, 757 N.Y.S.2d 316, 2003 N.Y. App. Div. LEXIS 3204 (N.Y. App. Div. 2d Dep't 2003).

Upon granting leave to renew pursuant to N.Y. C.P.L.R. 2221, the trial court erred in denying defendants' motion to dismiss homeowners' action for breach of an insurance contract pursuant to N.Y. C.P.L.R. 3211(a)(5), because the limitations period in the insurance policy expired prior to the commencement of the action, and no exception applied. Minichello v N. Assur. Co. of Am., 304 A.D.2d 731, 758 N.Y.S.2d 669, 2003 N.Y. App. Div. LEXIS 4308 (N.Y. App. Div. 2d Dep't 2003).

Supreme Court properly denied an injured party's motion for leave to renew a prior motion seeking to submit unsigned certified deposition testimony at trial, despite her contention that her motion was based on grounds she possessed new information purportedly establishing that the engineer's deposition transcript at issue had been submitted to the tortfeasor's counsel for signature and therefore, the court erred in refusing to admit the engineer's deposition testimony as substantive evidence at trial, as the injured party merely offered a more detailed explanation of her failure to submit the engineer's deposition testimony to the tortfeasor and provided no explanation for her failure to present these additional facts in her prior motion. Lattimore v Port Auth., 305 A.D.2d 639, 760 N.Y.S.2d 224, 2003 N.Y. App. Div. LEXIS 5968 (N.Y. App. Div. 2d Dep't 2003).

Appellate court construed plaintiff's motion to vacate a trial court's order as a motion to renew; so construed, the appellate court reversed the trial court's order, which had denied plaintiff's request to vacate an order of dismissal, because plaintiff's failure to submit a physician's affidavit was inadvertent and because defendant had failed to establish any prejudice resulting from plaintiff's delay in filing a note of issue in his personal injury case. Garner v Latimer, 306 A.D.2d 209, 761 N.Y.S.2d 657, 2003 N.Y. App. Div. LEXIS 7456 (N.Y. App. Div. 1st Dep't 2003).

On renewal pursuant to N.Y. C.P.L.R. 2221, the trial court properly granted defendants' motions for summary judgment pursuant to N.Y. C.P.L.R. 3212 in a personal injury action; a medical report was not sufficient to raise a triable issue of fact on whether the injured party sustained a

serious injury pursuant to N.Y. Ins. Law § 5102(d); the trial court's denial of the injured party's motion to reargue pursuant to N.Y. C.P.L.R. 2221 was not appealable. Gadsden v Montes, 2 A.D.3d 674, 768 N.Y.S.2d 630, 2003 N.Y. App. Div. LEXIS 13835 (N.Y. App. Div. 2d Dep't 2003).

Upon a grant of a motion to renew or revive pursuant to N.Y. C.P.L.R. 2221, the trial court properly denied appealing defendants' motion for summary judgment pursuant to N.Y. C.P.L.R. 3212 in a personal injury action, as they failed to make a prima facie showing that the injured party did not sustain a serious injury under N.Y. Ins. Law § 5102(d) in the subject accident. Matter of Abid v Edwards, 8 A.D.3d 510, 779 N.Y.S.2d 522, 2004 N.Y. App. Div. LEXIS 16566 (N.Y. App. Div. 2d Dep't 2004).

Because a motion for leave to renew failed to contain reasonable justification for the failure to present the newly asserted facts on the prior motion, it was properly denied under N.Y. C.P.L.R. 2221(e). Financial Pac. Leasing, LLC v D & D Wire, Inc., 44 A.D.3d 706, 843 N.Y.S.2d 657, 2007 N.Y. App. Div. LEXIS 10607 (N.Y. App. Div. 2d Dep't 2007).

Because the controlling documents of a corporation failed to demonstrate that a shareholder had been designated a holder of unsold shares, the shareholder failed to demonstrate a likelihood of success on the merits that would entitle it to a preliminary injunction under N.Y. C.P.L.R. 6301; therefore, pursuant to N.Y. C.P.L.R. 2221(e), the trial court properly denied its motion for leave to renew. 515 Ave. I Corp. v 515 Ave. I Tenants Corp., 44 A.D.3d 707, 844 N.Y.S.2d 79, 2007 N.Y. App. Div. LEXIS 10592 (N.Y. App. Div. 2d Dep't 2007).

Since the issue had not been decided in earlier proceedings, the trial court granted the N.Y. C.P.L.R. 2221(e) renewal motion to allow the first insurance company to raise the issue of whether the additional insureds' coverage on decedent, fatally injured while working on a job site, provided primary or excess coverage in a lawsuit on decedent's behalf for wrongful death. Thus, the trial court was able to bring before it all the insurers who might have a connection to the wrongful death action, and, following a review of the policies, determine that the additional insureds had primary coverage through the first insurance company's policy, primary coverage

under their own policy with the second insurance company, and that the first insurance company and the second insurance company should equally share the costs incurred regarding the wrongful death action. Briarwoods Farm, Inc. v Cent. Mut. Ins. Co., 866 N.Y.S.2d 847, 22 Misc. 3d 427, 2008 N.Y. Misc. LEXIS 6582 (N.Y. Sup. Ct. 2008).

Plaintiff's motion pursuant to N.Y. C.P.L.R. 2221 to renew and reargue the court's grant of summary judgment to defendant was denied, because the shareholder's agreement relied on by plaintiff was superseded by a new agreement, and plaintiff failed to prove that defendant's threat to withhold further financing for a subdivision project constituted economic duress. Madey v Carman, 238 N.Y.L.J. 16, 2007 N.Y. Misc. LEXIS 5432 (N.Y. Sup. Ct. June 29, 2007), aff'd in part, 51 A.D.3d 985, 858 N.Y.S.2d 784, 2008 N.Y. App. Div. LEXIS 4617 (N.Y. App. Div. 2d Dep't 2008).

3. —Change of attorney

In a matrimonial action, a motion by plaintiff's former attorney to renew a motion that had resulted in an order directing him to turn over his entire file to plaintiff's new attorneys would be denied, even though the attorney stated in an affidavit that the motion to renew was based on facts not previously presented to the court, where no new material facts were alleged in the affidavit, nor was any excuse offered for not presenting the additional facts upon the original application. Spiro v Spiro, 91 A.D.2d 1103, 458 N.Y.S.2d 354, 1983 N.Y. App. Div. LEXIS 16446 (N.Y. App. Div. 3d Dep't), app. dismissed, 59 N.Y.2d 761, 1983 N.Y. LEXIS 4999 (N.Y. 1983).

Defendants' motion for renewal and rehearing would be granted where, when defendants brought the motion, new counsel had been substituted and the disputed interrogatories in question had been answered, in that the prompt response on the part of defendants' new attorneys demonstrated good faith and created a situation different from the one existing at the time of the initial motion; a motion for renewal or rehearing must be based upon additional material facts not presented to the court at the time that the motion was originally made. Bassett

v Bando Sangsa Co., 103 A.D.2d 728, 478 N.Y.S.2d 298, 1984 N.Y. App. Div. LEXIS 19325 (N.Y. App. Div. 1st Dep't 1984).

4. —"New" fact or evidence

Where no facts, not previously available, and no mistakes of law were set forth in support of motion to renew prior motion to dismiss plaintiff's complaint in negligence action, motion to renew was properly denied. Rosa v Tountasakis, 55 A.D.2d 614, 389 N.Y.S.2d 137, 1976 N.Y. App. Div. LEXIS 15341 (N.Y. App. Div. 2d Dep't 1976).

In an action for specific performance of a lease of space in a planned but unbuilt office building which contained a clause providing that if the landlord failed to obtain governmental approval for the full number of proposed floors the parties would recalculate to reflect the change proportionately, the landlord's theories of cancellation and impossibility of performance were properly held ineffective to defeat summary judgment in light of the recalculation clause, and the landlord's motion for reargument or renewal on the ground of estoppel was properly rejected where such motion had not been based on any newly discovered matter. Kenyon & Eckhardt, Inc. v 805 Third Ave. Co., 84 A.D.2d 507, 443 N.Y.S.2d 163, 1981 N.Y. App. Div. LEXIS 15525 (N.Y. App. Div. 1st Dep't), dismissed, 55 N.Y.2d 825, 1981 N.Y. LEXIS 8706 (N.Y. 1981).

A trial court did not abuse its discretion in denying a motion to renew so as to present new facts, where the parties had stipulated that the court's decision on the motion was to be based on evidence before the court. Kyle v Kyle, 94 A.D.2d 866, 463 N.Y.S.2d 584, 1983 N.Y. App. Div. LEXIS 18331 (N.Y. App. Div. 3d Dep't), app. denied, 60 N.Y.2d 557, 457 N.E.2d 808, 1983 N.Y. LEXIS 5667 (N.Y. 1983).

The trial court in a slander action properly denied plaintiff's motion for leave to renew and reargue defendant's motion for summary judgment dismissing the complaint, which had previously been granted by the trial court, where plaintiff had been aware at the time of defendant's motion of the factual allegations concerning the context in which the allegedly defamatory remarks arose, which allegations he sought to offer as additional facts in support of

his motion to renew. Caffee v Arnold, 104 A.D.2d 352, 478 N.Y.S.2d 683, 1984 N.Y. App. Div. LEXIS 19821 (N.Y. App. Div. 2d Dep't 1984).

On motion to renew under CLS CPLR § 2221, party must show new facts to support motion, as well as justifiable excuse for not initially placing such facts before court. Lansing Research Corp. v Sybron Corp., 142 A.D.2d 816, 530 N.Y.S.2d 698, 1988 N.Y. App. Div. LEXIS 7824 (N.Y. App. Div. 3d Dep't 1988).

Although motion for leave to renew should be based on newly discovered facts, there are occasions when renewal may be granted upon basis of facts known to moving party at time of original motion. Blumstein v Menaldino, 144 A.D.2d 412, 533 N.Y.S.2d 987, 1988 N.Y. App. Div. LEXIS 11786 (N.Y. App. Div. 2d Dep't 1988).

In Article 78 proceeding to determine eligibility of certain school districts for “high tax aid” under CLS Educ § 3602(16)(c), court did not err by denying school district’s motion to renew or reargue prior motion, since additional material submitted by district was available initially and would not have affected outcome of litigation. Cario v Sobol, 157 A.D.2d 172, 557 N.Y.S.2d 592, 1990 N.Y. App. Div. LEXIS 6465 (N.Y. App. Div. 3d Dep't 1990).

There was no bar to granting renewal on basis of federal statute since motion for renewal may be based on law not previously considered, and excuse for neglecting in first instance to raise federal statute was valid. Johnston v National R. Passenger Corp., 161 A.D.2d 288, 555 N.Y.S.2d 62, 1990 N.Y. App. Div. LEXIS 5087 (N.Y. App. Div. 1st Dep't 1990).

Court properly denied plaintiffs’ application for renewal where so-called new facts presented by them were same facts they had asserted in their opposition to defendants’ motions to dismiss their second amended complaint and their original complaint. William P. Pahl Equip. Corp. v Kassis, 182 A.D.2d 22, 588 N.Y.S.2d 8, 1992 N.Y. App. Div. LEXIS 9933 (N.Y. App. Div. 1st Dep't), app. denied in part, app. dismissed, 80 N.Y.2d 1005, 592 N.Y.S.2d 665, 607 N.E.2d 812, 1992 N.Y. LEXIS 3981 (N.Y. 1992).

Court erred in granting personal injury plaintiff's motion for leave to renew opposition to defendant's motion for summary judgment on ground that plaintiff did not sustain CLS Ins § 5102 "serious injury," although plaintiff offered unsworn medical report in support of motion, where no explanation was offered as to why this or similar medical report could not have been prepared earlier, as there was no allegation that plaintiff's medical condition deteriorated after original motion. Hurst v Hilgenfeldt, 189 A.D.2d 855, 592 N.Y.S.2d 974, 1993 N.Y. App. Div. LEXIS 638 (N.Y. App. Div. 2d Dep't 1993).

Defendants' motion for leave to renew opposition to plaintiff's motion for summary judgment was properly denied since motion was predicated on legal theory not advanced in opposition to original motion, and on defense not asserted in their answer. Mid-State Elevator Co. v Empire-Salina Assocs., 190 A.D.2d 1061, 594 N.Y.S.2d 667, 1993 N.Y. App. Div. LEXIS 1290 (N.Y. App. Div. 4th Dep't 1993).

Requirement that new facts be presented to support motion to renew need not be applied to defeat substantive fairness. Lambert v Williams, 218 A.D.2d 618, 631 N.Y.S.2d 31, 1995 N.Y. App. Div. LEXIS 8939 (N.Y. App. Div. 1st Dep't 1995).

Where different state of facts has arisen since first motion, new motion based on those facts, but seeking same relief as that sought in first motion, may be made as matter of right. First Nationwide Bank v Brookhaven Realty Assocs., 223 A.D.2d 618, 637 N.Y.S.2d 418, 1996 N.Y. App. Div. LEXIS 415 (N.Y. App. Div. 2d Dep't), app. dismissed, 88 N.Y.2d 963, 647 N.Y.S.2d 715, 670 N.E.2d 1347, 1996 N.Y. LEXIS 1545 (N.Y. 1996).

In Article 78 proceeding to review determination that petitioner defaulted under several city contracts, documents obtained by discovery in separate action, which primarily consisted of correspondence between respondents concerning their negotiation of contracts with petitioner, were not "newly discovered evidence" for purpose of petitioner's motion for leave to renew under CLS CPLR § 2221, as they merely represented summaries of negotiations in which petitioner played active important role and thus already had substantive knowledge. Brooklyn Welding

Corp. v Chin, 236 A.D.2d 392, 653 N.Y.S.2d 631, 1997 N.Y. App. Div. LEXIS 1083 (N.Y. App. Div. 2d Dep't 1997).

Plaintiff's motion for leave to renew, which corrected deficiencies in original motion papers, was properly granted where plaintiff's prior motion for summary judgment was denied because plaintiff failed to include legible copy of assignment of mortgage and to include affidavit of person with knowledge attesting to mortgagor's default. Federal Home Loan Mortg. Corp. v Torres, 238 A.D.2d 306, 656 N.Y.S.2d 297, 1997 N.Y. App. Div. LEXIS 3407 (N.Y. App. Div. 2d Dep't 1997).

Court properly considered evidence submitted by plaintiffs in support of their second motion to renew and reargue motion to restore action to calendar, even though evidence had been available at time of original motion to restore, since it conclusively established that plaintiffs' first motion had been timely made, which had been plaintiffs' position on their first motion to renew and reargue, albeit with proof then deemed inadequate by court. Cohen v Otis Elevator, 241 A.D.2d 342, 660 N.Y.S.2d 972, 1997 N.Y. App. Div. LEXIS 7183 (N.Y. App. Div. 1st Dep't 1997).

As proponent of motion to renew, petitioner seeking to compel compliance with subpoena duces tecum had to show existence of newly discovered evidence that was previously unavailable, reasons as to why evidence was not previously presented, materiality of evidence, and its nondiscoverability at time of original motion. In re Saxton, 245 A.D.2d 733, 665 N.Y.S.2d 742, 1997 N.Y. App. Div. LEXIS 12951 (N.Y. App. Div. 3d Dep't 1997).

In action seeking recovery of finder's commission and consulting fees on theories of breach of contract and quantum meruit, plaintiff's motion to renew was properly denied where alternative argument raised by plaintiff should have been raised on initial motion. Global Fin. Corp. v Triarc Corp., 251 A.D.2d 17, 672 N.Y.S.2d 711, 1998 N.Y. App. Div. LEXIS 6391 (N.Y. App. Div. 1st Dep't 1998), app. dismissed, 92 N.Y.2d 1012, 684 N.Y.S.2d 483, 707 N.E.2d 438, 1998 N.Y. LEXIS 4279 (N.Y. 1998), aff'd, 93 N.Y.2d 525, 693 N.Y.S.2d 479, 715 N.E.2d 482, 1999 N.Y. LEXIS 1299 (N.Y. 1999).

In action for employment discrimination, court properly denied plaintiff's motion to renew prior order granting defendant's motion for summary judgment where plaintiff failed to allege new facts unavailable at time of original motion, and allegedly new facts did not undermine finding that defendant's articulated reason for terminating plaintiff was nonpretextual. Chawla v Cravath, Swaine & Moore, 251 A.D.2d 96, 673 N.Y.S.2d 309, 1998 N.Y. App. Div. LEXIS 6693 (N.Y. App. Div. 1st Dep't 1998).

It was error for court not to consider additional information on plaintiff's motion for leave to renew prior motion where additional information addressed issue raised sua sponte by court in original decision. Scannell v Mt. Sinai Med. Ctr., 256 A.D.2d 214, 683 N.Y.S.2d 18, 1998 N.Y. App. Div. LEXIS 13740 (N.Y. App. Div. 1st Dep't 1998).

Motion to renew was properly denied on movant's failure to submit evidence that would justify departure from court's original determination. Diviney v Aetna Life & Cas. Co., 257 A.D.2d 644, 682 N.Y.S.2d 908, 1999 N.Y. App. Div. LEXIS 627 (N.Y. App. Div. 2d Dep't 1999).

Requirement that motion for leave to renew be based on newly discovered facts is flexible, and court may, in its discretion, grant renewal on facts known to movant at time of original motion. Gadson v New York City Hous. Auth., 263 A.D.2d 464, 691 N.Y.S.2d 914, 1999 N.Y. App. Div. LEXIS 7873 (N.Y. App. Div. 2d Dep't 1999).

In action to recover on guarantee, court properly denied defendants' motion for renewal where additional "facts" were contrary to documentary evidence and entirely conclusory insofar as they related to amount of guarantee, and not inconsistent with result reached on original motion insofar as they related to amount of underlying indebtedness. Medallion Funding Corp. v Norrito, 272 A.D.2d 218, 708 N.Y.S.2d 617, 2000 N.Y. App. Div. LEXIS 5888 (N.Y. App. Div. 1st Dep't 2000).

Plaintiff's motion, although denominated as one for reargument and renewal, was properly treated solely as motion for reargument where plaintiff did not offer valid excuse as to why allegedly new facts were not previously submitted in opposition to defendant's original motion for

summary judgment. Harewood v Aiken, 273 A.D.2d 199, 710 N.Y.S.2d 82, 2000 N.Y. App. Div. LEXIS 6256 (N.Y. App. Div. 2d Dep't 2000).

Plaintiffs' motion, although denominated as one for reargument and renewal, was motion for reargument where it was not based on new evidence that was unavailable at time of defendants' original motion for summary judgment; thus, appeal from order denying plaintiffs' motion would be dismissed, as no appeal lies from order denying reargument. McCorvey v Schoulder, 273 A.D.2d 207, 709 N.Y.S.2d 442, 2000 N.Y. App. Div. LEXIS 6239 (N.Y. App. Div. 2d Dep't 2000).

Medical malpractice defendants were properly granted leave to renew their motion to amend answer to assert affirmative defense of offset of payment by successive tortfeasor, and amendment was properly granted, even though information submitted in support of renewal motion was available to defendants at time of original motion; requirement that motion for leave to renew be based on newly discovered facts is flexible, and court may, in its discretion, grant renewal on facts known to moving party at time of original motion. Sorto v S. Nassau Cmty. Hosp., 273 A.D.2d 373, 710 N.Y.S.2d 910, 2000 N.Y. App. Div. LEXIS 7093 (N.Y. App. Div. 2d Dep't 2000).

On plaintiff's motion to renew, reliance by her expert witness on facts known to her at time she submitted her opposition to defendant's summary judgment motion was not dispositive. Allison v D'Agostino Supermarkets, Inc., 282 A.D.2d 219, 723 N.Y.S.2d 30, 2001 N.Y. App. Div. LEXIS 3362 (N.Y. App. Div. 1st Dep't 2001).

While motion to renew is generally based on discovery of material facts unknown to movant at time of original motion, Supreme Court has discretion to grant renewal even on facts known to movant at that time. J.D. Structures, Inc. v Waldbaum, 282 A.D.2d 434, 723 N.Y.S.2d 205, 2001 N.Y. App. Div. LEXIS 3315 (N.Y. App. Div. 2d Dep't 2001).

In action seeking injunctive and other relief wherein defendants established, prima facie, their entitlement to judgment as matter of law, and plaintiffs' counsel admittedly signed purported affidavits on behalf of alleged affiants and then notarized them, falsely representing that affiants

had signed them in his presence, but court denied summary judgment because plaintiffs proffered other, proper evidence to show existence of triable issues of fact, defendants' motion for renewal, based on discovery of additional improper signatures and false notarizations submitted by plaintiffs' counsel, should have been granted and additional improper affidavits should have been eliminated from consideration. Ambulatory Surgery Ctr. of Brooklyn v Helpers of God's Precious Infants, Inc., 283 A.D.2d 528, 725 N.Y.S.2d 65, 2001 N.Y. App. Div. LEXIS 5447 (N.Y. App. Div. 2d Dep't 2001).

Pursuant to N.Y. C.P.L.R. 2221(e)(2), defendant general contractor's claim that the insurance-procurement provision in its construction contract with defendant premises occupant violated N.Y. Gen. Oblig. Law § 5-322.1 was not a proper subject of the contractor's motion to renew where the claim was not supported by any new evidence. Ribadeneyra v The Gap, Inc., 287 A.D.2d 362, 731 N.Y.S.2d 441, 2001 N.Y. App. Div. LEXIS 9910 (N.Y. App. Div. 1st Dep't 2001).

After granting defendant dentist summary judgment in plaintiff patient's dental malpractice action, the trial court, upon renewal, properly denied summary judgment where the patient, upon renewal, presented admissible and newly-available evidence in the form of a dentist's report which the patient did not have at the time of the original summary judgment motion and which, pursuant to N.Y. C.P.L.R. 2221(e)(2), constituted new facts not offered on the prior motion that would have changed the prior determination. Puntino v Chin, 288 A.D.2d 202, 733 N.Y.S.2d 108, 2001 N.Y. App. Div. LEXIS 10461 (N.Y. App. Div. 2d Dep't 2001).

In petitioner recipient's N.Y. C.P.L.R. art. 78 proceeding to compel respondents, individual and others, to comply with a Department of Social Services, New York, determination restoring certain public assistance, the trial court properly denied the recipients motion for renewal, inasmuch as the recipient's motion seeking renewal was not based upon new facts not offered on the prior motion that would have changed the prior determination. Wittlinger v Wing, 289 A.D.2d 171, 735 N.Y.S.2d 382, 2001 N.Y. App. Div. LEXIS 12747 (N.Y. App. Div. 1st Dep't 2001), app. denied, 2002 N.Y. App. Div. LEXIS 3102 (N.Y. App. Div. 1st Dep't Mar. 19, 2002), aff'd, 99 N.Y.2d 425, 757 N.Y.S.2d 234, 786 N.E.2d 1270, 2003 N.Y. LEXIS 216 (N.Y. 2003).

Because the Education Department's interpretation of N.Y. Comp. Codes R. & regs. tit. 8, § 200.7 as precluding contracting for private school special education services to be delivered in public school buildings with students mainstreamed for classes such as art and music was not unreasonable, given that the students eligible for such services would have already been determined to be unsuitable for mainstreaming, the private education provider's petition for administrative review was denied; its motion for renewal was also denied, because its argument that similar programs had received funding was not "new" evidence within the meaning of N.Y. C.P.L.R. 2221. Cooke Ctr. for Learning & Dev. v Mills, 19 A.D.3d 834, 797 N.Y.S.2d 173, 2005 N.Y. App. Div. LEXIS 6766 (N.Y. App. Div. 3d Dep't), app. dismissed, app. denied, 5 N.Y.3d 846, 805 N.Y.S.2d 546, 839 N.E.2d 900, 2005 N.Y. LEXIS 2722 (N.Y. 2005).

Founder's motion to renew his opposition to a summary judgment motion against him was properly denied in a shareholder derivative suit against him seeking to recover fees and costs incurred by the corporation on the founder's behalf in connection with charges of federal campaign finance laws violations; the motion to renew relied primarily on a letter written by the judge who sentenced the founder, but did not in any way alter fact that the founder admitted that he knowingly and intentionally violated campaign finance laws. Bansbach v Zinn, 20 A.D.3d 629, 798 N.Y.S.2d 549, 2005 N.Y. App. Div. LEXIS 7640 (N.Y. App. Div. 3d Dep't 2005).

Employer's appeal from a trial court's denial of its motion for leave to renew and reargue the trial court's decision granting an employee's motion for leave to commence a direct action was dismissed because the only additional evidence that it submitted to establish that it had complied with the disclosure ordered by the trial court was the deposition testimony of a witness produced by a codefendant several months after the original motion was decided. This testimony did not constitute new evidence as contemplated by N.Y. C.P.L.R. 2221(e)(2); therefore, the motion was one solely to reargue, which was not appealable. Almonte v W. Beef, Inc., 21 A.D.3d 516, 800 N.Y.S.2d 738, 2005 N.Y. App. Div. LEXIS 8688 (N.Y. App. Div. 2d Dep't 2005).

Evidence that, though previously submitted, has not been previously accepted, is appropriately considered to be new evidence. Because the injured party’s motion to renew and/or reargue was based on new evidence, as her uncertified climatological reports were previously deemed inadmissible by the trial court, the appellate court construed her motion as one to renew. Kasem v Price-Rite Off. & Home Furniture, 21 A.D.3d 799, 800 N.Y.S.2d 713, 2005 N.Y. App. Div. LEXIS 9161 (N.Y. App. Div. 1st Dep't 2005).

Passenger was not entitled to leave to renew since the passenger did not submit new facts not offered on the prior motion that would change the prior determination under N.Y. C.P.L.R. 2221(e)(2). Shaw v Lieb, 40 A.D.3d 740, 836 N.Y.S.2d 213, 2007 N.Y. App. Div. LEXIS 5901 (N.Y. App. Div. 2d Dep't 2007).

Under circumstances in which a client’s counterclaim for legal malpractice against a law firm had been dismissed, the trial court properly denied that branch of the client’s motion which was for leave to renew, as he failed to present new facts that would have changed the prior determination. Parola, Gross & Marino, P.C. v Susskind, 43 A.D.3d 1020, 843 N.Y.S.2d 104, 2007 N.Y. App. Div. LEXIS 9834 (N.Y. App. Div. 2d Dep't 2007).

Denial of a worker’s motion for leave to renew his opposition to a corporation’s summary judgment motion in a negligence and labor law case was error because the worker proffered new facts by submitting a determination of the Workers’ Compensation Board which found that the corporation was the general contractor for the subject renovation project; upon renewal, the trial court should have denied the motion for summary judgment since this evidence raised triable issues of fact as to as to whether the corporation was the general contractor and if so, whether it was involved in the subject renovation project. Chunqi Liu v Wong, 46 A.D.3d 735, 849 N.Y.S.2d 84, 2007 N.Y. App. Div. LEXIS 12828 (N.Y. App. Div. 2d Dep't 2007).

Trial court properly denied the motions for a change of venue and for leave to renew and reargue filed by a college and a deceased student's landlords (the defendants) because, although in moving for a change of venue, the defendants provided the names of certain students, fire and police officers, and first responders, they failed to offer, inter alia, sufficient

proof of their addresses and the facts to which they would testify, and the college failed to present “new facts” that were unavailable at the time of the original motion that would have changed the prior determination. Fitzsimons v Brennan, 128 A.D.3d 634, 9 N.Y.S.3d 318, 2015 N.Y. App. Div. LEXIS 3766 (N.Y. App. Div. 2d Dep't 2015).

Trial court properly denied plaintiff's motion to renew regarding the dismissal of an action against two members of a law firm based on lack of proper service because the new documents provided by plaintiff along with the motion could only establish service on the law firm, not the individual attorneys. Hyman v Schwartz, 127 A.D.3d 1281, 6 N.Y.S.3d 732, 2015 N.Y. App. Div. LEXIS 2846 (N.Y. App. Div. 3d Dep't 2015).

When a client fired an attorney after the attorney filed a personal injury suit for the client, the attorney applied to establish an attorney's retaining lien and charging lien, and the client's new counsel dismissed the suit in which the attorney's application was filed, it was error to deny the attorney's motion for leave to renew the application because the motion was based on new facts warranting changing a prior determination, and the attorney gave a reasonable justification for not previously presenting such facts, as the client did not show the attorney was discharged for cause, and new counsel's accusations that the attorney violated the Rules of Professional Conduct only related to the attorney's actions after being discharged and did not bar the attorney's entitlement to retaining or charging liens. Maher v Quality Bus Serv., LLC, 144 A.D.3d 990, 42 N.Y.S.3d 43, 2016 N.Y. App. Div. LEXIS 7768 (N.Y. App. Div. 2d Dep't 2016).

In foreclosure action, court agreed with denial of leave to renew prior motion for summary judgment because even if the plaintiff presented a reasonable justification for its failure to present the new facts on its prior motion, the new facts would not change the prior determination. Amtrust-NP SFR Venture, LLC v Thompson, 181 A.D.3d 762, 121 N.Y.S.3d 306, 2020 N.Y. App. Div. LEXIS 1957 (N.Y. App. Div. 2d Dep't 2020).

Motion for leave to renew was properly denied as a wife failed to present any new facts not proffered on the prior motion and cross motion that would have changed the prior determination.

Bruzzese v Bruzzese, 203 A.D.3d 1007, 165 N.Y.S.3d 115, 2022 N.Y. App. Div. LEXIS 1914 (N.Y. App. Div. 2d Dep't 2022).

In a discovery dispute, the lower court did not abuse its discretion in granting plaintiff's motion for leave to renew because the motion was based on new facts no offered on the prior motion, specifically transcripts of depositions of defendants that had not been completed at the time of the initial motion, and plaintiff established that the new facts would change the prior determination. Ashley M. v Marcinkowski, 207 A.D.3d 1093, 172 N.Y.S.3d 255, 2022 N.Y. App. Div. LEXIS 4270 (N.Y. App. Div. 4th Dep't 2022).

Supreme court properly denied an adjoining landowner's motion for leave to renew certain branches of its prior motion because the adjoining landowner failed to submit any new facts that would change the prior determination. FZ Realty, LLC v BH Shipping, LLC, 228 A.D.3d 735, 213 N.Y.S.3d 398, 2024 N.Y. App. Div. LEXIS 3207 (N.Y. App. Div. 2d Dep't 2024).

Defendants were not entitled to leave to renew because defendants failed to offer new facts or demonstrate a change in law that would change the court's prior determination. Federal Natl. Mtge. Assn. v Vivenzio, 229 A.D.3d 510, 216 N.Y.S.3d 605, 2024 N.Y. App. Div. LEXIS 3791 (N.Y. App. Div. 2d Dep't 2024).

Customers' motion to reargue the denial of a motion to amend their complaint was denied because they did not point either to a fact overlooked nor a principle of law misapplied by the court, but merely restated the same arguments that were already rejected in the original decision, which was not a correct basis for a motion to reargue. Yeger v E*Trade Securities, LLC, 2007 N.Y. Misc. LEXIS 8963 (NY Sup 2007).

Trial court properly denied owners' motion to renew a bank's summary judgment and to vacate a judgment of foreclosure because the owners did not make their motion for leave to renew until almost three years after the judgment was entered and did not allege any of the circumstances set forth in N.Y. C.P.L.R. 5015. Washington Mut. Bank, FA v Itzkowitz, 47 A.D.3d 923, 849 N.Y.S.2d 781, 2008 N.Y. App. Div. LEXIS 611 (N.Y. App. Div. 2d Dep't 2008).

In a personal injury action alleging end-stage renal failure arising from exposure to chemicals in the workplace, the trial court properly relied on a decision in a related workers' compensation proceeding that post-dated its prior order in the personal injury case granting summary judgment to two corporations and a business entity to grant plaintiff leave to renew under N.Y. C.P.L.R. § 2221(e). Lopez v Gem Gravure Co., Inc., 50 A.D.3d 1102, 858 N.Y.S.2d 226, 2008 N.Y. App. Div. LEXIS 3872 (N.Y. App. Div. 2d Dep't 2008).

Trial court properly denied that branch of defendant's motion which was pursuant to N.Y. C.P.L.R. 2221(e) for leave to renew its prior motion pursuant to N.Y. C.P.L.R. 510(3), 511 to change the venue of a personal injury action from Kings County to Nassau County; the new facts presented by the defendant in support of its motion did not warrant a change of the prior determination. Silvera v Strike Long Is, 52 A.D.3d 497, 860 N.Y.S.2d 555, 2008 N.Y. App. Div. LEXIS 4903 (N.Y. App. Div. 2d Dep't 2008).

Although a contractor was required to remove empty boxes from the site, it did not cause or create any dangerous condition that was a proximate cause of the owner's injuries by failing to do so; accordingly, the trial court properly granted the contractor's motion for summary judgment and denied the owner's N.Y. C.P.L.R. 2221(e) motion for leave to renew since the new facts submitted by the owner would not have changed the prior determination, and the motion did not provide a reasonable justification for the failure to present such facts on the prior motion. Cangro v Noah Bldrs., Inc., 52 A.D.3d 758, 861 N.Y.S.2d 121, 2008 N.Y. App. Div. LEXIS 5794 (N.Y. App. Div. 2d Dep't 2008).

Property owner's motion for leave to renew under N.Y. C.P.L.R. § 2221(e) its opposition to an insurer's motion for summary judgment was proper even if some of the evidence relied upon was known to the owner at the time it had originally opposed the insurer's prior motion. Moncrief v DiChiaro, 52 A.D.3d 789, 862 N.Y.S.2d 67, 2008 N.Y. App. Div. LEXIS 5750 (N.Y. App. Div. 2d Dep't 2008).

Trial court properly denied that part of a motion of a tavern and its owners to renew their prior motion pursuant to N.Y. C.P.L.R. 5015(a)(1); the tavern and its owners sought the same relief

sought in their prior motion and the new facts submitted in support of the motion would not have changed the prior determination pursuant to N.Y. C.P.L.R. 2221(e)(2). Garcea v Battista, 53 A.D.3d 1068, 863 N.Y.S.2d 311, 2008 N.Y. App. Div. LEXIS 5878 (N.Y. App. Div. 4th Dep't 2008).

In an action alleging false arrest and malicious prosecution, plaintiff's motion for leave to renew was not subject to any particular time constraints under N.Y. C.P.L.R. § 2221(e)(1) and was clearly proper as plaintiff came forward with new evidence (the reversal of his criminal conviction) that would change the prior determination granting summary judgment on the basis that probable cause existed for his arrest. Ramos v City of New York, 61 A.D.3d 51, 872 N.Y.S.2d 128, 2009 N.Y. App. Div. LEXIS 659 (N.Y. App. Div. 1st Dep't 2009).

Trial court properly denied a former husband's first motion for leave to renew his summary judgment motions in his partition action, because the new facts alleged would not have changed the prior determination, as required by N.Y. C.P.L.R. 2221(e)(2), and the former husband failed to establish a reasonable justification for failing to present any of the alleged new facts, which were then available to him, on the original motion; likewise, the trial court properly denied the former husband's second motion for leave to renew his motion for summary judgment on the complaint, as he failed to, inter alia, demonstrate the existence of any new facts not offered on his first motion for leave to renew his motion for summary judgment on the complaint. Semenov v Semenov, 98 A.D.3d 962, 950 N.Y.S.2d 570, 2012 N.Y. App. Div. LEXIS 6077 (N.Y. App. Div. 2d Dep't 2012).

Although the borrower in a foreclosure action claimed that the law firm representing the assignee was involved in a number of cases in which the foreclosure documentation was not properly completed, these cases were of no aid to the borrower in the context of her motion to renew; as the borrower failed to come forward with new information, as well as a reasonable justification for failing to bring such facts to the trial court's attention in the first instance, the borrower's request for renewal of a summary judgment motion was properly denied. To the extent that the borrower sought relief under the newly discovered evidence prong of N.Y.

C.P.L.R. 5015(a)(2), such motion was more properly considered as one for renewal pursuant to N.Y. C.P.L.R. 2221(e)(3) and was similarly lacking in merit. Wells Fargo, N.A. v Levin, 101 A.D.3d 1519, 958 N.Y.S.2d 227, 2012 N.Y. App. Div. LEXIS 9091 (N.Y. App. Div. 3d Dep't 2012).

Assuming, without deciding, that a client offered “new facts” on her N.Y. C.P.L.R. 2221(e) motion, those facts would not have changed the prior determination, and the client’s motion was properly denied. Nichols v Curtis, 104 A.D.3d 526, 962 N.Y.S.2d 98, 2013 N.Y. App. Div. LEXIS 1728 (N.Y. App. Div. 1st Dep't 2013).

Where the trial court dismissed plaintiff's breach of fiduciary duty claim against a bank for failure to prosecute, it erred by granting plaintiff's motion to renew and vacating its order of dismissal because plaintiff's newly submitted evidence would not have changed the prior determination, as it did not demonstrate that plaintiff had a potentially meritorious cause of action against the bank; even if the bank could be held liable for a breach of fiduciary duty by its attorney, the record did not establish that he had any duty to act or give advice for the benefit of plaintiff. Gall v Colon-Sylvain, 151 A.D.3d 701, 54 N.Y.S.3d 659, 2017 N.Y. App. Div. LEXIS 4346 (N.Y. App. Div. 2d Dep't 2017).

Supreme court providently exercised its discretion in denying an employee’s motion for leave to renew her opposition to an employer’s motion to dismiss the cause of action alleging a violation of the statute because the new evidence the employee tendered would not change the prior determination to grant the employer’s motion to dismiss. Coyle v College of Westchester, Inc., 166 A.D.3d 722, 87 N.Y.S.3d 242, 2018 N.Y. App. Div. LEXIS 7676 (N.Y. App. Div. 2d Dep't 2018).

Motion to reconsider would be treated as motion to renew where it alleged new facts rather than purported errors of law, and was therefore timely although filed approximately 9 months after entry of judgment sought to be reconsidered. State v Rock, 147 Misc. 2d 231, 555 N.Y.S.2d 584, 1990 N.Y. Misc. LEXIS 216 (N.Y. Sup. Ct. 1990).

Businessman who was being sued by his partner over their partnership agreement was entitled to reargue the trial court's prior order denying his motion to amend his answer to assert an affirmative defense, pursuant to N.Y. C.P.L.R. § 2221(d), by providing new documents that appeared to support his contention that a false statement that overstated the value of a property was made on a United States Department of Housing and Urban Development form, for which no evidence was offered on the prior motion. Unger v Leviton, 787 N.Y.S.2d 625, 5 Misc. 3d 925, 2004 N.Y. Misc. LEXIS 1891 (N.Y. Sup. Ct. 2004).

Court denied motion to renew denial of a summer program's motion to be relieved from default since it did not base the motion on new facts not offered in the prior motion as required under N.Y. C.P.L.R. 2221(d)(3)(e)(2), (3). That was because a submitted affidavit was unsworn and lacked probative value. Williams v Church of the Transfiguration, 794 N.Y.S.2d 781, 7 Misc. 3d 553, 2004 N.Y. Misc. LEXIS 2907 (N.Y. Sup. Ct. 2004).

Landlord was not entitled to summary disposition under N.Y. C.P.L.R. § 409, which was actually a motion for summary judgment under N.Y. C.P.L.R. § 3212, in summary proceedings against a tenant because it was the second motion for the same relief and was, thus, proscribed under N.Y. C.P.L.R. § 2221; the landlord should have brought a motion to renew to present newly discovered evidence. 1422 Corp. v Rosenfeld, 842 N.Y.S.2d 697, 17 Misc. 3d 468, 2007 N.Y. Misc. LEXIS 6047 (N.Y. Civ. Ct. 2007).

In an action by an oil company against, inter alia, an individual to recover on certain guarantees, a motion by the individual to renew regarding an order which granted the company's motion for a default judgment was properly denied for failure to specify any new evidence in accordance with N.Y. C.P.L.R. 2221(e)(2). Coastal Oil N.Y., Inc. v Diversified Fuel Carriers Corp., 303 A.D.2d 251, 756 N.Y.S.2d 207, 2003 N.Y. App. Div. LEXIS 2680 (N.Y. App. Div. 1st Dep't), app. denied, 100 N.Y.2d 512, 767 N.Y.S.2d 393, 799 N.E.2d 616, 2003 N.Y. LEXIS 2408 (N.Y. 2003).

Injured party's motion for leave to renew a motion seeking permission to amend the injured party's complaint by increasing the ad damnum clause was based on new facts not available

when the first motion was filed, including a second surgery the injured party underwent after the trial court denied the first motion, and the trial court erred by denying the injured party's motion for leave to renew the first motion. Miller v United Rentals Aerial Equip., 303 A.D.2d 471, 756 N.Y.S.2d 613, 2003 N.Y. App. Div. LEXIS 2383 (N.Y. App. Div. 2d Dep't 2003).

Motion for leave to renew needed to be based on new or additional facts which, although in existence at the time of the original motion, were not made known to the party seeking renewal, and therefore, were not known to the court; a party's explanation of the significance of information submitted with the original motion to enforce a settlement agreement was not new information, and the trial court erred in granting the motion for leave to renew. Orange & Rockland Utils., Inc. v Assessor of Haverstraw, 304 A.D.2d 668, 758 N.Y.S.2d 151, 2003 N.Y. App. Div. LEXIS 3969 (N.Y. App. Div. 2d Dep't 2003).

Supreme Court properly denied an injured party's motion for leave to renew a prior motion seeking to submit unsigned certified deposition testimony at trial, despite her contention that her motion was based on grounds she possessed new information purportedly establishing that the engineer's deposition transcript at issue had been submitted to the tortfeasor's counsel for signature and therefore, the court erred in refusing to admit the engineer's deposition testimony as substantive evidence at trial, as the injured party merely offered a more detailed explanation of her failure to submit the engineer's deposition testimony to the tortfeasor and provided no explanation for her failure to present these additional facts in her prior motion. Lattimore v Port Auth., 305 A.D.2d 639, 760 N.Y.S.2d 224, 2003 N.Y. App. Div. LEXIS 5968 (N.Y. App. Div. 2d Dep't 2003).

Trial court properly denied a defendant's motion for leave to renew under N.Y. C.P.L.R. § 2221(e)(2) because it was not based upon new facts which were previously unavailable and which would change the prior determination. Pashayan v Corson, 306 A.D.2d 259, 760 N.Y.S.2d 339, 2003 N.Y. App. Div. LEXIS 6289 (N.Y. App. Div. 2d Dep't), app. denied, 100 N.Y.2d 510, 766 N.Y.S.2d 164, 798 N.E.2d 348, 2003 N.Y. LEXIS 2328 (N.Y. 2003).

Application to renew must be based upon additional material facts which existed at the time that the prior motion was made but which were not then known to the party seeking leave to renew and a valid excuse must have been offered for not supplying such facts; a trial court's grant of a renewal motion based on a revised expert affidavit was reversed where no explanation was given for why the expert was unable, when providing the original affidavit, to make the same inspection he performed and incorporated into his revised affidavit. Cuccia v City of New York, 306 A.D.2d 2, 761 N.Y.S.2d 31, 2003 N.Y. App. Div. LEXIS 6172 (N.Y. App. Div. 1st Dep't 2003).

Where a tenant sued a landlord in a supreme court and the landlord sued the tenant in a civil court, the supreme court correctly denied renewal, affirmed the grant of summary judgment in the landlord's favor, and advised the tenant to present any new evidence in the civil court action pursuant to N.Y. C.P.L.R. 5015(a)(2). Bassett v W. Side Equities, LLC, 306 A.D.2d 70, 762 N.Y.S.2d 43, 2003 N.Y. App. Div. LEXIS 6432 (N.Y. App. Div. 1st Dep't 2003).

Where a tenant's motion to renew under N.Y. C.P.L.R. 2221(e) presented new facts that the tenant had lost a job, tried to avoid seeking public assistance, and had a minor child, pursuant to N.Y. C.P.L.R. 5015, N.Y. City Civ. Ct. Act § 212, the tenant was restored to possession upon payment of all arrears. NYCHA--Edenwald Houses v Roque, 766 N.Y.S.2d 540, 1 Misc. 3d 833, 2003 N.Y. Misc. LEXIS 1345 (N.Y. Civ. Ct. 2003).

A plaintiff was properly granted her motion for renewal of a previously denied motion for leave to amend to add a wrongful death claim where that denial had been made without prejudice to renewal as long as the plaintiff provided a certified death certificate; also presentation of an affidavit from plaintiff's expert was properly considered on the motion to renew where it raised a triable issue as to whether defendant doctor's treatment of the decedent comported with prevailing standards of professional medical care. Trinidad v Lantigua, 2 A.D.3d 163, 767 N.Y.S.2d 618, 2003 N.Y. App. Div. LEXIS 12938 (N.Y. App. Div. 1st Dep't 2003).

Denial by a trial court of plaintiff's motion for leave to renew in plaintiff's declaratory judgment action, seeking a declaration that a party was required to participate in arbitration proceedings,

was proper because it was not based upon new facts which were previously unavailable and which would have changed the trial court's prior determination pursuant to N.Y. C.P.L.R. 2221(e)(2). Allied Int'l Dev., Ltd. v Barson Composite Corp., 2 A.D.3d 552, 768 N.Y.S.2d 382, 2003 N.Y. App. Div. LEXIS 13426 (N.Y. App. Div. 2d Dep't 2003).

Since defendants did not appeal an earlier ruling which denied their motion to dismiss trademark and privacy claims, and since defendants did not, in the round of renewal motions, submit any new facts relating to those claims, an order denying their summary judgment motion was affirmed. Bykowsky v Eskenazi, 2 A.D.3d 115, 769 N.Y.S.2d 216, 2003 N.Y. App. Div. LEXIS 12713 (N.Y. App. Div. 1st Dep't 2003).

Lower court's denial of plaintiffs' motion for leave to renew in reference to the summary judgment motions was properly denied because it was undisputed that the evidence submitted upon renewal was not previously unavailable but had been inadvertently omitted. Boreanaz v Facer-Kreidler, 2 A.D.3d 1481, 770 N.Y.S.2d 516, 2003 N.Y. App. Div. LEXIS 14153 (N.Y. App. Div. 4th Dep't 2003).

Court of Claims properly denied plaintiffs' motion to renew after the court granted defendants summary judgment in plaintiffs' negligence action seeking damages for personal injuries resulting from an alleged failure to warn of a dangerous condition on a state highway, because plaintiffs failed to provide a justifiable excuse for not providing the meteorologist's affidavit presented in the motion to renew to the court initially and the alleged new evidence of the affidavit addressed the weather conditions in the area of the accident but failed to prove that defendants had prior notice of the whiteout conditions anyway, which caused the accident wherein plaintiffs were injured. Barrett v State, 13 A.D.3d 775, 787 N.Y.S.2d 151, 2004 N.Y. App. Div. LEXIS 14990 (N.Y. App. Div. 3d Dep't 2004).

Denial of the inmate's motion to renew was properly granted pursuant to N.Y. C.P.L.R. 2221(e) because the inmate did not proffer newly discovered evidence. Dickan v State, 16 A.D.3d 760, 790 N.Y.S.2d 572, 2005 N.Y. App. Div. LEXIS 2142 (N.Y. App. Div. 3d Dep't 2005).

Lower court properly denied plaintiff's motion to renew, which asked the lower court to reconsider the dismissal of some of plaintiff's claims based upon new evidence, because the evidence had been in plaintiff's possession when the lawsuit was initially filed and plaintiff did not exercise due diligence in making its first factual presentation. American Audio Serv. Bur. Inc. v AT & T Corp., 33 A.D.3d 473, 823 N.Y.S.2d 25, 2006 N.Y. App. Div. LEXIS 12547 (N.Y. App. Div. 1st Dep't 2006), app. dismissed, 2007 N.Y. App. Div. LEXIS 5367 (N.Y. App. Div. 1st Dep't Apr. 26, 2007).

Because there was no basis for a general contractor to be liable for violations of N.Y. Labor Law § 240(1) due to the fact that it was not in charge of a job in which a worker was injured, the granting of a motion for leave to renew under N.Y. C.P.L.R. 2221(e) for newly discovered evidence was proper to dismiss the worker's claim against the general contractor. There was also no basis for third-party indemnification claims by the general contractor against an insulation contractor and an assignee; thus, dismissal of the third-party complaint should also have been granted. Vincente v Roy Kay, Inc., 35 A.D.3d 448, 826 N.Y.S.2d 361, 2006 N.Y. App. Div. LEXIS 14597 (N.Y. App. Div. 2d Dep't 2006).

In an action against a school district for personal injuries, the trial court improvidently exercised its discretion in granting the claimant's motion for leave to renew his prior motion for leave to amend a notice of claim, which the trial court had denied in a December 15, 2006 order, because the relevant material offered in support of the motion did not constitute new facts not offered on the prior motion within the meaning of N.Y. C.P.L.R. 2221(e)(2). Hernandez v Harrison Cent. School Dist., 36 A.D.3d 665, 828 N.Y.S.2d 207, 2007 N.Y. App. Div. LEXIS 496 (N.Y. App. Div. 2d Dep't 2007).

In a personal injury action against a county alleging a dangerous intersection, a motorcycle passenger's motion for leave to renew under CPLR § 2221 was properly denied as allegedly new materials submitted were matters of public record in existence before a decision was made on the county's motion for summary judgment based on qualified immunity for highway planning

decisions. Kosoff-Boda v County of Wayne, 45 A.D.3d 1337, 845 N.Y.S.2d 612, 2007 N.Y. App. Div. LEXIS 11511 (N.Y. App. Div. 4th Dep't 2007).

Because the new proof offered by a supplier in its N.Y. C.P.L.R. 2221(e) motion to renew its opposition to the State's renewed application for a default judgment did not negate the proof relied upon by the State or leave it devoid of probative value, there was no basis for vacating the default judgment against the supplier under N.Y. C.P.L.R. 5015(a)(1). State of New York v Williams, 890 N.Y.S.2d 789, 26 Misc. 3d 743, 2009 N.Y. Misc. LEXIS 2762 (N.Y. Sup. Ct. 2009).

As some of the evidence plaintiffs submitted in support of their motion to renew did not constitute new facts, and as the other evidence submitted would not have changed the prior determination, the trial court properly denied the motion. Doviak v Finkelstein & Partners, LLP, 90 A.D.3d 696, 934 N.Y.S.2d 467, 2011 N.Y. App. Div. LEXIS 8916 (N.Y. App. Div. 2d Dep't 2011).

Court found no error in the finding that defendants did not present a sufficient basis upon which to grant their renewal motion. Tefoe v Thompson, 101 A.D.3d 1271, 955 N.Y.S.2d 697, 2012 N.Y. App. Div. LEXIS 8558 (N.Y. App. Div. 3d Dep't 2012).

Unpublished decision: Party seeking renewal under N.Y. C.P.L.R. 2221 had to establish that new, not previously considered, facts would have changed the court's prior decision. Therefore, because the shareholder had not demonstrated how the new facts would have changed the court's decision, her motion for renewal was denied. Armstrong v Forgione, 237 N.Y.L.J. 5, 2006 N.Y. Misc. LEXIS 4128 (N.Y. Sup. Ct. Dec. 5, 2006).

People were justified in raising new facts to support exclusion of portions of time periods, under a pre-readiness analysis, because the criminal court, in its decision, ruled that the adjournments were pre-readiness, rather than post-readiness, as the People had maintained. People v Jones, 57 Misc. 3d 590, 57 N.Y.S.3d 371, 2017 N.Y. Misc. LEXIS 2882 (N.Y. City Crim. Ct. 2017).

Trial court erred by denying the tenant's motion seeking leave to renew because the letter, which revealed the landlord's false and deceptive actions, was newly discovered evidence

satisfying the tenant’s heavy burden of showing due diligence to meet the requirement for granting the branch of her motion for leave to renew her motion to vacate the stipulations. The stipulations should have been set aside because the landlord’s misrepresentations induced the tenant to enter into the stipulations in which the tenant received no consideration and forfeited a valuable leasehold and the tenant was justified in refusing to sign the renewal lease since no amount was due and owing and the tenant had, in fact, overpaid. 125 Ct. St., LLC v Nicholson, 67 Misc. 3d 28, 115 N.Y.S.3d 817, 2019 N.Y. Misc. LEXIS 6858 (N.Y. App. Term 2019), aff'd, 214 A.D.3d 723, 184 N.Y.S.3d 831, 2023 N.Y. App. Div. LEXIS 1179 (N.Y. App. Div. 2d Dep't 2023).

5. — —Reasonable excuse shown for not presenting evidence earlier

In an action by an urban renewal agency to recover rent from the owners of property that had been taken by eminent domain, the former property owners’ motion to have their summary judgment motion reconsidered was a motion to renew, not to reargue, and should have been granted, where the former landowners asserted that they were prevented through surprise from asserting the statute of limitations as a complete defense at the previous hearing of the summary judgment motion, and the failure to raise that defense was understandable and excusable, since they had no real reason to assert the defense, the plaintiff not claiming that it was surprised or prejudiced by the defense, and the defense warranted judgment as a matter of law. Olean Urban Renewal Agency v Herman, 101 A.D.2d 712, 475 N.Y.S.2d 955, 1984 N.Y. App. Div. LEXIS 18281 (N.Y. App. Div. 4th Dep't 1984).

Supreme Court did not improvidently exercise its discretion in granting leave to plaintiff to renew defendant’s motion for summary judgment where new evidence was obtained pursuant to court-ordered disclosure during pendency of motion; delay in discovery proceedings offered valid excuse for failure of plaintiff to submit additional facts in opposition to motion. Sentry Ins. Co. v Kero-Sun, Inc., 154 A.D.2d 662, 546 N.Y.S.2d 662, 1989 N.Y. App. Div. LEXIS 13791 (N.Y. App. Div. 2d Dep't 1989).

Medical malpractice plaintiff proffered reasonable excuse for her failure to adduce information omitted at time of defendant doctor's successful motion for summary judgment where such information was not brought to light until subsequent motion for summary judgment brought by co-defendant hospital; in absence of prejudice to doctor, trial court properly granted plaintiff leave to renew her opposition. Roseman v Goldberg, 181 A.D.2d 873, 581 N.Y.S.2d 854, 1992 N.Y. App. Div. LEXIS 4992 (N.Y. App. Div. 2d Dep't 1992).

Court did not err in granting plaintiff's motion for renewal of defendant's summary judgment motion, which was based on allegation that he did not receive summons and complaint mailed to his residence as it was addressed to wrong address, where plaintiff's counsel established that delay in producing new evidence on issue was caused by difficulty in locating postal worker who had retired without leaving any information from which he could be easily traced. Taft v Lesko, 182 A.D.2d 1008, 583 N.Y.S.2d 530, 1992 N.Y. App. Div. LEXIS 6093 (N.Y. App. Div. 3d Dep't 1992).

Court would grant respondent's motion for leave to renew her prior motion to vacate default judgment in action to foreclose mortgage since (1) on learning that foreclosure action would affect her life tenancy in property, respondent promptly sought to vacate her default and to defend on merits, (2) respondent submitted contract for sale of property, which contained clause reserving life tenancy in her favor, and (3) respondent's inability to locate contract at time of original motion did not evince intentional failure to respond to bank's claim that contract did not contain life tenancy. Citibank, N. A. v Olson, 204 A.D.2d 381, 612 N.Y.S.2d 54, 1994 N.Y. App. Div. LEXIS 4791 (N.Y. App. Div. 2d Dep't 1994).

Cross-plaintiff provided justifiable excuse for not placing evidence of other out-of-state product liability cases in which cross-defendant was party before Supreme Court on cross-defendant's initial motion for summary judgment, and thus Appellate Division would consider denial of cross-plaintiff's motion to renew and reargue granting of summary judgment for cross-defendant even though motion to reargue is generally not appealable, where cross-plaintiff's counsel had not received evidence prior to cross-defendant's summary judgment motion due to fact that

evidence was in possession of out-of-state attorneys representing cross-plaintiff in unrelated matters. Winch v Yates Am. Mach. Co., 205 A.D.2d 1001, 613 N.Y.S.2d 980, 1994 N.Y. App. Div. LEXIS 6732 (N.Y. App. Div. 3d Dep't 1994), app. dismissed, 84 N.Y.2d 1027, 623 N.Y.S.2d 182, 647 N.E.2d 454, 1995 N.Y. LEXIS 102 (N.Y. 1995).

Court acted within its discretion in granting plaintiff's motion for renewal of defendant's summary judgment motion on its counterclaim where basis of renewal motion was newly discovered promissory note that appeared as result of discovery in related federal action between same parties; it could fairly be said that note was not discoverable with due diligence prior to original summary judgment motion, since more than 100,000 documents had been produced as result of discovery demand in federal action. Gelmin v Sequa Capital Corp., 223 A.D.2d 525, 636 N.Y.S.2d 813, 1996 N.Y. App. Div. LEXIS 184 (N.Y. App. Div. 2d Dep't 1996), aff'd, 269 A.D.2d 492, 707 N.Y.S.2d 108, 2000 N.Y. App. Div. LEXIS 1929 (N.Y. App. Div. 2d Dep't 2000).

Court properly granted plaintiffs' motion to renew where motion was based, in part, on discovery which occurred in related federal action wherein over 100,000 documents were produced, including portions of depositions on which motion to renew was based; given such volume of discovery, it could be fairly said that portions of depositions in federal action were not discoverable with due diligence prior to defendants' original motion to dismiss. Altamore v Sequa Capital Corp., 224 A.D.2d 469, 637 N.Y.S.2d 786, 1996 N.Y. App. Div. LEXIS 1173 (N.Y. App. Div. 2d Dep't 1996).

Court properly granted respondents' motion for leave to renew prior judgment annulling respondents' termination of petitioner as probationary correction officer where ground on which determination was annulled—that petitioner was terminated after his period of probation had expired—was first raised by petitioner only in his reply papers, rendering excusable respondents' omission of facts relevant to reckoning of such period. McKenzie v Schembri, 235 A.D.2d 351, 653 N.Y.S.2d 545, 1997 N.Y. App. Div. LEXIS 615 (N.Y. App. Div. 1st Dep't 1997).

In action for nonpayment of concrete delivered to defendant contractor, defendant had valid excuse for failure to timely submit its new evidence on counterclaims alleging that plaintiff

supplier had delivered nonconforming concrete, and court should have allowed defendant to renew its motion for leave to amend answer to assert affirmative defense under CLS UCC § 2-717, where plaintiff's motion to strike defendant's answer was initiated just 4 months after issue was joined while discovery was still in preliminary stages and information required by defendant to establish its counterclaims was in possession of nonparty. Bonded Concrete v T.J. Madden Constr. Co., 237 A.D.2d 785, 655 N.Y.S.2d 153, 1997 N.Y. App. Div. LEXIS 2434 (N.Y. App. Div. 3d Dep't 1997).

Court properly granted plaintiffs' renewal motion, even though new evidence offered in support thereof existed at time of original motion, since it had not been made known to plaintiffs' counsel by attorneys who had defended plaintiffs in underlying property damage action. Framapac Delicatessen v Aetna Cas. & Sur. Co., 249 A.D.2d 36, 670 N.Y.S.2d 491, 1998 N.Y. App. Div. LEXIS 3782 (N.Y. App. Div. 1st Dep't 1998).

Plaintiffs in wrongful death action were properly granted renewal of their prior motion to vacate automatic dismissal under CLS CPLR § 3404 where they offered affidavit of merit and acceptable excuse for failing to previously submit proof of certain facts, and equities of matter and interests of justice were served by allowing renewal. Scott v Brickhouse, 251 A.D.2d 397, 675 N.Y.S.2d 542, 1998 N.Y. App. Div. LEXIS 6584 (N.Y. App. Div. 2d Dep't 1998).

On renewal, court vacated default order granting summary judgment to defendant where (1) plaintiff affixed affidavit of merit with counsel's explanation that he initially failed to submit affidavit of merit due to his "myopic zeal to demonstrate that default was excusable," and (2) plaintiff's initial default was excusable where defense counsel had served plaintiff's discharged attorney despite being aware of substitution of counsel and plaintiff's outgoing counsel did not answer defense counsel's letter or motion or notify incoming counsel. Drummond v Petito, 253 A.D.2d 407, 677 N.Y.S.2d 133, 1998 N.Y. App. Div. LEXIS 9194 (N.Y. App. Div. 1st Dep't 1998).

In adoption proceeding under CLS Family Ct Act § 114, petitioners were entitled to renewal where they presented evidence that petitioner husband's alcohol and/or substance abuse problem was remote in time and not continuing; matter would be remitted for further fact-finding

hearing on that issue where adoption by petitioners otherwise appeared to be in best interests of child. In re Crystal Marie, 263 A.D.2d 482, 691 N.Y.S.2d 911, 1999 N.Y. App. Div. LEXIS 7886 (N.Y. App. Div. 2d Dep't 1999).

Statement of plaintiff's counsel that, despite diligent efforts, he was unable to obtain sworn affidavits from plaintiff's 2 witnesses until after court's initial determination on motion for summary judgment was adequate basis for renewal. Ralat v New York City Hous. Auth., 265 A.D.2d 185, 693 N.Y.S.2d 561, 1999 N.Y. App. Div. LEXIS 10503 (N.Y. App. Div. 1st Dep't 1999).

Plaintiffs' motion to renew was properly granted where they were previously unaware that injured plaintiff's treating dentist refused to travel, and thus they had valid excuse for not submitting additional facts in their original motion. Quirici v Wassinger, 266 A.D.2d 926, 698 N.Y.S.2d 181, 1999 N.Y. App. Div. LEXIS 11737 (N.Y. App. Div. 4th Dep't 1999).

In action under CLS Labor § 240(1), court improperly denied third-party defendants' motion and defendant's cross-motion for renewal of plaintiff's previously granted summary judgment motion where it was undisputed that plaintiff failed to complete service of all motion papers on third-party defendant but that, despite such procedural infirmity, court nonetheless proceeded to grant plaintiff partial summary judgment on liability; third-party defendant was party entitled to service of all motion papers. Russo v Herbert Constr. Co., 272 A.D.2d 193, 708 N.Y.S.2d 291, 2000 N.Y. App. Div. LEXIS 5675 (N.Y. App. Div. 1st Dep't 2000).

Defendant was entitled to renewal of his earlier motion under CLS CPLR § 3216 to dismiss fraud action for failure to prosecute, even though renewal motion was supported by additional facts that existed at time of original motion, where those facts were not then known to defendant. Yohay v Papaleo, 273 A.D.2d 465, 711 N.Y.S.2d 746, 2000 N.Y. App. Div. LEXIS 7418 (N.Y. App. Div. 2d Dep't 2000).

On plaintiff's motion to renew, failure of her counsel to proffer affidavit with initial opposition to defendant's summary judgment motion would be excused where there was no evidence that

failure was dilatory or strategic. Allison v D'Agostino Supermarkets, Inc., 282 A.D.2d 219, 723 N.Y.S.2d 30, 2001 N.Y. App. Div. LEXIS 3362 (N.Y. App. Div. 1st Dep't 2001).

In medical malpractice action in which court granted summary judgment to defendant because plaintiff failed to submit unredacted copy of her expert witness affidavit to court for in camera review, court properly granted plaintiff's motion for renewal where she submitted unredacted copy to court, and her attorney averred that he redacted expert affidavit in reliance on CLS CPLR § 3101 and that he failed to submit unredacted version to court due to his unfamiliarity with "generally acceptable procedure" in medical malpractice cases to redact name of expert and also submit unredacted version to trial court. Wilcox v Winter, 282 A.D.2d 862, 722 N.Y.S.2d 836, 2001 N.Y. App. Div. LEXIS 3686 (N.Y. App. Div. 3d Dep't 2001).

Injured party's motion to renew the grant of summary judgment to the Port Authority of New York and New Jersey and the company should have been granted; the deposition testimony of the former employee, who had been subpoenaed prior to the filing of the cross motion for summary judgment, raised an issue of material fact, this testimony had been unavailable at the time of the summary judgment pursuant to N.Y. C.P.L.R. 2221(e)(2) due the former employee's initial failure to comply with a subpoena, and the unavailability of the testimony was not due to the injured party's lack of diligent effort under N.Y. C.P.L.R. 2221(e)(3). Luna v Port Auth., 21 A.D.3d 324, 800 N.Y.S.2d 170, 2005 N.Y. App. Div. LEXIS 8807 (N.Y. App. Div. 1st Dep't 2005).

Trial court erred in granting defendants' motion to change the venue of an action from Rockland County to Onondaga County and denying plaintiffs' cross-motion to retain venue in Rockland County, and in denying plaintiffs' motion to renew their cross-motion to retain venue in Rockland County, as: (1) the papers submitted by plaintiffs contained the names, addresses, and occupations of numerous prospective witnesses, the facts to which the witnesses would testify at trial, a statement that the witnesses were willing to testify, and a statement that the witnesses would be greatly inconvenienced if the venue of the action was not retained in Rockland County, (2) the convenience of local government officials, such as police officers, was of paramount importance because they should not be kept from their duties unnecessarily, and (3) the

convenience of the treating physicians was also a strong factor in favor of retaining venue in Rockland County. Lafferty v Eklecco, LLC, 34 A.D.3d 754, 826 N.Y.S.2d 617, 2006 N.Y. App. Div. LEXIS 14275 (N.Y. App. Div. 2d Dep't 2006).

Order granting an infant leave to serve a late notice of claim against a school district upon reconsideration of an earlier order denying leave was proper because the infant demonstrated that the new facts set forth in the infant's affidavit would change the prior determination and the trial court considered N.Y. Gen. Mun. Law § 50-e(5) factors. Matter of Surdo v Levittown Pub. School Dist., 41 A.D.3d 486, 837 N.Y.S.2d 315, 2007 N.Y. App. Div. LEXIS 6945 (N.Y. App. Div. 2d Dep't 2007).

Trial court properly denied that branch of a doctor's motion which was for leave to renew in a medical malpractice case; the doctor failed to set forth a reasonable justification for the failure to present the alleged new facts on the prior motion. Kletnieks v Hertz, 54 A.D.3d 660, 863 N.Y.S.2d 487, 2008 N.Y. App. Div. LEXIS 6558 (N.Y. App. Div. 2d Dep't 2008).

Commissioners' motion for leave to renew was properly granted under N.Y. C.P.L.R. 2221(e) because the commissioners offered a reasonable justification for their failure to submit additional facts at time of their opposition to a medical center's petition challenging adjustment of Medicaid reimbursement rates; as the medical center did not specifically contend in its petition that the commissioners' mistake was an error in judgment rather than an error in computation or data entry, it was not unreasonable for the commissioners to fail to realize, at the time of their opposition to the petition, that this would be a disputed issue. Matter of Lutheran Med. Ctr. v Daines, 65 A.D.3d 551, 884 N.Y.S.2d 122, 2009 N.Y. App. Div. LEXIS 5981 (N.Y. App. Div. 2d Dep't), app. denied, 13 N.Y.3d 712, 891 N.Y.S.2d 304, 919 N.E.2d 719, 2009 N.Y. LEXIS 4100 (N.Y. 2009).

Trial court's denial of singers' motion for renewal of a prior summary judgment order dismissing their claim against a producer was improper because, although renewal motions generally should have been based on newly discovered facts that could not be offered on the prior motion, N.Y. C.P.L.R. 2221(e), courts had discretion to relax this requirement and to grant such a motion

in the interest of justice; while the singers should have submitted admissible evidence to oppose the summary judgment motion, their failure was excusable. The producer moved for summary judgment before the singers had the opportunity to conduct discovery, and the singers' counsel reasonably believed that the producer had failed to make a prima facie showing of entitlement to judgment. Sirico v F.G.G. Prods., Inc., 71 A.D.3d 429, 896 N.Y.S.2d 61, 2010 N.Y. App. Div. LEXIS 1694 (N.Y. App. Div. 1st Dep't 2010), dismissed in part, 2013 N.Y. Misc. LEXIS 704 (N.Y. Sup. Ct. Feb. 5, 2013).

Because a contractor offered a reasonable excuse for not including a three-day notice to cure with its original opposition papers, and because the new facts submitted by the contractor would change the prior determination, the trial court erred in denying the contractor's N.Y. C.P.L.R. 2221(e)(2) motion to renew. Schenectady Steel Co., Inc. v Meyer Contr. Corp., 73 A.D.3d 1013, 903 N.Y.S.2d 58, 2010 N.Y. App. Div. LEXIS 4256 (N.Y. App. Div. 2d Dep't 2010).

Trial court erred in denying a subrogee's N.Y. C.P.L.R. 2221 motion for leave to renew its motion for sanctions against a nonparty since the subrogee's attorney offered a reasonable justification for failing to submit a copy of a nonparty's deposition transcript with the first motion. State Farm Fire & Cas. v Parking Sys. Valet Serv., 85 A.D.3d 761, 926 N.Y.S.2d 541, 2011 N.Y. App. Div. LEXIS 4944 (N.Y. App. Div. 2d Dep't 2011).

Trial court properly granted a psychologist leave to amend the answer pursuant to N.Y. C.P.L.R. 3025(b) in plaintiff's suit because the affirmative defense of lack of capacity had merit and plaintiff failed to demonstrate prejudice or surprise; plaintiff's failure to schedule the instant claims in her bankruptcy proceeding deprived her of legal capacity to pursue this case. However, the psychologist failed to offer a reasonable justification for not presenting such facts on the prior motion, and the existence of the bankruptcy proceeding was easily discovered, so the psychologist was not entitled to renewal of earlier summary judgment motion. Webber v Scarano-Osika, 94 A.D.3d 1304, 943 N.Y.S.2d 240, 2012 N.Y. App. Div. LEXIS 2928 (N.Y. App. Div. 3d Dep't 2012).

Prior dismissal order should have been vacated and the complaint should have been reinstated under circumstances in which plaintiff's new evidence established that plaintiff's former attorney failed to comply with the discovery deadline at issue due to panic and anxiety attacks suffered due to a diagnosed mental illness combined with other difficulties in functioning caused by a change in the dosage of his psychiatric medication; since it was undisputed that plaintiff had now provided all required disclosure, and there was no showing that reinstatement of the complaint would have caused any cognizable prejudice to defendants, imposition on plaintiff of the drastic penalty of dismissal of the complaint as a sanction for the non-volitional failures of its former attorney related to his mental illness was improper. 219 E. 7th St. Hous. Dev. Fund Corp. v 324 E. 8th St. Hous. Dev. Fund Corp., 40 A.D.3d 293, 836 N.Y.S.2d 81, 2007 N.Y. App. Div. LEXIS 5705 (N.Y. App. Div. 1st Dep't 2007).

Where defendants, a residential care facility and its owner, were sued by plaintiff child for negligent supervision allegedly resulting in assaults on the child, and the trial court refused to compel defendants to produce records concerning the child's assailants, the child's motion to renew was properly denied since the purportedly new material which the child offered, namely, the assailants' last known addresses, was available on the child's prior motion to compel disclosure, and, in any event, the new evidence, if considered, did not warrant a different result because the trial court denial of the motion to compel was not based on the absence of the addresses, but on finding that the records were privileged under N.Y. Soc. Serv. Law §§ 372, 460-e, and that disclosure would not have furthered the public interest. C.R. v Pleasantville Cottage Sch., 302 A.D.2d 259, 756 N.Y.S.2d 2, 2003 N.Y. App. Div. LEXIS 1484 (N.Y. App. Div. 1st Dep't 2003).

Contrary to the determination of the trial court, defendant corporation's assertion that it never received notice of the lawsuit against it by plaintiffs, an individual and others, and the corporation's meritorious defense constituted a sufficient basis to vacate its default, since the corporation was never personally served with process; furthermore, in seeking renewal of its motion to vacate the default, the corporation established a reasonable justification for purposes

of N.Y. C.P.L.R. 2221(e) for failing to submit specific facts in support of its meritorious defense with its original motion to vacate its default. Sattaur v Gallante Props., 304 A.D.2d 548, 756 N.Y.S.2d 901, 2003 N.Y. App. Div. LEXIS 3660 (N.Y. App. Div. 2d Dep't 2003).

Trial court erred in denying defendants' motion to renew, pursuant to N.Y. C.P.L.R. 2221(e), a motion to change the venue of a personal injury action pursuant to N.Y. C.P.L.R. 510; both defendants resided in the county where the auto accident occurred, rather than in the county where the action was filed, and therefore the motion to renew should have been granted in the interest of justice. Mejia v Nanni, 307 A.D.2d 870, 763 N.Y.S.2d 611, 2003 N.Y. App. Div. LEXIS 8991 (N.Y. App. Div. 1st Dep't 2003).

Where an injured party's moved to renew a prior summary judgment order so that the injured party could attached a sworn affidavit of a doctor's findings, the motion was based on newly submitted evidence and did not prejudice the individuals; therefore, the motion was properly admitted. Cespedes v McNamee, 308 A.D.2d 409, 764 N.Y.S.2d 818, 2003 N.Y. App. Div. LEXIS 9924 (N.Y. App. Div. 1st Dep't 2003).

Trial court erred in denying a company's motions to renew, pursuant to N.Y. C.P.L.R. 2221(e), and to vacate a default judgment pursuant to N.Y. C.P.L.R. 2005; the company offered a reasonable excuse of law office failure, there was no prejudice to plaintiffs, and the company presented a meritorious defense. Vita v Alstom Signaling, Inc., 308 A.D.2d 582, 764 N.Y.S.2d 864, 2003 N.Y. App. Div. LEXIS 9905 (N.Y. App. Div. 2d Dep't 2003).

Supreme court providently exercised its discretion in granting a town leave to renew its prior motion for summary judgment upon submission of previously omitted documentation; the town adequately demonstrated that the documentation was not located until after the filing of its original motion, and it is improvident to deny leave to renew where it may fairly be said that the new matter was not raised because of excusable mistake or inadvertence. Mollin v County of Nassau, 2 A.D.3d 600, 769 N.Y.S.2d 59, 2003 N.Y. App. Div. LEXIS 13372 (N.Y. App. Div. 2d Dep't 2003).

Where a driver provided a reasonable excuse for his failure to offer the newly-found evidence on the original motion in his personal injury action against the District Attorney's Office, that branch of his motion which was for leave to renew should have been granted Hasmath v Cameb, 5 A.D.3d 438, 773 N.Y.S.2d 121, 2004 N.Y. App. Div. LEXIS 2446 (N.Y. App. Div. 2d Dep't 2004).

Trial court providently exercised its discretion in granting the motion for leave to renew as the victim proffered a reasonable justification for failing to tender the "new facts" with his original papers. Coll v Padilla, 5 A.D.3d 716, 774 N.Y.S.2d 550, 2004 N.Y. App. Div. LEXIS 3618 (N.Y. App. Div. 2d Dep't 2004).

Where, in support of an individual's motion to dismiss and in opposition to the corporation's cross motion for summary judgment, the individual submitted an affidavit that was not notarized, and on the renewal motion, the individual submitted a re-dated and now notarized affidavit and an affirmation from counsel explaining that in preparing the papers on the prior motion he had overlooked the fact that the affidavit was not notarized, where this excuse for failing to notarize the affidavit was supported by a comparison of the two affidavits in the record, the failure was demonstrably inadvertent, and, since the corporation failed to show any prejudice, upon renewal, summary judgment to the corporation should have been denied. B.B.Y. Diamonds Corp. v Five Star Designs, Inc., 6 A.D.3d 263, 775 N.Y.S.2d 34, 2004 N.Y. App. Div. LEXIS 4628 (N.Y. App. Div. 1st Dep't 2004).

In an action for a declaratory judgment that plaintiffs did not have to defend and indemnify defendants in an underlying action, even though defendants' appeal from an order that denied their motions to avoid a default judgment was untimely because the notice of entry and order served by the plaintiffs was sufficient to commence the relevant 30-day limitation period under N.Y. C.P.L.R. § 5513(a), on the facts presented to the appeals court, defendants' motion for leave to renew those motions should have been granted and the appeal from denial of that motion was timely. The leave to renew motion should have been granted because, in defendants' argument for renewal, they demonstrated both a reasonable excuse for their default in answering the complaint and a meritorious defense under N.Y. C.P.L.R. §§ 2221, 5015(a)(1).

Serio v United States Fire Ins. Co., 11 A.D.3d 670, 783 N.Y.S.2d 289, 2004 N.Y. App. Div. LEXIS 12540 (N.Y. App. Div. 2d Dep't 2004), dismissed in part, 41 A.D.3d 459, 837 N.Y.S.2d 294, 2007 N.Y. App. Div. LEXIS 6906 (N.Y. App. Div. 2d Dep't 2007).

Injured party’s motion to renew the prior order dismissing the injured party’s personal injury action against the New York City Housing Authority for failure to timely serve notice of claim and allowing the injured party to amend the date of the accident in the notice of claim and the complaint was properly granted, as the injured party submitted evidence that established that the dismissal was based on an incorrect date for the accident, which occurred on a later date than previously thought; although the records were previously available, the date of the accident was not at issue, N.Y. C.P.L.R. 2221(e)(3), and the Authority’s investigation of the accident was not prejudiced by the delay pursuant to N.Y. Gen. Mun. Law § 50-e(6). Arroyo v N.Y. City Hous. Auth., 12 A.D.3d 254, 785 N.Y.S.2d 60, 2004 N.Y. App. Div. LEXIS 13759 (N.Y. App. Div. 1st Dep't 2004).

It was error to deny a decedent’s motion for leave to renew a motion to serve a late notice of claim against a county as the decedent’s recently-received medical records showed that her medical malpractice claim was meritorious and that the county had actual notice of the facts constituting the claim. Matter of Olsen v County of Nassau, 14 A.D.3d 706, 789 N.Y.S.2d 264, 2005 N.Y. App. Div. LEXIS 819 (N.Y. App. Div. 2d Dep't 2005).

Where the trial court denied petitioner's motion to hold respondents in contempt, it erred in denying his motion for leave to renew, as he asserted that he never received the court's letter granting respondents an extension to respond to his contempt motion, since it was mailed to the wrong address, and submitted communications from himself to respondents' counsel and the court indicating his intent to reply to any response, which constituted a reasonable justification for his failure to present information on the merits at the time of the original contempt motion. Matter of Karnofsky (New York State Dept. of Corr. & Community Supervision), 125 A.D.3d 1198, 4 N.Y.S.3d 671, 2015 N.Y. App. Div. LEXIS 1688 (N.Y. App. Div. 3d Dep't 2015).

It was error to deny a husband's motion to renew a motion to terminate maintenance and life insurance obligations because (1) the motion was based on new evidence, (2) the husband gave reasonable grounds for not having presented the evidence, and (3) the evidence raised substantial issues about the correctness of the court's prior decision. Schwartz v Schwartz, 153 A.D.3d 953, 60 N.Y.S.3d 426, 2017 N.Y. App. Div. LEXIS 6375 (N.Y. App. Div. 2d Dep't 2017).

When a lawyer and law office unsuccessfully moved to dismiss a legal malpractice suit arising from a client’s representation in a divorce, it was proper to grant leave to renew because (1) it was shown that the divorce judgment was vacated, (2) this was a new fact not offered on the prior motion to dismiss that would change the original denial of the motion, since the client could not establish the client sustained damages proximately caused by the lawyer’s alleged negligent representation, and (3) a failure to discover the vacatur due to misspelling the client’s name was tantamount to law office failure which, under the circumstances, was a reasonable justification. Buongiovanni v Hasin, 162 A.D.3d 736, 79 N.Y.S.3d 251, 2018 N.Y. App. Div. LEXIS 4302 (N.Y. App. Div. 2d Dep't 2018).

Supreme court abused its discretion in granting an insurer’s motion for default judgment and denying the passenger’s cross motion to renew and vacate the order where the passenger diligently attempted to file his opposition in a timely manner, however, those papers were not considered by the supreme court, counsel averred that the passenger’s medical records were not available at the time of the insurer’s order to show cause, those records were pertinent as they demonstrated evidence of the passenger’s injuries, and thus, the passenger had provided reasonable justification for failing to submit the additional facts in his opposition to the insurer’s order to show cause. Preferred Mut. Ins. Co. v DiLorenzo, 183 A.D.3d 1091, 124 N.Y.S.3d 88, 2020 N.Y. App. Div. LEXIS 2945 (N.Y. App. Div. 3d Dep't 2020).

Property buyers’ motion to renew their motion to dismiss a complaint by real estate brokers, seeking recovery of their commissions, was granted pursuant to N.Y. C.P.L.R. 2221(e)(2) and (3), as there were no competent affidavits and the pleadings contained no allegations regarding the location of the brokerage services that were rendered, which was an issue for purposes of

whether the lack of licensing in Pennsylvania precluded the ability of the brokers to seek their commissions; the buyers proffered an explanation as to why the facts were not included in the earlier dismissal motion, based on the lack of an indication previously by the brokers concerning whether the services were allegedly rendered. Klein v Antebi, 832 N.Y.S.2d 904, 15 Misc. 3d 901, 237 N.Y.L.J. 74, 2007 N.Y. Misc. LEXIS 1476 (N.Y. Sup. Ct. 2007), aff'd in part, 53 A.D.3d 529, 861 N.Y.S.2d 143, 2008 N.Y. App. Div. LEXIS 6058 (N.Y. App. Div. 2d Dep't 2008).

Denial of plaintiff's motion to vacate summary judgment for defendant in plaintiff's personal injury case was error because N.Y. C.P.L.R. 2221(e) did not disqualify, as "new facts not offered" on plaintiff's earlier motion to vacate the summary judgment, facts contained in plaintiff's affidavit of merit, which was originally rejected for consideration because the affidavit was not in admissible form; the key was whether a "reasonable justification" existed for failing to present the evidence on the prior motion, and the explanation proffered concerning plaintiff's limitations in language and education and a misunderstanding of the instructions for notarization in Jamaica, where plaintiff lived, was a reasonable justification for failing to present the affidavit in admissible form. Plaintiff demonstrated a reasonable excuse for his default and demonstrated that defendant's motion was untimely, thus establishing the existence of a meritorious opposition. Simpson v Tommy Hilfiger U.S.A., Inc., 48 A.D.3d 389, 850 N.Y.S.2d 629, 2008 N.Y. App. Div. LEXIS 594 (N.Y. App. Div. 2d Dep't 2008).

Court could consider defendant's second motion to dismiss an indictment for legal insufficiency under N.Y. Crim. Proc. Law § 210.20(1)(b) and (i) and 210.45(1) and (4)(a)as one to renew under N.Y. C.P.L.R. § 2221 and could consider the motion on the merits, although outside the 45-day period of N.Y. Crim. Proc. Law § 255.20, because defendant could not have been previously aware with due diligence of the fact that only a bench warrant from Florida was presented to the grand jury with respect to an escape in the first degree charge as the proof presented to the grand jury had just been disclosed. People v Walker, 851 N.Y.S.2d 866, 19 Misc. 3d 444, 2008 N.Y. Misc. LEXIS 613 (N.Y. Sup. Ct. 2008).

Trial court’s denial of singers’ motion for renewal of a prior summary judgment order dismissing their claim against a producer was improper because, although renewal motions generally should have been based on newly discovered facts that could not be offered on the prior motion, N.Y. C.P.L.R. 2221(e), courts had discretion to relax this requirement and to grant such a motion in the interest of justice; while the singers should have submitted admissible evidence to oppose the summary judgment motion, their failure was excusable. The producer moved for summary judgment before the singers had the opportunity to conduct discovery, and the singers’ counsel reasonably believed that the producer had failed to make a prima facie showing of entitlement to judgment. Sirico v F.G.G. Prods., Inc., 71 A.D.3d 429, 896 N.Y.S.2d 61, 2010 N.Y. App. Div. LEXIS 1694 (N.Y. App. Div. 1st Dep't 2010), dismissed in part, 2013 N.Y. Misc. LEXIS 704 (N.Y. Sup. Ct. Feb. 5, 2013).

Where plaintiff home buyer sued defendants for the return of his down payment, the trial court properly granted his motion for leave to renew his prior motion for summary judgment because, under the particular circumstances of the case, including the narrow scope of the issues raised on the prior motion and the opposition thereto, the buyer set forth a reasonable justification for his failure to present the newly submitted evidence on the prior motion. Kweku v Thomas, 144 A.D.3d 1109, 42 N.Y.S.3d 261, 2016 N.Y. App. Div. LEXIS 7896 (N.Y. App. Div. 2d Dep't 2016).

It was an improvident exercise of the trial court's discretion to deny a mortgagor's request for leave to renew her prior motion to vacate her default in opposing the mortgagee's summary judgment motion, arising in a foreclosure action, as she presented an affidavit from her attorney regarding law office failure which would have changed the prior determination and which could not have been obtained earlier. Flagstar Bank, FSB v Damaro, 145 A.D.3d 858, 44 N.Y.S.3d 128, 2016 N.Y. App. Div. LEXIS 8358 (N.Y. App. Div. 2d Dep't 2016).

Plaintiff’s motion to renew its prior application for attorney’s fees was granted as plaintiff indicated that the failure to timely file its support for the attorney’s fee application was due to law office failure; defendants never objected to the delayed filing of such documents; and counsel’s affirmation and exhibits established the reasonableness of the attorney’s fees and expenses

plaintiff sought. Cozy Bay Assoc. LLC v Bari, 77 Misc. 3d 612, 180 N.Y.S.3d 494, 2022 N.Y. Misc. LEXIS 6603 (N.Y. Sup. Ct. 2022).

6. — —Reasonable excuse not shown for not presenting evidence earlier

Beneficiary's motion, in action to compel delivery of stock, to reargue and/or renew the proceeding upon submission of affidavits and further evidence on nature of distribution of stock was properly denied where the evidence existed at the time of the prior motion and beneficiary failed to show why it was not presented earlier. Ingersoll v Security Trust Co., 51 A.D.2d 874, 380 N.Y.S.2d 373, 1976 N.Y. App. Div. LEXIS 11497 (N.Y. App. Div. 4th Dep't), app. denied, 39 N.Y.2d 711, 1976 N.Y. LEXIS 3469 (N.Y. 1976).

Motion which was essentially a motion to renew a motion to vacate, dismissal of Article 78 proceeding, where motion was based on new facts, was properly denied in exercise of court's discretion where there was failure to present requisite explanation of why the facts newly presented had not been presented on earlier motion. Hooker v Town Board of Guilderland, 60 A.D.2d 684, 399 N.Y.S.2d 935, 1977 N.Y. App. Div. LEXIS 14699 (N.Y. App. Div. 3d Dep't 1977).

Where new facts alleged on motion to renew prior motion were available to petitioners at time they instituted original proceeding and where there was no explanation in record as to why such facts had been omitted, denial of motion to renew was not an abuse of discretion. Hooker v Town Board of Guilderland, 60 A.D.2d 684, 399 N.Y.S.2d 935, 1977 N.Y. App. Div. LEXIS 14699 (N.Y. App. Div. 3d Dep't 1977).

In an action for damages based on injuries sustained by a painter who fell from a roof, motions for summary judgment were properly denied where factual issues were presented relating to a violation of a statute that were alleged to have been a proximate cause of injuries a motion to renew a motion for partial summary judgment on the issue of liability was properly denied where there was no explanation as to why the information on which the motion to renew was based could not have been presented at the original hearing on the summary judgment motion.

Facteau v Cote, 85 A.D.2d 865, 446 N.Y.S.2d 459, 1981 N.Y. App. Div. LEXIS 16694 (N.Y. App. Div. 3d Dep't 1981).

Plaintiff's motion to renew argument on defendant's previous motion for summary judgment, which had been originally decided in plaintiff's favor, so as to allow plaintiff to include additional evidence in the record on appeal of the prior motion was improperly granted where no valid excuse was offered for not submitting the additional facts upon the original application. Hugelmaier v Sweden, 101 A.D.2d 996, 476 N.Y.S.2d 660, 1984 N.Y. App. Div. LEXIS 18713 (N.Y. App. Div. 4th Dep't), app. dismissed, 63 N.Y.2d 909, 483 N.Y.S.2d 213, 472 N.E.2d 1040, 1984 N.Y. LEXIS 4707 (N.Y. 1984).

Leave to renew motion to amend answer in action to recover money due on mortgage note and to recover damages for breach of contract was properly denied where defendants failed to offer reasonable excuse as to why additional facts were not submitted on original application, since their additional evidence consisted mostly of public records and information within their knowledge at time of original motion. Mayer v McBrunigan Constr. Corp., 123 A.D.2d 606, 506 N.Y.S.2d 770, 1986 N.Y. App. Div. LEXIS 60757 (N.Y. App. Div. 2d Dep't 1986).

Following dismissal of petition under CLS Lien § 201-a to invalidate lien asserted by respondent against petitioner's car, petitioner's motion to renew, claiming that work performed on his car by respondent was unacceptable, was properly denied with prejudice in absence of adequate explanation as to why this information was not offered in petitioner's initial application, in which he had indicated that work was performed "as agreed." Jones v Marcy, 135 A.D.2d 887, 522 N.Y.S.2d 285, 1987 N.Y. App. Div. LEXIS 52817 (N.Y. App. Div. 3d Dep't 1987).

In contract action in which defendant asserted 7 affirmative defenses and 2 counterclaims, and in which defendant moved and plaintiff cross moved for summary judgment, court properly denied defendant's motion to renew pursuant to CLS CPLR § 2221 after granting summary judgment in favor of plaintiff since defendant was required to lay bare its evidence on its original motion and it failed to offer any valid excuses for not submitting additional known facts upon its original motion; court would reject defendant's argument that it was excused from initially laying

bare its proof because of scientific nature of its defenses, narrow scope of its original motion, departure of attorney in firm it retained, and another attorney's attendance at boy scout camp. Lansing Research Corp. v Sybron Corp., 142 A.D.2d 816, 530 N.Y.S.2d 698, 1988 N.Y. App. Div. LEXIS 7824 (N.Y. App. Div. 3d Dep't 1988).

It was not improvident exercise of discretion to deny application to renew request for removal of action from Civil Court to Supreme Court where plaintiff failed to offer any excuse for not submitting additional facts in original application. Francilion v Epstein, 144 A.D.2d 633, 535 N.Y.S.2d 65, 1988 N.Y. App. Div. LEXIS 12435 (N.Y. App. Div. 2d Dep't 1988).

Motion to renew was properly denied where supporting information had clearly been available at time of original motion, and moving party failed to provide explanation as to why such information was not presented originally. Martini v Asmann, 146 A.D.2d 571, 536 N.Y.S.2d 517, 1989 N.Y. App. Div. LEXIS 134 (N.Y. App. Div. 2d Dep't 1989).

It was error for Court of Claims to grant, on renewal, leave to file late notice of claim against state where (1) claimant was involved in single car accident while passenger in automobile in October 1987, and applied to file late notice of claim in March 1988, (2) application was denied for failure to demonstrate meritorious cause of action, and (3) claimant then moved for renewal on basis of newly obtained testimony of driver, to effect that road had no lane markings; claimant failed to establish justifiable excuse for her initial failure to place testimony of driver before court. Barnes v State, 159 A.D.2d 753, 552 N.Y.S.2d 57, 1990 N.Y. App. Div. LEXIS 2176 (N.Y. App. Div. 3d Dep't), app. dismissed, 76 N.Y.2d 935, 563 N.Y.S.2d 63, 564 N.E.2d 673, 1990 N.Y. LEXIS 3316 (N.Y. 1990).

In personal injury action, plaintiff's renewal of motion to conduct videotaped depositions of her California doctors should have been denied, even though renewal was newly supported by affidavits of doctors who claimed that they could not spare time to travel to New York for purpose of testifying at trial, where plaintiff knew in advance of original motion that her doctors resided in California, and yet she failed to explain why she did not previously produce doctors'

affidavits. Mangine v Keller, 182 A.D.2d 476, 581 N.Y.S.2d 793, 1992 N.Y. App. Div. LEXIS 5973 (N.Y. App. Div. 1st Dep't 1992).

Husband would not be permitted to renew motion to vacate default judgment in divorce action where (1) on first motion to vacate, he alleged lack of personal jurisdiction, (2) court concluded after traverse hearing that there was proper personal service, and (3) husband then moved to renew on basis that he had recently obtained evidence that wife had committed fraud in procuring judgment, but he failed to offer reasonable excuse as to why additional facts were not submitted at time of original motion. Rubin v Rubin, 203 A.D.2d 272, 612 N.Y.S.2d 877, 1994 N.Y. App. Div. LEXIS 3251 (N.Y. App. Div. 2d Dep't 1994).

Court lacked discretion to grant motion to renew where there was no indication given why new information in support of motion could not have been presented in first instance. Louis Fargnoli Food Distrib. v Jennies Bakery, 209 A.D.2d 806, 618 N.Y.S.2d 482, 1994 N.Y. App. Div. LEXIS 11137 (N.Y. App. Div. 3d Dep't 1994).

Court properly denied plaintiff’s motion for renewal to introduce purportedly new evidence to bolster its assertion that description of property liened was legally sufficient where (1) sole reason plaintiff proffered for not having submitted new evidence at time of defendants’ original summary judgment motion was that plaintiff “did not expect that a primary basis for the court’s decision would be its finding that the description was insufficient to identify the property, and could not anticipate that this finding would be based in large part on defendants’ mischaracterizations with regard to the location and description of the property,” (2) papers submitted by defendants on original motion demonstrated, however, that they raised issue of property description as one ground for dismissal of complaint, and plaintiff’s answering affidavit revealed that it was aware of that argument, and (3) plaintiff waited 7 months before seeking relief. Ramsco, Inc. v Riozzi, 210 A.D.2d 592, 619 N.Y.S.2d 809, 1994 N.Y. App. Div. LEXIS 11857 (N.Y. App. Div. 3d Dep't 1994).

Motion for renewal was properly denied for failure to establish that claimed new evidence was unknown to movants at time of original motion and to offer valid excuse for not submitting

additional facts on original motion. Valentini Constr. Corp. v Cohen, 223 A.D.2d 489, 636 N.Y.S.2d 1009, 1996 N.Y. App. Div. LEXIS 535 (N.Y. App. Div. 1st Dep't 1996).

Court erred in granting plaintiffs' motion to review prior order granting defendants summary judgment for failure to make prima facie showing of serious injury under CLS Ins § 5102(d), even though doctor alleged that he did not have actual magnetic resonance imaging (MRI) report at time he made original affidavit, since his affidavit indicated that he had access to MRI report, and plaintiffs failed to allege any excuse for failure to submit report with their submissions on original motion. Lee v Ogden Allied Maintenance Corp., 226 A.D.2d 226, 640 N.Y.S.2d 560, 1996 N.Y. App. Div. LEXIS 3942 (N.Y. App. Div. 1st Dep't 1996), reh'g denied, 1996 N.Y. App. Div. LEXIS 8737 (N.Y. App. Div. 1st Dep't Aug. 22, 1996), app. dismissed, 89 N.Y.2d 916, 653 N.Y.S.2d 919, 676 N.E.2d 501, 1996 N.Y. LEXIS 4337 (N.Y. 1996).

Court properly denied plaintiff's motion to renew her prior motion for summary judgment in lieu of complaint in action for payment on promissory note, which motion was based on personal guaranty and pledge agreement executed by individual defendants, where there was no excuse for failure of plaintiff's counsel to determine prior to commencing action whether such guaranty had been executed, and there was no adequate explanation for plaintiff's 17-month delay in making instant motion. Dankner v Szurzan & Dorf, Inc., 226 A.D.2d 669, 641 N.Y.S.2d 405, 1996 N.Y. App. Div. LEXIS 4581 (N.Y. App. Div. 2d Dep't 1996).

Court properly refused to grant plaintiff's request for leave to renew where he did not satisfactorily explain why he was unable to furnish items in question in opposition to original motion; his assertions that expert was "extremely busy," and that plaintiff believed that previous affidavit, "though brief," would be sufficient to raise fact question, did not constitute justifiable excuses for failing to lay bear his proof before court in first instance. Serbalik v GMC, 252 A.D.2d 801, 676 N.Y.S.2d 250, 1998 N.Y. App. Div. LEXIS 8334 (N.Y. App. Div. 3d Dep't), app. dismissed, 92 N.Y.2d 1001, 684 N.Y.S.2d 188, 706 N.E.2d 1212, 1998 N.Y. LEXIS 4129 (N.Y. 1998).

Plaintiff’s motion to renew her prior motion to amend complaint so as to add cause of action for malicious prosecution and to join additional defendants was properly denied, absent any explanation as to why supporting facts, purporting to show that defendants delayed dismissal of criminal prosecution that they initiated against plaintiff, were not adduced on first motion. Hughes v S&S Apparel Corp., 255 A.D.2d 148, 679 N.Y.S.2d 580, 1998 N.Y. App. Div. LEXIS 11742 (N.Y. App. Div. 1st Dep't 1998).

Motion to renew petition in Article 78 proceeding was properly denied where petitioner failed to offer valid excuse for not submitting additional facts on original application. Willett v City Univ. of New York Sch. of Law at Queens College, 255 A.D.2d 518, 680 N.Y.S.2d 161, 1998 N.Y. App. Div. LEXIS 12630 (N.Y. App. Div. 2d Dep't 1998).

Motion for renewal was properly denied where movant relied on new facts without offering excuse for his failure to offer them on original motion. Papaioannou v Tsopelas, 260 A.D.2d 282, 686 N.Y.S.2d 708, 1999 N.Y. App. Div. LEXIS 4171 (N.Y. App. Div. 1st Dep't 1999).

Court properly denied defendants’ motion for leave to renew plaintiff’s motion to enter judgment for defendants’ failure to appear or answer where allegedly new facts proffered by defendants had been readily available at time of their original opposition to plaintiff’s motion, and defendants failed to offer reasonable excuse for not having previously adduced such information. Guerrero v Dublin Up Corp., 260 A.D.2d 435, 687 N.Y.S.2d 721, 1999 N.Y. App. Div. LEXIS 3828 (N.Y. App. Div. 2d Dep't 1999).

After mortgagor’s property insurers had been ordered to pay mortgagee bank $82,535.18 balance due on mortgage on date of fire damage to property, insurers were not entitled to renewal on ground that mortgagor had sold one of subject parcels, thus reducing mortgage balance to amount substantially less than $82,535.18, where fire occurred in December 1995, parcel was sold in July 1996, action was commenced in December 1996, and insurers failed to present justifiable excuse for not bringing to court’s attention new facts relevant to issue before court at time of their initial motion for summary judgment. Bank of Richmondville v Terra Nova

Ins. Co., 263 A.D.2d 786, 694 N.Y.S.2d 206, 1999 N.Y. App. Div. LEXIS 8300 (N.Y. App. Div. 3d Dep't 1999).

Court erred in granting plaintiff's motion for leave to renew defendants' prior summary judgment motion in reliance on affidavit submitted by plaintiff's sister, which averred that plaintiff could identify "particular hole" which caused accident and that "such hole is the one as portrayed in Defendant's Exhibit A"; hearsay declaration made by plaintiff recounted in affidavit, which appeared to contradict plaintiff's own deposition testimony, and which was unaccompanied by any claim that plaintiff was herself unavailable, did not constitute valid evidence sufficient to defeat summary judgment motion. Schectel v Southland Corp., 264 A.D.2d 512, 694 N.Y.S.2d 468, 1999 N.Y. App. Div. LEXIS 8905 (N.Y. App. Div. 2d Dep't 1999).

Plaintiffs' motion for renewal of defendants' summary judgment motion should not have been granted where plaintiffs submitted only affidavits of chiropractor that were identical to prior purported affirmations made by same witness, since such evidence was not newly discovered and plaintiffs did not proffer reasonable explanation for their failure to submit proper affidavits in opposition to prior motion. Doumanis v Conzo, 265 A.D.2d 296, 696 N.Y.S.2d 201, 1999 N.Y. App. Div. LEXIS 9631 (N.Y. App. Div. 2d Dep't 1999).

In action against building owner for negligent maintenance of staircase on which plaintiff fell, owner was not entitled to renewal of its motion to vacate default judgment where owner failed to offer reasonable excuse for not having submitted adequate affidavit of merit on its original motion, and affidavit submitted with renewal motion was also inadequate, because it did not address condition of premises at time of plaintiff's fall. Suon Luong v 173 Lafayette Corp., 266 A.D.2d 26, 697 N.Y.S.2d 602, 1999 N.Y. App. Div. LEXIS 11157 (N.Y. App. Div. 1st Dep't 1999).

In Article 78 proceeding seeking order that respondents furnish documents under Freedom of Information Law, petitioner's motion to renew was properly denied where he failed to prove that documents requested had not been provided to attorney who had represented him at his criminal trial or that documents were no longer available. Brightley v Lai, 266 A.D.2d 131, 698 N.Y.S.2d 487, 1999 N.Y. App. Div. LEXIS 12348 (N.Y. App. Div. 1st Dep't 1999).

Proffered excuse that eyewitness to accident was not contacted because his name was inadvertently not included in counsel's investigation file, even if sufficient to explain counsel's failure to contact eyewitness at outset of case, did not explain why counsel failed to contact eyewitness after depositions revealed his identity; thus, where plaintiffs failed to offer any excuse for their 7-month delay in seeking renewal, their motion for leave to renew their opposition to defendants' summary judgment motion should have been denied. Cole-Hatchard v Grand Union, 270 A.D.2d 447, 705 N.Y.S.2d 605, 2000 N.Y. App. Div. LEXIS 3247 (N.Y. App. Div. 2d Dep't 2000).

Court erred in granting plaintiffs' motion for leave to renew where they offered no excuse for not submitting additional facts on original motion, and application was not supported by new facts or information which could not have been made part of original motion. LaRosa v Trapani, 271 A.D.2d 506, 706 N.Y.S.2d 911, 2000 N.Y. App. Div. LEXIS 4025 (N.Y. App. Div. 2d Dep't 2000).

Court properly denied defendant's renewal motion, despite his contention that newly discovered evidence "has only come to light within the past week when I reviewed the filed papers in the Greene County Clerk's Office," since he offered no reasonable explanation for his failure to examine notice of pendency filed in Clerk's office in preparation of original papers submitted in opposition to plaintiff's summary judgment motion. N.A.S. Pshp. v Kligerman, 271 A.D.2d 922, 706 N.Y.S.2d 753, 2000 N.Y. App. Div. LEXIS 4661 (N.Y. App. Div. 3d Dep't 2000).

Divorced wife's motion for renewal was properly denied where her assertions concerning her former attorney's failure to properly advise her were insufficient excuse for omitting allegedly new material in opposition for her former husband's motion for partial summary judgment. Drasner v Drasner, 273 A.D.2d 131, 709 N.Y.S.2d 183, 2000 N.Y. App. Div. LEXIS 7167 (N.Y. App. Div. 1st Dep't 2000).

Plaintiffs' motion to "renew and reargue" defendants' prior motion for summary judgment was actually motion to reargue, denial of which was not appealable, where plaintiffs offered no valid excuse as to why medical evidence offered on their motion to "renew and reargue" was not

submitted in opposition to prior motion. Sallusti v Jones, 273 A.D.2d 293, 710 N.Y.S.2d 547, 2000 N.Y. App. Div. LEXIS 6529 (N.Y. App. Div. 2d Dep't 2000).

In action against hospital for slip and fall on water on floor of patient’s room, plaintiff was not entitled to renewal of parties’ summary judgment motions where identities of witnesses who submitted affidavits in support of renewal could have been discovered at time of original motions. Fowler v St. Luke's Mem'l Hosp. Ctr., 273 A.D.2d 893, 711 N.Y.S.2d 374, 2000 N.Y. App. Div. LEXIS 6962 (N.Y. App. Div. 4th Dep't 2000).

Plaintiff was not entitled to renew her motion for partial summary judgment, even though court erroneously identified affidavit of plaintiff’s surgeon rather than affidavit of plaintiff as new evidence that plaintiff sought to have admitted, where plaintiff did not provide adequate excuse for her failure to submit her affidavit on original motion. Donaldson v Bottar, 275 A.D.2d 897, 715 N.Y.S.2d 168, 2000 N.Y. App. Div. LEXIS 9525 (N.Y. App. Div. 4th Dep't), app. dismissed, 95 N.Y.2d 959, 722 N.Y.S.2d 474, 745 N.E.2d 395, 2000 N.Y. LEXIS 3861 (N.Y. 2000).

Plaintiffs’ motion to renew their motion to restore action to active calendar was properly denied for failure to explain why motion to restore was not supported by requisite factual showings. Roman v City of New York, 281 A.D.2d 246, 721 N.Y.S.2d 535, 2001 N.Y. App. Div. LEXIS 2448 (N.Y. App. Div. 1st Dep't 2001).

Insurer was not entitled to renewal of its previously defeated opposition to insureds’ motion for summary judgment where evidence on which motion to renew was based was mere restatement in affidavit form of information that insurer had supplied to insureds when insured rejected their insurance claim, that evidence was available to insurer at time of original motion, and no viable excuse was submitted for insured’s failure to submit that evidence at time of original motion. Chelsea Piers Mgmt. v Forest Elec. Corp., 281 A.D.2d 252, 722 N.Y.S.2d 29, 2001 N.Y. App. Div. LEXIS 2442 (N.Y. App. Div. 1st Dep't 2001).

Insurer was not entitled to stay of arbitration of underinsured motorist claim, there being no merit in its claims that, inter alia, underinsurance was not covered under “supplementary uninsured

motorist endorsement," where (1) endorsement defined "uninsured motor vehicle" as one having bodily injury liability insurance that was less than third-party bodily injury liability limit of insured's policy at time of accident, and (2) insurer's claims related to whether certain conditions of policy had been complied with and not whether parties had agreed to arbitration; insurer's motion to renew, in which it sought to adduce evidence that policy's declarations page would have expressly mentioned "underinsurance" coverage if insured had purchased it, was properly denied for lack of explanation as to why such evidence was not presented on original motion. Empire Ins. Co. v Busse, 281 A.D.2d 377, 722 N.Y.S.2d 543, 2001 N.Y. App. Div. LEXIS 3208 (N.Y. App. Div. 1st Dep't 2001).

Appellants' motions for leave to renew their prior motions to dismiss Article 78 proceedings were properly denied where appellants failed to provide reasonable excuse as to why additional facts were not presented at time of original motions and were not previously brought to court's attention. Goetschius v Board of Educ., 281 A.D.2d 418, 721 N.Y.S.2d 271, 2001 N.Y. App. Div. LEXIS 2121 (N.Y. App. Div. 2d Dep't 2001).

In legal malpractice action wherein trial court granted plaintiffs' motion for default judgment based on defendant attorney's willful and bad faith failure to maintain contact with his own attorneys and failure to appear in response to notice to take his deposition, which was served on his attorneys, it was within court's discretion to deny defendant's motion for renewal where he merely asserted that he had no knowledge of action before original default order was entered, that he and his attorneys had since communicated with each other, and that he now wished to participate in litigation. Cafferty v Thomas, Collison & Place, 282 A.D.2d 959, 723 N.Y.S.2d 722, 2001 N.Y. App. Div. LEXIS 4164 (N.Y. App. Div. 3d Dep't 2001).

In action against county for damage to plaintiff's car, incurred when allegedly decaying tree fell on it, plaintiff was not entitled to leave to renew where additional information submitted on renewal was known to plaintiff at time of his original motion, and he did not offer reasonable excuse for his failure to present those facts at that time. Quog v Town of Brookhaven, 286 A.D.2d 678, 730 N.Y.S.2d 145, 2001 N.Y. App. Div. LEXIS 8434 (N.Y. App. Div. 2d Dep't 2001),

app. denied, 97 N.Y.2d 610, 740 N.Y.S.2d 694, 767 N.E.2d 151, 2002 N.Y. LEXIS 167 (N.Y. 2002).

Because there was no change in the law that would alter the court's prior determination, because the new facts submitted by a company in support of its N.Y. C.P.L.R. 2221 motion to renew were readily available at the time the prior motion was made, and because the company failed to provide a reasonable justification for failing to present those facts in support of its initial motion, denial of the motion to renew was appropriate . NYCTL 1999-1 Trust v 114 Tenth Ave. Assoc., Inc., 44 A.D.3d 576, 845 N.Y.S.2d 235, 2007 N.Y. App. Div. LEXIS 10945 (N.Y. App. Div. 1st Dep't 2007), app. dismissed, 10 N.Y.3d 757, 853 N.Y.S.2d 540, 883 N.E.2d 366, 2008 N.Y. LEXIS 292 (N.Y. 2008), cert. denied, 555 U.S. 970, 129 S. Ct. 458, 172 L. Ed. 2d 327, 2008 U.S. LEXIS 7841 (U.S. 2008).

Since there was no justification for the attorneys' failure to present the information revealed in their depositions in support of the original motion for summary judgment in the legal malpractice case, their renewal should have been denied. Petersen v Lysaght, Lysaght & Kramer, P.C., 19 A.D.3d 391, 799 N.Y.S.2d 522, 2005 N.Y. App. Div. LEXIS 5995 (N.Y. App. Div. 2d Dep't 2005).

In a breach of contract case, a trust's motion for leave to renew under N.Y. C.P.L.R. 2221(e) its prior cross-motion for summary judgment was properly denied because the facts submitted were cumulative of the facts submitted on its prior cross-motion and no reasonable justification was made for its failure to present the alleged new facts on the trust's prior cross-motion. T & B Port Wash., Inc. v McDonough, 34 A.D.3d 785, 825 N.Y.S.2d 524, 2006 N.Y. App. Div. LEXIS 14285 (N.Y. App. Div. 2d Dep't 2006).

Distributor was not entitled to leave to renew, N.Y. C.P.L.R. 2221(e), its original motion for summary judgment in a strict products liability action because the evidence submitted was cumulative with respect to factual material submitted on the original motion and the distributor failed to offer any explanation for neglecting to present the additional evidence on the original motion. Riglioni v Chambers Ford Tractor Sales, Inc., 36 A.D.3d 785, 828 N.Y.S.2d 520, 2007 N.Y. App. Div. LEXIS 755 (N.Y. App. Div. 2d Dep't 2007).

Because a petitioner did not establish that a village had actual knowledge of the essential facts constituting a claim within 90 days after an accident, did not have a reasonable excuse for the delay, and did not demonstrate that the village was not prejudiced in its defense, pursuant to N.Y. Gen. Mun. Law § 50-e(2), (5), (7), and N.Y. C.P.L.R. 2221(e)(2), (3), the trial court properly denied the petitions for leave to serve a late claim on the village. Matter of Narcisse v Incorporated Vil. of Cent. Islip, 36 A.D.3d 920, 829 N.Y.S.2d 578, 2007 N.Y. App. Div. LEXIS 981 (N.Y. App. Div. 2d Dep't 2007).

In a personal injury action, plaintiffs failed to provide a reasonable justification for the failure to present facts in opposition to defendants' initial summary judgment motion (N.Y. C.P.L.R. 2221(e)(2), (3)) as to why a treating physician had sufficient time to prepare an affidavit, but did not have sufficient time to conduct an examination before the submission of defendants' motion for summary judgment. Further, plaintiffs never submitted the results of an examination contemporaneous to the injured party's accident; thus, there was no basis for renewal. Beyl v Franchini, 37 A.D.3d 505, 829 N.Y.S.2d 699, 2007 N.Y. App. Div. LEXIS 1731 (N.Y. App. Div. 2d Dep't 2007).

Because a law firm did not proffer a reasonable excuse for failing to submit a partner's affidavit with its earlier motion for summary judgment in a client's action for a refund of an alleged overpayment under a legal retainer agreement, the trial court properly treated the firm's motion as one for renewal under N.Y. C.P.L.R. 2221(e)(3), rather than as a successive summary judgment motion, and properly denied it. Kornblum v Blank Rome Tenzer Greenblatt, 39 A.D.3d 482, 834 N.Y.S.2d 245, 2007 N.Y. App. Div. LEXIS 4253 (N.Y. App. Div. 2d Dep't 2007).

Plaintiffs were entitled to renewal of a prior motion for summary judgment by defendants pursuant to N.Y. C.P.L.R. § 2221(e)(2), (3), as plaintiffs provided a reasonable excuse for their failure to submit an affidavit from in opposition to the motion, and any prejudice that might have inured to defendants as a result of the delay in making the renewal motion was, at least in part, the result of defendants' five-year delay in serving the order with notice of its entry. Heaven v

McGowan, 40 A.D.3d 583, 835 N.Y.S.2d 641, 2007 N.Y. App. Div. LEXIS 5625 (N.Y. App. Div. 2d Dep't 2007).

Employee's motion to renew under N.Y. C.P.L.R. 2221(e) a disability discrimination claim failed as: (1) the employee's proffer of a disability was insufficient as the employee failed to submit a medical diagnosis, (2) the employee's affirmation detailing the employee's inability to locate the employee's treating physicians to obtain their sworn testimony failed to explain why this obstacle was not explained initially, or how any of this constituted newly discovered facts, (3) the proof was within the purview of the employee's knowledge at the time of the employer's motion for summary judgment, and (4) the employee's explanation that the employee failed to offer competent proof in the first instance because the employee viewed the employer's proffer insufficient was unavailing. Tibbits v Verizon N.Y., Inc., 40 A.D.3d 1300, 836 N.Y.S.2d 727, 2007 N.Y. App. Div. LEXIS 6061 (N.Y. App. Div. 3d Dep't 2007).

Teacher, who was discharged by a city department of education for unfitness, was not entitled to vacate an arbitration ruling under N.Y. Educ. Law § 3020-a on the grounds of bias and misconduct because even if considered a new fact, a hearing officer's resume indicating an association with another officer who presided over a prior unrelated hearing was not clear and convincing evidence of bias; the resume could not be considered on a motion to renew under N.Y. C.P.L.R. 2221 as the teacher failed to present a reasonable justification for a failure to present it with the original motion. Zrake v New York City Dept. of Educ., 41 A.D.3d 118, 838 N.Y.S.2d 31, 2007 N.Y. App. Div. LEXIS 6715 (N.Y. App. Div. 1st Dep't), app. dismissed, app. denied, 9 N.Y.3d 1001, 849 N.Y.S.2d 28, 879 N.E.2d 168, 2007 N.Y. LEXIS 3772 (N.Y. 2007).

Denial of building owners' motion for leave to renew was proper as: (1) the owners contended that new facts that engineers who had inspected the property found that the excavation for new construction had caused significant impairment of the structural integrity of the building, and ordered that the building be vacated until repaired, presented in part in inadmissible form, triggered a provision in the policy specifically covering loss caused by defective construction involving "collapse," (2) the owners presented no evidence as to whether the alleged new facts

could have been ascertained at the time of the original motions, and (3) they failed to present a reasonable justification for their failure to present such facts on the prior motions under N.Y. C.P.L.R. 2221(e)(3). Schlesinger v Harleysville Worcester Ins. Co., 41 A.D.3d 692, 838 N.Y.S.2d 611, 2007 N.Y. App. Div. LEXIS 7750 (N.Y. App. Div. 2d Dep't 2007).

While the defendants' renewal motion attempted to explain the lateness as a result of non-service, they gave no reason why they did not offer that explanation in their opposition to a N.Y. C.P.L.R. 3215 motion for a default judgment, in accordance with N.Y. C.P.L.R. 2221(e)(3); therefore, their N.Y. C.P.L.R. 5015(a)(1) motion to vacate the default was properly denied. Singh v Gladys Towncars Inc., 42 A.D.3d 313, 839 N.Y.S.2d 734, 2007 N.Y. App. Div. LEXIS 8175 (N.Y. App. Div. 1st Dep't 2007).

Because an insurer failed to set forth a reasonable justification for its failure to present the alleged new facts on the motions that would change a prior determination, as required by N.Y. C.P.L.R. 2221(e)(2), the insurer's two motions for leave to renew were properly denied. State Farm Mut. Auto. Ins. Co. v Hertz Corp., 43 A.D.3d 907, 841 N.Y.S.2d 617, 2007 N.Y. App. Div. LEXIS 9543 (N.Y. App. Div. 2d Dep't 2007).

In an action for specific performance of a real estate contract or for the return of a downpayment, an assignee's affidavit that was submitted on a motion for leave to renew and reargue constituted evidence that could have been submitted in opposition to the sellers' original motion for leave to enter a judgment for use and occupancy; thus, leave to renew was properly denied under N.Y. C.P.L.R. § 2221(e)(3). Nowak v Rametta, 43 A.D.3d 1120, 843 N.Y.S.2d 150, 2007 N.Y. App. Div. LEXIS 9975 (N.Y. App. Div. 2d Dep't 2007).

Because a motion for leave to renew under N.Y. C.P.L.R. 2221 had to be based upon new facts not offered on the prior motion that would change the prior determination and it had to contain a reasonable justification for the failure to present such facts on the prior motion, and the new facts proffered by the corporations would not have changed the prior determination, summary judgment was appropriate as to additional insured coverage. Tower Ins. Co. of N. Y. v T & G

Contr. Inc., 44 A.D.3d 933, 845 N.Y.S.2d 356, 2007 N.Y. App. Div. LEXIS 11343 (N.Y. App. Div. 2d Dep't 2007).

Renewal motion was properly denied as an employee did not offer reasonable justification for the employee's initial failure to submit documentation as required by N.Y. C.P.L.R. 2221(e)(3), which would not have cured an untimely commencement of suit in any event. Russek v Dag Media, Inc., 47 A.D.3d 457, 851 N.Y.S.2d 399, 2008 N.Y. App. Div. LEXIS 327 (N.Y. App. Div. 1st Dep't 2008).

Denial of an owner's motion, inter alia, for leave to renew her opposition to a village's motion to deem resolved certain issues and for summary judgment was proper because, although that branch of the owner's motion was based, in part, on new facts, the owner failed to offer a reasonable justification for the failure to present such facts on the prior motion. Incorporated Vil. of Cove Neck v Petrara, 47 A.D.3d 885, 850 N.Y.S.2d 577, 2008 N.Y. App. Div. LEXIS 678 (N.Y. App. Div. 2d Dep't 2008).

Because a plaintiff failed to offer any reasonable excuse for not having submitted an adequate affidavit of merit from a medical expert in support of the plaintiff's earlier motion to vacate a default judgment, pursuant to N.Y. C.P.L.R. 2221(e)(3), renewal of the plaintiff's motion to vacate was properly denied. Hassell v New York Univ. Med. Ctr., 48 A.D.3d 632, 852 N.Y.S.2d 342, 2008 N.Y. App. Div. LEXIS 1549 (N.Y. App. Div. 2d Dep't 2008).

Defendants, a business and its owner individually, were improperly granted a prior motion to vacate a prior default upon renewal under N.Y. C.P.L.R. § 2221(a) in an action to foreclose a mechanic's lien because defendants failed to present a reasonable justification for their failure to present purported new facts on the prior motion to vacate the default judgment; in any event, defendants failed to present a reasonable excuse under N.Y. C.P.L.R. § 5015(a)(1) for the default in answering the complaint. Keyland Mech. Corp. v 529 Empire Realty Corp., 48 A.D.3d 755, 851 N.Y.S.2d 380, 2008 N.Y. App. Div. LEXIS 1680 (N.Y. App. Div. 2d Dep't 2008).

Trial court properly denied the motion of plaintiff for leave to renew her opposition to the motions for summary judgment filed by a manufacturer and a contractor in a negligence and products liability case because the affidavit of plaintiff's expert submitted in support of plaintiff's motion did not present new facts, nor did plaintiff offer a reasonable excuse for failing to submit the affidavit in opposition to the prior motions; in any event, the conclusions in the affidavit of plaintiff's expert were based upon speculation and thus would not have altered the outcome of the prior motions. Blazynski v A. Gareleck & Sons, Inc., 48 A.D.3d 1168, 852 N.Y.S.2d 500, 2008 N.Y. App. Div. LEXIS 806 (N.Y. App. Div. 4th Dep't), app. denied, 52 A.D.3d 1292, 858 N.Y.S.2d 646, 2008 N.Y. App. Div. LEXIS 5081 (N.Y. App. Div. 4th Dep't 2008), app. dismissed, app. denied, 11 N.Y.3d 825, 868 N.Y.S.2d 593, 897 N.E.2d 1077, 2008 N.Y. LEXIS 3381 (N.Y. 2008).

Denial as premature of a corporation's motion for leave to renew its prior motion for sanctions based on spoliation of evidence was proper under circumstances in which the trial court denied the initial motion without prejudice to the corporation to seek sanctions on the completion of discovery or at trial, but the corporation moved for leave to renew before even producing a witness for a deposition; moreover, the corporation failed to demonstrate a reasonable justification for its failure to have proffered, in support of its original motion, alleged new facts presented in support of its motion for leave to renew. Princeton Ins. Co. v Jenny Exhaust Sys., Inc., 49 A.D.3d 518, 853 N.Y.S.2d 580, 2008 N.Y. App. Div. LEXIS 1965 (N.Y. App. Div. 2d Dep't 2008).

Trial court properly denied the motion of a decedent's representative to renew in a medical malpractice case because, although the decedent's representative submitted an affirmation of clarification from her expert anesthesiologist, she failed to provide a reasonable explanation as to why she had not offered this information in opposition to the prior motions for summary judgment. Oestreich v Present, 50 A.D.3d 522, 857 N.Y.S.2d 79, 2008 N.Y. App. Div. LEXIS 3602 (N.Y. App. Div. 1st Dep't 2008).

In a personal injury action, plaintiff was not entitled to a grant of his motion to renew under N.Y. C.P.L.R. § 2221(e) as in opposing a property owner's motion for summary judgment, plaintiff

relied upon the owner's exhibits instead of providing his own copies of the transcripts; plaintiff did not demonstrate a reasonable justification for his failure to present the transcripts in opposition to the owner's motion. Valenti v Exxon Mobil Corp., 50 A.D.3d 1382, 857 N.Y.S.2d 745, 2008 N.Y. App. Div. LEXIS 3310 (N.Y. App. Div. 3d Dep't 2008).

Inasmuch as a town was aware at the time it opposed a corporation's initial motion for sampling at the town's real estate, of a revised estimate of the repair costs following the sampling, which totaled $125,000 as opposed to the $25,000 that the town originally estimated, and failed to demonstrate a reasonable justification for its failure to proffer, in support of its original motion, the alleged new facts presented in support of that branch of its motion which was for leave to renew, that branch of the motion was properly denied. Town of Eastchester v Shawn's Lawns, Inc., 51 A.D.3d 906, 858 N.Y.S.2d 358, 2008 N.Y. App. Div. LEXIS 4409 (N.Y. App. Div. 2d Dep't 2008).

Order granting a pedestrian leave under N.Y. C.P.L.R. 2221(c) to renew her opposition to owners' summary judgment motion in a personal injury case was error because, inter alia, the pedestrian failed to explain why an expert's inspection leading to new facts was not performed earlier, and why the expert's opinion could not have been presented in opposition to the original motion. Hlenski v City of New York, 51 A.D.3d 974, 858 N.Y.S.2d 789, 2008 N.Y. App. Div. LEXIS 4562 (N.Y. App. Div. 2d Dep't 2008).

Because a co-owner failed to rebut the presumption of proper service in N.Y. C.P.L.R. 308(2), the co-owner failed to offer any basis upon which to deny the owner's motion for leave to enter a default judgment; the co-owner also failed to reasonably justify the failure to submit the purportedly new facts on the prior motion under N.Y. C.P.L.R. 2221(e). Swedish v Beizer, 51 A.D.3d 1008, 859 N.Y.S.2d 668, 2008 N.Y. App. Div. LEXIS 4608 (N.Y. App. Div. 2d Dep't 2008).

Denial of defendants' motion to renew their opposition to plaintiffs' summary judgment motion in an N.Y. Real Prop. Acts. Law § 901 partition action was proper because defendant conceded that both he his wife signed an agreement between the parties which he claimed was newly

discovered evidence, and that when the action arose, he remembered that the agreement was in place; however, defendant never made mention of this agreement in his opposition to the summary judgment motion. Therefore, the agreement did not meet the requirements of newly discovered evidence under N.Y. C.P.L.R. 2221(e). Kahn v Levy, 52 A.D.3d 928, 859 N.Y.S.2d 308, 2008 N.Y. App. Div. LEXIS 4810 (N.Y. App. Div. 3d Dep't 2008).

Plaintiff's motion to renew was properly denied since he failed to offer a reasonable excuse for not presenting the new evidence on the prior motion, N.Y. C.P.L.R. 2221(e)(3), when it could have been obtained through discovery. Rosado v Edmundo Castillo Inc., 54 A.D.3d 278, 865 N.Y.S.2d 12, 2008 N.Y. App. Div. LEXIS 6463 (N.Y. App. Div. 1st Dep't 2008).

Owner's motion for leave to renew under N.Y. C.P.L.R. § 2221(e) was properly denied as the owner failed to offer a reasonable excuse as to why it did not present the alleged new facts on the prior motion for summary judgment filed by a representative of unpaid subcontractors and suppliers in an action alleging a diversion of trust funds. Spectrum Painting Contrs., Inc. v Kreisler Borg Florman Gen. Constr. Co., Inc., 54 A.D.3d 748, 864 N.Y.S.2d 61, 2008 N.Y. App. Div. LEXIS 6705 (N.Y. App. Div. 2d Dep't 2008).

Trial court correctly denied that branch of a congregation's motion which was for leave to renew its motion to dismiss the complaint insofar as asserted against it; the congregation failed to provide a "reasonable justification" for not alleging the "new facts" in its original motion to dismiss the complaint insofar as asserted against it pursuant to N.Y. C.P.L.R. 2221(e)(2), (3). Merkos L'Inyonei Chinuch, Inc. v Sharf, 59 A.D.3d 403, 873 N.Y.S.2d 148, 2009 N.Y. App. Div. LEXIS 729 (N.Y. App. Div. 2d Dep't 2009).

Denial of petitioner's motion for leave to renew his original petition seeking leave pursuant to N.Y. Gen. Mun. Law § 50-e(5) to serve a late notice of claim against a school was proper because petitioner did not proffer any justification for failing to present certain facts known to him at the time the original petition was submitted as required by N.Y. C.P.L.R. 2221(e) and the other facts upon which he now relied would not have changed the outcome of the proceeding in

any event. Matter of Korman v Bellmore Pub. Schools, 62 A.D.3d 882, 879 N.Y.S.2d 194, 2009 N.Y. App. Div. LEXIS 3862 (N.Y. App. Div. 2d Dep't 2009).

Trial court providently exercised its discretion in denying plaintiff's motion for leave to renew her opposition to defendants' motion for summary judgment because plaintiffs failed to provide a reasonable justification for the failure to include the findings in a doctor's supplemental affidavit on the original motion. Caraballo v Kim, 63 A.D.3d 976, 882 N.Y.S.2d 211, 2009 N.Y. App. Div. LEXIS 5206 (N.Y. App. Div. 2d Dep't 2009).

Trial court, in a review of a department's billboard permit application denial, properly denied the applicant's motion for renewal pursuant to N.Y. C.P.L.R. 2221 because the motion pertained to a postjudgment order and therefore should have been brought pursuant to N.Y. C.P.L.R. 5015(2); under either provision, the applicant bore the burden of proving that the new evidence it sought to present could not have been discovered earlier with due diligence and would have led to a different result, but the information it sought to present, which it contended would have clarified, among other things, the property's location, was a matter of public record, and the applicant offered no reason why it could not have been presented at the time of the original application. Further, the new evidence could not properly have been considered because it was not presented to the department. Matter of Lamar Cent. Outdoor, LLC v State of New York, 64 A.D.3d 944, 882 N.Y.S.2d 743, 2009 N.Y. App. Div. LEXIS 5567 (N.Y. App. Div. 3d Dep't 2009).

Newly discovered evidence supporting an assignee's motion for renewal of borrowers' summary judgment motion in foreclosure case was information obtained from government Web sites; the assignee failed to proffer a reasonable excuse as to why that information was not submitted in opposition to the original motion, and so, the motion for renewal should not have been granted. JPMorgan Chase Bank, N.A. v Malarkey, 65 A.D.3d 718, 884 N.Y.S.2d 787, 2009 N.Y. App. Div. LEXIS 5942 (N.Y. App. Div. 3d Dep't 2009).

Because an expert's renewal addendum was not the result of any additional examination or medical testing and failed to explain the two-week gap between the accident and the commencement of treatment, the driver failed to satisfy the requirements for renewal in N.Y.

C.P.L.R. 2221(e). Henry v Peguero, 72 A.D.3d 600, 900 N.Y.S.2d 49, 2010 N.Y. App. Div. LEXIS 3364 (N.Y. App. Div. 1st Dep't), app. dismissed, 15 N.Y.3d 820, 908 N.Y.S.2d 152, 934 N.E.2d 886, 2010 N.Y. LEXIS 2501 (N.Y. 2010).

Although a corporation based its motion for leave to renew its opposition to the State's renewed motion for a default judgment and to vacate the default on deposition testimony, the corporation failed to offer any justification for its failure to provide the testimony that was previously available. State of New York v Williams, 73 A.D.3d 1401, 901 N.Y.S.2d 751, 2010 N.Y. App. Div. LEXIS 4393 (N.Y. App. Div. 3d Dep't), app. denied, 15 N.Y.3d 709, 909 N.Y.S.2d 24, 935 N.E.2d 816, 2010 N.Y. LEXIS 2657 (N.Y. 2010).

As defendant's motion for reconsideration under N.Y. C.P.L.R. 2221(e) was based on an appraisal that was not obtained by them until after plaintiff's motion for summary judgment had been submitted, and they failed to provide a reasonable justification for not presenting the appraisal at the time of the original motion, their motion was properly denied. Town of Kirkwood v Ritter, 80 A.D.3d 944, 915 N.Y.S.2d 683, 2011 N.Y. App. Div. LEXIS 128 (N.Y. App. Div. 3d Dep't 2011).

Plaintiff's motion pursuant to N.Y. C.P.L.R. 2221(e) for leave to renew his opposition to prior motions to hold him in contempt was properly denied because plaintiff failed to offer a reasonable justification as to why the subject "new" evidence was not submitted at the time of the prior motions and, in any event, the subject evidence would not have changed the prior determinations. Rose v Levine, 98 A.D.3d 1015, 951 N.Y.S.2d 880, 2012 N.Y. App. Div. LEXIS 6166 (N.Y. App. Div. 2d Dep't 2012).

While a trial court erred in granting an administrator's motion to strike a hospital's answer where the hospital offered no new facts to support its motion for leave to renew, pursuant to N.Y. C.P.L.R. 2221(d)(2), the trial court properly granted the hospital's motion based on the court's misapprehension of the facts and the law in determining that it had no choice but to penalize the hospital for failing to produce the contract documents at issue. Luppino v Mosey, 103 A.D.3d 1117, 958 N.Y.S.2d 823, 2013 N.Y. App. Div. LEXIS 653 (N.Y. App. Div. 4th Dep't 2013).

Summary judgment entered on renewal was error because, as the corporation sought to present new facts, the motion should have been made pursuant to N.Y. C.P.L.R. 2221(e); however, the corporation failed to demonstrate “reasonable justification” for its failure to present the facts regarding its payments on the prior motion, and so failed to show its entitlement to relief under N.Y. C.P.L.R. 2221(e). In any event, on the record, it could not have been determined whether the corporation’s purported payments were made in compliance with N.Y. Comp. Codes R. & Regs. tit. 11, § 65-3.15. Mount Sinai Hosp. v Dust Tr., Inc., 104 A.D.3d 823, 962 N.Y.S.2d 307, 2013 N.Y. App. Div. LEXIS 1768 (N.Y. App. Div. 2d Dep't 2013).

County defendants' motion for leave to renew was properly denied as the motion was not based upon new facts that would have changed the prior determination or a change in law, and the county defendants failed to proffer a reasonable justification for their failure to proffer the new facts on their prior motion. New York Tel. Co. v Supervisor of Town of Hempstead, 115 A.D.3d 824, 982 N.Y.S.2d 492, 2014 N.Y. App. Div. LEXIS 1691 (N.Y. App. Div. 2d Dep't), app. denied, 24 N.Y.3d 905, 995 N.Y.S.2d 714, 20 N.E.3d 660, 2014 N.Y. LEXIS 2560 (N.Y. 2014).

Lower court providently exercised its discretion in denying defendant leave to renew his opposition to plaintiff's motion for summary judgment, as defendant failed to establish that the alleged new evidence was not available at the time of the original motion; even assuming he had a reasonable justification for failing to submit this evidence, he failed to demonstrate that it would have changed the prior determination. Wells Fargo Bank, N.A. v Rooney, 132 A.D.3d 980, 19 N.Y.S.3d 543, 2015 N.Y. App. Div. LEXIS 7892 (N.Y. App. Div. 2d Dep't 2015).

Trial court did not abuse its discretion in denying warehouse owners motion for leave to renew because the owners failed to provide a reasonable justification for the failure to produce the purported new evidence on their prior cross motion against an injured warehouse manager. Wolfe v Wayne-Dalton Corp., 133 A.D.3d 1281, 20 N.Y.S.3d 777, 2015 N.Y. App. Div. LEXIS 8616 (N.Y. App. Div. 4th Dep't 2015), reh'g denied, 137 A.D.3d 1633, 26 N.Y.S.3d 904, 2016 N.Y. App. Div. LEXIS 1949 (N.Y. App. Div. 4th Dep't 2016).

In a mortgage foreclosure action, the trial court properly exercised its discretion by denying plaintiff's motion for leave to renew its prior motion for summary judgment because it failed to set forth a reasonable justification for failing to present the new facts in connection with its prior motion and opposition. DLJ Mtge. Capital, Inc. v David, 147 A.D.3d 1024, 48 N.Y.S.3d 234, 2017 N.Y. App. Div. LEXIS 1320 (N.Y. App. Div. 2d Dep't 2017).

In a proceeding commenced by police department members, seeking a designation as police detectives, the trial court properly denied their motion seeking leave to renew because they did not present new facts, and they did not provide a reasonable justification for failing to produce the additional evidence in opposing the laches argument that supported the dismissal. Matter of Granto v City of Niagara Falls, 148 A.D.3d 1694, 51 N.Y.S.3d 714, 2017 N.Y. App. Div. LEXIS 2275 (N.Y. App. Div. 4th Dep't 2017).

Trial court erred in granting a defendant’s motion for leave to renew its motion to dismiss the plaintiffs’ second amended complaint against it and, upon renewal, in dismissing the second amended complaint and the specific performance cause of action because, even assuming that the allegedly new evidence was not cumulative, the purportedly new facts were available to the defendant at the time of the original motion, and the defendant failed to provide any reasonable justification for its failure to present the purportedly new facts on the original motion. The Walton & Willet Stone Block, LLC v City of Oswego Community Dev. Off., 175 A.D.3d 882, 107 N.Y.S.3d 224, 2019 N.Y. App. Div. LEXIS 6377 (N.Y. App. Div. 4th Dep't 2019), app. dismissed, 34 N.Y.3d 1145, 142 N.E.3d 110, 119 N.Y.S.3d 427, 2020 N.Y. LEXIS 106 (N.Y. 2020).

Bank’s motion for leave to renew its prior motion to, inter alia, vacate a dismissal order was properly denied where although the affidavits of two former attorneys provided some facts surrounding the bank’s default in appearing at the scheduled status conference in 2013, the bank provided no reasonable explanation for failing to present that evidence on its prior motion, including as part of its supplemental submission. Nothing in the record suggested that the affidavits could not have been obtained earlier through the exercise of due diligence. HSBC

Bank USA, N.A. v Chapman, 209 A.D.3d 848, 176 N.Y.S.3d 300, 2022 N.Y. App. Div. LEXIS 5756 (N.Y. App. Div. 2d Dep't 2022).

Mortgagor failed to demonstrate any valid reason why an affidavit, which averred that the required notice of default was mailed by first-class mail and that the address to which the notice of default was sent was the actual notice address, could not have been submitted on its prior motion. Since the affidavit was submitted without demonstrating a reasonable justification for failing to submit it on the prior summary judgment motion, renewal should have been denied per CPLR 2221(e)(2)(3). JPMorgan Chase Bank N.A. v EY Bay Ridge, LLC, 212 A.D.3d 794, 183 N.Y.S.3d 435, 2023 N.Y. App. Div. LEXIS 312 (N.Y. App. Div. 2d Dep't 2023).

Supreme court properly denied that branch of appellants' motion for leave to renew; appellants failed to demonstrate a reasonable justification for the failure to present the purported new facts with their complaint/petition or in opposition to the cross-petition, and failed to demonstrate that the alleged new facts would have changed the court's prior determination. Matter of Tauber v Gross, 216 A.D.3d 1066, 190 N.Y.S.3d 408, 2023 N.Y. App. Div. LEXIS 2682 (N.Y. App. Div. 2d Dep't 2023).

In a personal injury suit arising out of a car accident, plaintiff failed to show special and extraordinary circumstances to amend the bill of particulars long after discovery was complete and the case was certified for trial and plaintiff did not provide a reasonable justification for failing to submit the new medical report on the original cross-motion. Ghosio v Weiser, 224 A.D.3d 664, 205 N.Y.S.3d 140, 2024 N.Y. App. Div. LEXIS 696 (N.Y. App. Div. 2d Dep't 2024).

Supreme court properly denied petitioner's motion for leave to renew the petition; petitioner failed to justify failing to include an injury report with the petition, and although the report was provided to petitioner after filing in response to a Freedom of Information Law request, petitioner did not make that request until nearly two months after filing the petition and the delay was not explained. Matter of Polak v MTA Long Is. R.R., 230 A.D.3d 500, 215 N.Y.S.3d 511, 2024 N.Y. App. Div. LEXIS 4305 (N.Y. App. Div. 2d Dep't 2024).

Supreme Court improperly denied that branch of plaintiff's motion which was for leave to renew that branch of his prior motion which was for leave to enter a judgment on the issue of liability against defendant upon defendant's failure to appear or answer the complaint on grounds of untimeliness. Since plaintiff's prior motion had been denied with leave to renew, plaintiff was not required to demonstrate a reasonable justification for his failure to submit the new facts on the prior motion. Smith v Realty on Fox Croft Corp., 233 A.D.3d 908, 223 N.Y.S.3d 703, 2024 N.Y. App. Div. LEXIS 6739 (N.Y. App. Div. 2d Dep't 2024).

Supreme Court also properly denied the plaintiff leave to renew; plaintiff did not provide a reasonable justification for failing to include a foreperson's affidavit on plaintiff's original motion, plus plaintiff could not rely on his second supplemental bill of particulars, which was served after he moved for summary judgment and without leave of court, to reinstate a N.Y. Lab. Law § 241(6) cause of action predicated on a regulatory violation. Weekes v Tishman Tech. Corp., 2025 N.Y. App. Div. LEXIS 2992 (N.Y. App. Div. 2d Dep't 2025).

In holdover proceeding where petitioner landlord initially alleged that respondents' tenancies were commercial and thus not subject to rent stabilization protection, but then conceded, after respondents' summary judgment motion was granted, that loft apartments had been converted to residential use, petitioner was not entitled to renewal of that motion under CLS CPLR § 2221 based on evidence, which was readily available on prior motion, that respondents allegedly would not bear cost of renovations and thus were exempt from coverage under Emergency Tenant Protection Act, especially considering that petitioner offered no excuse for belated proffer of evidence, which was not even submitted with initial motion, but instead in reply to respondents' opposition. Tan Holding Corp. v Wallace, 182 Misc. 2d 422, 698 N.Y.S.2d 423, 1999 N.Y. Misc. LEXIS 447 (N.Y. Civ. Ct. 1999), rev'd in part, 187 Misc. 2d 687, 724 N.Y.S.2d 260, 2001 N.Y. Misc. LEXIS 83 (N.Y. App. Term 2001).

In mortgage foreclosure action, plaintiff's motion to renew or reargue prior summary judgment motion, which was denied because plaintiff failed to establish its corporate status, was treated as motion to renew and was denied, where plaintiff submitted documentation from Secretary of

State to establish its status but failed to submit reasonable justification for not producing this evidence on its initial motion. Ulster Sav. Bank v Goldman, 183 Misc. 2d 893, 705 N.Y.S.2d 880, 2000 N.Y. Misc. LEXIS 66 (N.Y. Sup. Ct. 2000).

In mortgage foreclosure action, court denied plaintiff's motion to renew its prior motion for summary judgment where it offered no excuse as to why it did not produce, at time of its original motion, signed and cancelled checks refuting defendant's assertion that he never received mortgage loan proceeds; moreover, mortgage loan at issue, on its face, violated Home Ownership and Equity Protection Act, 15 USCS § 1639, which precluded granting summary judgment in plaintiff's favor. Bankers Trust Co of Cal., N.A. v Payne, 188 Misc. 2d 726, 730 N.Y.S.2d 200, 2001 N.Y. Misc. LEXIS 262 (N.Y. Sup. Ct. 2001).

Where respondent's motion for leave to renew a prior motion was based on new or additional evidence which was not presented on the prior motion and respondent did not proffer an explanation in accordance with N.Y. C.P.L.R. 2221(e) for its failure to present its additional evidence on its prior motion, the trial court properly denied the motion for leave to renew. Matter of O'Donnell v Arrow Elecs., Inc., 294 A.D.2d 582, 743 N.Y.S.2d 277, 2002 N.Y. App. Div. LEXIS 5604 (N.Y. App. Div. 2d Dep't 2002).

Trial court properly denied that branch of a motion by plaintiffs, a railroad passenger and others, which sought leave to renew following the trial court's grant of summary judgment in favor of defendants, a railroad and others, dismissing plaintiffs' personal injury suit, as the accident report upon which plaintiffs relied in seeking renewal was known to plaintiffs and, with due diligence, available to them at the time of the original motion, and plaintiffs failed to set forth a reasonable excuse, as required by N.Y. C.P.L.R. 2221(e), explaining why it could not have been submitted at that time. Dawkins v Long Island R. R., 302 A.D.2d 349, 753 N.Y.S.2d 893, 2003 N.Y. App. Div. LEXIS 818 (N.Y. App. Div. 2d Dep't 2003).

Trial court erred in granting plaintiff leave to renew a motion to amend a medical malpractice complaint against a plastic surgery group and individuals to add a claim for wrongful death, as N.Y. C.P.L.R. 2221(e)(2), (3) provided, inter alia, that a motion for leave to renew had to be

based upon new facts not offered on the prior motion that would change the prior determination, and had to contain reasonable justification for the failure to present such facts on the prior motion, and even assuming that the affidavit which plaintiff offered on the motion to renew constituted new facts, the patient wholly failed to offer any explanation for the failure to present such facts upon the original motion. Sherman v Piccione, 304 A.D.2d 552, 757 N.Y.S.2d 112, 2003 N.Y. App. Div. LEXIS 3698 (N.Y. App. Div. 2d Dep't 2003).

Supreme Court properly denied an injured party’s motion for leave to renew a prior motion seeking to submit unsigned certified deposition testimony at trial, despite her contention that her motion was based on grounds she possessed new information purportedly establishing that the engineer’s deposition transcript at issue had been submitted to the tortfeasor’s counsel for signature and therefore, the court erred in refusing to admit the engineer’s deposition testimony as substantive evidence at trial, as the injured party merely offered a more detailed explanation of her failure to submit the engineer’s deposition testimony to the tortfeasor and provided no explanation for her failure to present these additional facts in her prior motion. Lattimore v Port Auth., 305 A.D.2d 639, 760 N.Y.S.2d 224, 2003 N.Y. App. Div. LEXIS 5968 (N.Y. App. Div. 2d Dep't 2003).

Trial court erred in granting a patient’s motion pursuant to N.Y. C.P.L.R. 2221 for leave to renew a motion pursuant to N.Y. C.P.L.R. 3215 to vacate a default judgment in a medical malpractice action, because the alleged new facts did not demonstrate a reasonable explanation for the patient’s default. Kingston v Brookdale Hosp. & Med. Ctr., 4 A.D.3d 397, 771 N.Y.S.2d 385, 2004 N.Y. App. Div. LEXIS 1332 (N.Y. App. Div. 2d Dep't 2004).

Trial court properly denied a company’s motion for leave to renew, pursuant to N.Y. C.P.L.R. 2221, following a finding that an insurer had no duty to defend or indemnify the company in an underlying personal injury action, because alleged new facts submitted in support of the motion for leave to renew were contained in a letter that was attached as an exhibit to the insurer’s original motion papers, and thus the company failed to establish that the alleged new facts were unavailable at the time of the original motions. Precision Electro Minerals Co. v Dryden Mut. Ins.

Co., 4 A.D.3d 823, 772 N.Y.S.2d 436, 2004 N.Y. App. Div. LEXIS 1460 (N.Y. App. Div. 4th Dep't 2004).

Where the information contained within an affidavit submitted by an injured party, in her personal injury action, on her motion for leave to renew was not newly-discovered evidence, and she failed to provide any reasonable justification for her failure to submit those affidavits in opposition to motions for summary judgment filed by the alleged tortfeasors, said tortfeasors were properly granted summary judgment. Hart v City of New York, 5 A.D.3d 438, 772 N.Y.S.2d 574, 2004 N.Y. App. Div. LEXIS 2444 (N.Y. App. Div. 2d Dep't), app. denied, 3 N.Y.3d 601, 782 N.Y.S.2d 404, 816 N.E.2d 194, 2004 N.Y. LEXIS 1579 (N.Y. 2004).

Motion for leave to renew and reargue, which was not based upon new evidence unavailable at the time of the original motion, was properly denied as a motion for reargument, the denial of which was not appealable; moreover, the movants failed to provide a reasonable excuse as to why the additional evidence upon which they relied could not have been submitted in support of their original motion. Ruddock v Boland Rentals, Inc., 5 A.D.3d 368, 774 N.Y.S.2d 50, 2004 N.Y. App. Div. LEXIS 2158 (N.Y. App. Div. 2d Dep't 2004).

Trial court erred in granting a plaintiff’s motion to renew after summary judgment was entered against plaintiff in a tort action; the supplemental opinion submitted by plaintiff’s expert was not new evidence and plaintiff failed to provide reasonable justification as to why the evidence in the supplemental opinion was not submitted at the time the original motion for summary judgment was pending. Stocklas v Auto Solutions of Glenville, Inc., 9 A.D.3d 622, 780 N.Y.S.2d 215, 2004 N.Y. App. Div. LEXIS 9404 (N.Y. App. Div. 3d Dep't), app. dismissed, app. denied, 4 N.Y.3d 738, 790 N.Y.S.2d 638, 823 N.E.2d 1286, 2004 N.Y. LEXIS 3882 (N.Y. 2004).

Lower court properly denied leave to renew in light of the claimant’s failure to present any “new facts,” N.Y. C.P.L.R. 2221(e)(2), that were available but unknown to him at the time of the original application. Matter of Rush v County of Nassau, 24 A.D.3d 560, 806 N.Y.S.2d 232, 2005 N.Y. App. Div. LEXIS 14142 (N.Y. App. Div. 2d Dep't 2005), app. dismissed, app. denied, 7 N.Y.3d 862, 824 N.Y.S.2d 601, 857 N.E.2d 1133, 2006 N.Y. LEXIS 3333 (N.Y. 2006).

Although the behavior of a breach of contract plaintiff was not so egregious as to call for imposition of sanctions on counsel, it was sufficiently willful and contumacious to justify the grant of the defendant's motion for an order of preclusion; where the materials sought were medical practice accounts that had long been promised to the defendant, the plaintiff's excuse that plaintiff was simply preoccupied with an "extremely busy medical practice" was inadequate. Campbell v Obear, 26 A.D.3d 877, 809 N.Y.S.2d 371, 2006 N.Y. App. Div. LEXIS 1321 (N.Y. App. Div. 4th Dep't 2006).

Because the "new facts" submitted by the plaintiff in support of renewal would not have changed the trial court's prior determination of the plaintiff's motion for leave to enter a default judgment against the defendant, the trial court properly denied the plaintiff's N.Y. C.P.L.R. 2221(e)(2) motion for leave to renew, granted the defendant's cross-motion for leave to serve a late answer, and compelled the plaintiff to accept the late answer. Nickell v Pathmark Stores, Inc., 44 A.D.3d 631, 843 N.Y.S.2d 177, 2007 N.Y. App. Div. LEXIS 10422 (N.Y. App. Div. 2d Dep't 2007).

As there was no reasonable justification for not placing new facts before the court on the original application by an inmate for admission to a substance abuse treatment program, a treatment program reviewer's request for renewal of the court's decision that granted the inmate's request was not warranted under N.Y. C.P.L.R. 2221(e)(3). Matter of Simmons v Joy, 879 N.Y.S.2d 898, 24 Misc. 3d 1030, 2009 N.Y. Misc. LEXIS 1328 (N.Y. Sup. Ct. 2009).

Court found that the administration failed to use reasonable efforts to prevent the removal of the children in a neglect proceeding and to return the children to the mother after their removal as required by N.Y. Fam. Ct. Act §§ 1027, 1028, because the administration presented no new facts on the renewal motion and failed to justify its failure to present such facts on the prior motion; the administration did not provide the mother with sufficient services or referrals in response to her significant psychiatric needs, even though the administration knew that the mother was psychiatrically hospitalized several times because she had not followed her prescribed psychotropic medicinal regimen and that when the mother was hospitalized the

children were being cared for by their 18 year old sibling. The administration should have provided additional services. Matter of Jamie C., 889 N.Y.S.2d 437, 26 Misc. 3d 580, 2009 N.Y. Misc. LEXIS 3079 (N.Y. Fam. Ct. 2009).

Defendant's motion to renew her N.Y. Crim. Proc. Law § 440.10 motion failed as notwithstanding the significance of the evidence proffered, defense counsel knew or should have known of the purported new facts prior to the N.Y. Crim. Proc. Law § 440.30(5) hearing and should have brought them to the court's attention at that time; further, as the arguments and supporting evidence provided by defendant could be considered on defendant's motion to reargue, denial of the motion to renew did not result in deprivation of substantial fairness to defendant. People v De Jesus, 935 N.Y.S.2d 464, 34 Misc. 3d 748, 2011 N.Y. Misc. LEXIS 5558 (N.Y. Sup. Ct. 2011).

Trial court erred in granting worker's N.Y. C.P.L.R. 2221 motion to renew opposition to an owner's summary judgment motion because, inter alia, the worker's submissions were insufficient to demonstrate a reasonable justification for failing to present the new evidence on prior motion; many of the efforts made by the worker and other individuals to locate the co-worker occurred after the motion for summary judgment was decided, and, thus, did not constitute reasonable justification for their failure to present the co-worker's affidavit on the prior motion. Moreover, the worker, who did not move to vacate the judgment until six months after locating the co-worker, failed to meet the "heavy burden" of showing due diligence in presenting the new evidence to the trial court once it was obtained. Abrams v Berelson, 94 A.D.3d 782, 942 N.Y.S.2d 132, 2012 N.Y. App. Div. LEXIS 2637 (N.Y. App. Div. 2d Dep't), app. dismissed, 19 N.Y.3d 949, 950 N.Y.S.2d 96, 973 N.E.2d 193, 2012 N.Y. LEXIS 1842 (N.Y. 2012).

Denial of motion for leave to renew under N.Y. C.P.L.R. 2221(e) a motorist's opposition to a driver's summary judgment motion under N.Y. Ins. Law § 5102(d) was affirmed as the additional affirmation produced from the motorist's treating physician was based on facts known to the motorist and his treating physician when the summary judgment motion was made; the fact that the motorist was pro se at the time, alone, did not justify his failure to obtain an adequate

affirmation from his treating physician. Further, the additional affirmation, although more detailed that the initial affirmation, was not a sufficient basis to change the summary judgment for the driver. Yebo v Cuadra, 98 A.D.3d 504, 949 N.Y.S.2d 451, 2012 N.Y. App. Div. LEXIS 5731 (N.Y. App. Div. 2d Dep't 2012).

7. — — —Lack of diligence

In personal injury action, court erred in granting plaintiff's motion to vacate summary judgment, pursuant to CLS CPLR §§ 2221 and 5015, since plaintiff did not exercise due diligence in producing "new evidence" where he waited 6 months after discovering new evidence to seek to vacate judgment, and he failed to proffer sufficient explanation for delay. Levitt v County of Suffolk, 166 A.D.2d 421, 560 N.Y.S.2d 487, 1990 N.Y. App. Div. LEXIS 11861 (N.Y. App. Div. 2d Dep't 1990), app. dismissed, 77 N.Y.2d 834, 566 N.Y.S.2d 588, 567 N.E.2d 982, 1991 N.Y. LEXIS 79 (N.Y. 1991).

In action against New York City and Triborough Bridge & Tunnel Authority (TBTA) for injuries sustained by pedestrian when she tripped and fell on pedestrian overpass, court properly denied motions by pedestrian and city for renewal of motion for summary judgment after TBTA was granted summary judgment on showing that it had transferred ownership of overpass to city in contract providing that overpass was to be maintained by city, notwithstanding affidavits of engineer who attributed hole in pavement in which pedestrian tripped to poor design, since no reason was given for lack of diligence in producing engineer's affidavits on TBTA's summary judgment motion, especially where engineer had examined overpass some 2 months before motion was made. Martin v Triborough Bridge & Tunnel Authority, 180 A.D.2d 596, 580 N.Y.S.2d 305, 1992 N.Y. App. Div. LEXIS 2920 (N.Y. App. Div. 1st Dep't), sub. op., app. denied, 182 A.D.2d 545, 1992 N.Y. App. Div. LEXIS 15133 (N.Y. App. Div. 1st Dep't 1992).

It was error to grant plaintiffs' motion to renew where alleged newly discovered evidence was available from police file at earlier juncture, that evidence was obtained by plaintiffs' prior counsel, yet instant motion was not made until almost 2 years later, plaintiffs failed to show that

they exercised due diligence in obtaining newly discovered evidence, and they did not proffer reasonable excuse for such failure. Cannistra by Cannistra v Gibbons, 224 A.D.2d 570, 639 N.Y.S.2d 48, 1996 N.Y. App. Div. LEXIS 1421 (N.Y. App. Div. 2d Dep't 1996).

In combined Article 78 proceeding and action for declaratory judgment annulling town planning board's grant of special use permit for property owner's construction of hot mix asphalt plant, property owner was not entitled to renewal of its motion for summary judgment where its failure to discover, at time of its original motion, that town failed to file zoning map with Secretary of State resulted from owner's lack of diligence rather than justifiable excuse, owner's summary judgment motion was made within 5 weeks of commencement of combined proceeding/complaint, and owner had ample time to investigate all aspects of case yet chose to hastily move for summary judgment. Dyer v Planning Bd., 251 A.D.2d 907, 674 N.Y.S.2d 860, 1998 N.Y. App. Div. LEXIS 7773 (N.Y. App. Div. 3d Dep't 1998), app. dismissed, 92 N.Y.2d 1026, 684 N.Y.S.2d 490, 707 N.E.2d 445, 1998 N.Y. LEXIS 4325 (N.Y. 1998), app. dismissed, 93 N.Y.2d 1000, 695 N.Y.S.2d 745, 717 N.E.2d 1082, 1999 N.Y. LEXIS 1977 (N.Y. 1999).

Plaintiffs were not entitled to renewal of their motion for summary judgment where Appellate Division had affirmed its prior denial of summary judgment to them, and they failed to show justifiable excuse for not pursuing discovery more expeditiously. Cohoes Realty Assocs. v Lexington Ins. Co., 266 A.D.2d 11, 698 N.Y.S.2d 217, 1999 N.Y. App. Div. LEXIS 11190 (N.Y. App. Div. 1st Dep't 1999), app. dismissed, 94 N.Y.2d 875, 705 N.Y.S.2d 7, 726 N.E.2d 484, 2000 N.Y. LEXIS 12 (N.Y. 2000).

Plaintiffs were not entitled to renewal of action where they waited over one year after they obtained evidence before seeking renewal on ground of newly discovered evidence, and thus they did not show due diligence in presenting such evidence. Booth v 3669 Del., Inc., 275 A.D.2d 974, 714 N.Y.S.2d 251, 2000 N.Y. App. Div. LEXIS 9597 (N.Y. App. Div. 4th Dep't 2000), app. dismissed, 96 N.Y.2d 730, 722 N.Y.S.2d 796, 745 N.E.2d 1018, 2001 N.Y. LEXIS 63 (N.Y. 2001).

In a personal injury action, the trial court properly granted plaintiff's motion pursuant to N.Y. C.P.L.R. 3126 to strike the answer of the employee of a bar, because the employee's failure to appear for court-ordered depositions on three occasions was willful and contumacious in character, and the trial court providently exercised its discretion in denying a motion pursuant to N.Y. C.P.L.R. 2221 for leave to renew since his counsel failed to demonstrate diligent efforts to locate the employee. Carbajal v Bobo Robo, Inc., 38 A.D.3d 820, 833 N.Y.S.2d 150, 2007 N.Y. App. Div. LEXIS 3989 (N.Y. App. Div. 2d Dep't 2007).

Injured party was not entitled to leave to renew, as her motion was based on evidence which could have been discovered at an earlier time with due diligence. Yarde v N.Y. City Transit Auth., 4 A.D.3d 352, 771 N.Y.S.2d 185, 2004 N.Y. App. Div. LEXIS 1034 (N.Y. App. Div. 2d Dep't 2004).

Plaintiff's motion to renew her prior motion for summary judgment on the issue of liability made prediscovery was properly denied because she failed to exercise due diligence in obtaining the probative facts and failed to provide a reasonable justification for her failure to present those facts in the prior motion. Perretta v New York City Tr. Auth., 230 A.D.3d 428, 217 N.Y.S.3d 30, 2024 N.Y. App. Div. LEXIS 4328 (N.Y. App. Div. 1st Dep't 2024).

8. — —Materiality

After motion to compel trust remaindermen to comply with subpoena duces tecum was denied on ground of attorney-client privilege, movant's further motion to renew was properly denied where purported "newly discovered evidence," allegedly indicating that remaindermen could not have had attorney-client relationship with attorney or his law firm, did not constitute material facts or evidence that would have changed outcome if it had been presented earlier. In re Saxton, 245 A.D.2d 733, 665 N.Y.S.2d 742, 1997 N.Y. App. Div. LEXIS 12951 (N.Y. App. Div. 3d Dep't 1997).

In action for partition of real property, defendant was not entitled to summary judgment granting her title to property in fee simple where she offered no meaningful evidence to rebut

presumption of delivery of recorded deeds under CLS Real P § 244, and purported new evidence submitted on her renewal motion was based on hearsay and would not have altered result. Dwyer v Adler, 251 A.D.2d 535, 673 N.Y.S.2d 925, 1998 N.Y. App. Div. LEXIS 7504 (N.Y. App. Div. 2d Dep't 1998).

Trial court properly denied a borrower's motion to quash two subpoenas duces tecum served upon non-parties because the issue of whether a third party was assisting the lender with a new business aside from the redemption of the property was not material and necessary to the issue referred, and the statutory rate applied where the underlying loan documents did not contain a clear, unambiguous, and unequivocal expression that interest would be paid at a higher rate. Luna Light., Inc. v Just Indus., Inc., 137 A.D.3d 1228, 29 N.Y.S.3d 410, 2016 N.Y. App. Div. LEXIS 2323 (N.Y. App. Div. 2d Dep't 2016).

Trial court properly denied an injured worker's motion for leave to renew because his newly submitted evidence would not have changed the prior determination inasmuch as it did not show the existence of special circumstances in which there was sufficient authority and ability to control the conduct of third persons or establish the essential elements of a joint venture between a supplier and a manufacturer. Ciaravino v Bulldog Natl. Logistics, LLC, 146 A.D.3d 925, 46 N.Y.S.3d 127, 2017 N.Y. App. Div. LEXIS 450 (N.Y. App. Div. 2d Dep't 2017).

9. — —Particular evidence

In seller’s action for breach of contract for sale of bar and nightclub, to enjoin purchasers from continued operation of business, and to grant seller possession of premises, Supreme Court erred in denying purchasers’ motion for leave to renew in which they sought vacatur of prior order directing deposit of remainder of purchase price into court (which had been ordered in lieu of granting seller possession) where purchasers demonstrated that they had vacated premises and that seller had taken possession so that no further reason existed for requiring deposit; additionally, in disputed contract action, court may not direct payment into court in order to provide party with security for satisfaction of possible judgment. Renad, Inc. v Grana, Ltd., 127

A.D.2d 994, 512 N.Y.S.2d 940, 1987 N.Y. App. Div. LEXIS 43491 (N.Y. App. Div. 4th Dep't 1987).

Article 78 proceeding for review of decisions by town planning board and zoning board of appeals, permitting expansion of cemetery, was properly dismissed on town's renewal motion, based on affidavit of deputy town clerk attesting to filing dates of determinations under review which had been omitted inadvertently when proceeding was initially considered, since (1) record established that petitioners had failed to commence proceeding within 30 days of filing of determinations as required by CLS Town §§ 267 and 274-a, and (2) additional proof of filing, submitted on renewal, reaffirmed that proceeding was untimely; while motion for renewal generally should be based on newly-discovered facts, court has discretion to grant renewal on facts known to movant at time of original motion. Watsky v Ossining Planning Bd., 136 A.D.2d 634, 523 N.Y.S.2d 598, 1988 N.Y. App. Div. LEXIS 419 (N.Y. App. Div. 2d Dep't 1988).

IAS court properly granted motion to renew by defendant in personal injury action to extent of permitting affirmative defense of workers' compensation to remain interposed in action where there was newly discovered information not available at time of original action as to existence of employment relationship between plaintiff and defendant. Lopez v Jan Transport, Inc., 148 A.D.2d 397, 539 N.Y.S.2d 345, 1989 N.Y. App. Div. LEXIS 4077 (N.Y. App. Div. 1st Dep't 1989).

In action under Human Rights Law in which some claims were dismissed as time-barred and dismissal was affirmed on appeal, court should have granted plaintiff's renewal motion to reinstate dismissed claims based on "newly discovered" evidence where administrative complaint had been filed with Division of Human Rights (DHR) unbeknownst to plaintiff, on referral from United States Equal Employment Opportunity Commission (EEOC), and such complaint was not dismissed until 9 days after disposition of judicial appeal, since (1) statute of limitations was tolled during pendency of administrative complaint and therefore judicial proceeding should have been deemed to have been commenced on DHR's dismissal of complaint, (2) any lack of diligence in bringing renewal motion was attributable to plaintiff's attorney, and (3) defendants failed to demonstrate prejudice. Sciss v Metal Polishers Union

Local 8A, 149 A.D.2d 318, 539 N.Y.S.2d 899, 1989 N.Y. App. Div. LEXIS 4385 (N.Y. App. Div. 1st Dep't 1989).

In negligence and strict products liability action by roofer to recover for cancer allegedly caused by exposure to roofing and waterproofing substance, Supreme Court was not barred from entertaining motions for leave to renew motions for summary judgment based on newly discovered evidence where (1) Supreme Court granted defendants' original motions to dismiss based on statute of limitations, but Appellate Division reversed, and reinstated complaint, (2) at examinations before trial following reversal, plaintiff first testified that he last worked with substance in 1977 or 1978, but later testified that he last worked with substance in 1974, and (3) based on latter date, defendant made motions to renew based on allegation that action was commenced more than 3 years after last exposure to substance. Harrell v Koppers Co., 154 A.D.2d 340, 545 N.Y.S.2d 818, 1989 N.Y. App. Div. LEXIS 12279 (N.Y. App. Div. 2d Dep't 1989).

Plaintiff's motion to renew prior motion to file lis pendens in mortgage litigation was properly denied, even though plaintiff asserted that certain 1977 agreement had not been before court at time of prior motion, where (1) parties had been involved in litigation since 1978, (2) 1984 order had enjoined plaintiff from bringing further actions without prior permission of court, (3) in 1988, one month before making motion to renew, plaintiff was found guilty of contempt of 1984 order, and (4) plaintiff admitted that he knew of 1977 agreement at time of motion to file lis pendens; motion to renew must be based on additional material facts which existed at time of prior motion but were not then known to party seeking to renew and therefore not made known to court. Silverman v Leucadia, Inc., 159 A.D.2d 254, 552 N.Y.S.2d 248, 1990 N.Y. App. Div. LEXIS 2362 (N.Y. App. Div. 1st Dep't 1990).

In personal injury action arising from single car accident, court abused its discretion in summarily denying plaintiff's renewal motion after it granted summary judgment to automobile manufacturer where (1) plaintiff claimed to have no memory of accident but alleged that accident was caused when hood latch on car malfunctioned and hood unexpectedly sprung open, as it

had on previous occasions, (2) plaintiff's discovery responses established that he longer possessed car and did not know its location, (3) manufacturer served notice to admit on plaintiff seeking concession that he had performed no expert inspection of car and had no memory or accident, (4) following plaintiff's admission of these facts, manufacturer sought and received summary judgment on basis that plaintiff could not prove that allegedly defective hood latch caused accident, and (5) plaintiff's new counsel thereafter discovered that car was titled in name of defense counsel, who had possession of car for 5 months before summary judgment motion was made; under circumstances, court should have granted renewal but held resolution of summary judgment motion in abeyance while plaintiff conducted examination of vehicle. Jones v General Motors Corp., 185 A.D.2d 398, 585 N.Y.S.2d 820, 1992 N.Y. App. Div. LEXIS 8889 (N.Y. App. Div. 3d Dep't 1992).

Court should have granted plaintiff's renewal motion to change language of proposed preliminary and permanent injunctions by adding new, more narrow wording where court had previously granted more broadly worded restraining order, and defendant did not oppose proposed amendment on any grounds. Lambert v Williams, 218 A.D.2d 618, 631 N.Y.S.2d 31, 1995 N.Y. App. Div. LEXIS 8939 (N.Y. App. Div. 1st Dep't 1995).

In action to foreclose mortgage and for deficiency judgment, court properly denied individual defendant's motion to renew and reargue summary judgment motion where defendant sought to show that she was not partner in mortgagor partnership but submitted only partnership certificate that was executed one month after loan application on which mortgage was based; because certificate did not exist at time loan application was executed, it did not raise triable issue of fact as to whether mortgagee relied on defendant's representation that she was partner. First Nationwide Bank v Brookhaven Realty Assocs., 223 A.D.2d 618, 637 N.Y.S.2d 418, 1996 N.Y. App. Div. LEXIS 415 (N.Y. App. Div. 2d Dep't), app. dismissed, 88 N.Y.2d 963, 647 N.Y.S.2d 715, 670 N.E.2d 1347, 1996 N.Y. LEXIS 1545 (N.Y. 1996).

Plaintiff's motion to renew dismissal of his action on grounds of forum non conveniens was properly denied where he failed to offer valid excuse for failing to submit—on original motion—

additional facts, which merely consisted of opinion from English counsel that fees were higher and that litigation would probably last longer in England than in New York. Zelouf v Republic Nat'l Bank, 225 A.D.2d 419, 640 N.Y.S.2d 15, 1996 N.Y. App. Div. LEXIS 2724 (N.Y. App. Div. 1st Dep't 1996).

Court properly denied defendants' motion for leave to renew their prior motion to amend their answer to add counterclaims charging that plaintiffs' negligence in failing to keep their child from playing in street was primary cause of accident, despite allegedly newly discovered evidence consisting of mother's admission during her examination before trial that she allowed her child to play in street, since defendants were merely attempting to circumvent case law disallowing actions based on negligent parental supervision by arguing that mother, as owner of land abutting highway, created dangerous condition on roadway by placing her own child thereon. Wallace v Pacelli, 225 A.D.2d 924, 638 N.Y.S.2d 850, 1996 N.Y. App. Div. LEXIS 2257 (N.Y. App. Div. 3d Dep't 1996).

Court improperly denied defendant's motion to renew plaintiffs' motion for summary judgment on defendant's showing that it had in fact obtained coverage for plaintiff as additional insured on policy at issue where defendant's supposed failure to obtain coverage for plaintiffs was sole basis for summary judgment against defendant, defendant's failure to locate endorsement when motion was originally made was adequately excused by fact that plaintiff's name was misspelled on policy endorsement, and there was no showing of prejudice by 3-month delay between original order and motion for renewal. Hartley v NAB Constr. Co., 228 A.D.2d 387, 644 N.Y.S.2d 730, 1996 N.Y. App. Div. LEXIS 7499 (N.Y. App. Div. 1st Dep't 1996).

Court properly denied plaintiff's motion to renew defendant's prior summary judgment motion to dismiss, inter alia, action premised on its aiding and abetting fraud where new evidence presented did not raise fact issue as to whether defendant was aware of fraud, which is element of such action. Murray Hill Invs. v Adas Yereim, Inc., 233 A.D.2d 305, 649 N.Y.S.2d 810, 1996 N.Y. App. Div. LEXIS 11594 (N.Y. App. Div. 2d Dep't 1996).

In action by plaintiff who tripped and fell as result of pothole in city street, city's motion for summary judgment, on ground that it did not receive prior written notice in accordance with city code, was properly denied as premature where city had not yet complied with plaintiff's notice for discovery and inspection, and plaintiff opposed summary judgment on basis that city created pothole; however, court should have granted city's application to renew, made after city furnished its discovery response, and should have dismissed complaint where there was no proof that city created allegedly defective condition. Karnes v City of White Plains, 237 A.D.2d 574, 655 N.Y.S.2d 615, 1997 N.Y. App. Div. LEXIS 3027 (N.Y. App. Div. 2d Dep't 1997).

In action for declaratory judgment that insurer was not obligated to defend and indemnify its insured in underlying personal injury action, court's denial of insurer's prior motion for summary judgment, on ground that issue of fact existed as to whether policy contained condition requiring insured to give written notice of accident to insurer as soon as practicable, did not bar consideration of plaintiff's subsequent renewed motion for same relief where court granted renewed motion on ground that notice, which was not received by insurer until 3 years after accident, was not given within reasonable time as matter of law. Mount Vernon Fire Ins. Co. v Timm, 237 A.D.2d 586, 655 N.Y.S.2d 611, 1997 N.Y. App. Div. LEXIS 3056 (N.Y. App. Div. 2d Dep't), app. denied, 90 N.Y.2d 806, 663 N.Y.S.2d 511, 686 N.E.2d 223, 1997 N.Y. LEXIS 2974 (N.Y. 1997).

Plaintiffs' motion for leave to renew was properly denied where facts on which motion was based were known to plaintiffs before Appellate Division's determination of prior appeal, and if, as injured plaintiff now claimed, he was not special employee of defendant, there would be no basis to impose liability on defendant under CLS Labor § 240 or § 241, because defendant would not fall within class of entities having nondelegable liability as "agent" under those sections. Olsen v We'll Manage, 238 A.D.2d 556, 656 N.Y.S.2d 384, 1997 N.Y. App. Div. LEXIS 4394 (N.Y. App. Div. 2d Dep't 1997).

In personal injury action against elevator service company, Supreme Court, on granting motion to renew, could not adhere to its prior decision on different ground that new affidavit did not

prove factual issues pointing to service company's negligence where original motions for summary judgment were not based on claim that services or repairs were performed in nonnegligent manner. Brignol v Warren Elevator Serv. Co., 240 A.D.2d 354, 657 N.Y.S.2d 768, 1997 N.Y. App. Div. LEXIS 5790 (N.Y. App. Div. 2d Dep't 1997).

In action by lake park commission against lodge owners to collect penalties for nonpayment of commercial dock fees, owners were properly required to remove 6-foot extensions of 25 docks where no expansion permit was ever secured; owners could not belatedly interject, on their motion for renewal of their previously denied cross motion to dismiss commission's motion for summary judgment, claim that no permit for such extensions was required where they never raised that issue before commission and failed to exhaust their administrative remedies. Lake George Park Comm'n v Salvador, 245 A.D.2d 605, 664 N.Y.S.2d 847, 1997 N.Y. App. Div. LEXIS 12557 (N.Y. App. Div. 3d Dep't 1997), app. dismissed in part, app. denied, 91 N.Y.2d 939, 670 N.Y.S.2d 402, 693 N.E.2d 749, 1998 N.Y. LEXIS 892 (N.Y. 1998).

Court properly granted respondent Attorney General's motion to dismiss, and properly denied petitioner's motion to renew, Article 78 proceeding challenging Attorney General's refusal to certify, under CLS Pub O § 17(2)(b), that petitioner was entitled to be represented by private counsel of his choice in federal action brought against him and others under 42 USCS § 1983 where complaint in federal action did not allege that petitioner was not executing Attorney General's policy or otherwise acting beyond scope of his employment, there was never any possibility that petitioner would be held liable for unreimbursable damages, and petitioner's allegations did not show that Attorney General was asserting position that exposed petitioner to unreimbursable liability, was contemplating such position, or was otherwise putting himself in conflict with petitioner. Samuels v Vacco, 251 A.D.2d 10, 674 N.Y.S.2d 11, 1998 N.Y. App. Div. LEXIS 6381 (N.Y. App. Div. 1st Dep't 1998).

In action to recover proceeds of insurance policy, insurer was not entitled to either summary judgment or renewal, on ground that policy was void due to misrepresentations by insured on insurance application and at her examination under oath, where insurer failed to show that

misinformation on application was material or that false statements at examination were made with intent to deceive or defraud insurer. Kirkpatrick v State Farm Fire & Cas. Co., 255 A.D.2d 363, 679 N.Y.S.2d 688, 1998 N.Y. App. Div. LEXIS 11810 (N.Y. App. Div. 2d Dep't 1998).

Since Department of Taxation and Finance conciliation order which had not been timely appealed by plaintiffs was non-binding, it was not dispositive of whether defendant (as opposed to Department of Taxation and Finance) was liable to plaintiffs for amount claimed; thus, plaintiffs' motion to renew their previously denied motion for summary judgment against defendant, premised on conciliation order, was properly denied. Taft Partners Dev. Group v Drizin, 283 A.D.2d 218, 728 N.Y.S.2d 363, 2001 N.Y. App. Div. LEXIS 4789 (N.Y. App. Div. 1st Dep't 2001).

Trial court erred in granting a dog owner's motion pursuant to N.Y. C.P.L.R. 2221(e)(2) to renew their motion for summary judgment in a dog bite case, as the evidence offered in support of the renewal motion was merely cumulative of information offered by the parents of the injured child during the earlier summary judgment proceeding. Skoney v Pittner, 21 A.D.3d 1422, 801 N.Y.S.2d 654, 2005 N.Y. App. Div. LEXIS 10414 (N.Y. App. Div. 4th Dep't 2005).

Trial court erred in denying a corporation's motion pursuant to N.Y. C.P.L.R. 2221(e) to renew a prior motion for summary judgment, as production of an exemplar chair and an expert engineer's inspection of that chair and resultant conclusions constituted new facts not known or available to the corporation at the time of the prior motion; however, in light of the parties' engineers' conflicting affidavits, the extent of prejudice that the corporation might have suffered as a result of the destruction of chair which allegedly collapsed and injured a plaintiff could not be determined at this stage of the proceedings, and under these circumstances, upon renewal, the corporation was still not entitled to the relief sought on the prior motion, N.Y. C.P.L.R. 2221(e)(2). Kreusi v City of New York, 40 A.D.3d 820, 836 N.Y.S.2d 281, 2007 N.Y. App. Div. LEXIS 6170 (N.Y. App. Div. 2d Dep't 2007).

In a wrongful death action, a lower court properly granted a used car dealership leave to renew its motion for summary judgment because the dealership established, inter alia, that since the

lower court had denied its motion for summary judgment, it had discovered “new facts” that would change the determination denying that motion, under N.Y. C.P.L.R. 2221(e)(2), because a driver’s insurance policy and response to a notice to admit clearly established that a vehicle was insured at all relevant times, and thus, that the dealership could not have been estopped from denying ownership of the vehicle at the time of an accident. Sanz v Discount Auto, 41 A.D.3d 685, 838 N.Y.S.2d 613, 2007 N.Y. App. Div. LEXIS 7751 (N.Y. App. Div. 2d Dep't 2007).

Trial court improvidently exercised its discretion in denying that branch of the motion of an authority which was for leave to renew that branch of its prior motion to dismiss the complaint as a sanction for a construction company’s failure to produce two witnesses for depositions by a date certain; the authority proffered new facts on its motion to renew establishing that, even after the construction company became subject to an order, inter alia, compelling it to produce the witnesses for depositions, it expressly refused to produce them. Thus, to the extent that the authority sought renewal in order to change the contingent penalty to be imposed for failing to produce the witnesses for depositions from preclusion of their testimony to dismissal of the complaint, the motion to renew should have been granted. Trataros Constr., Inc. v New York City School Constr. Auth., 46 A.D.3d 872, 849 N.Y.S.2d 582, 2007 N.Y. App. Div. LEXIS 13313 (N.Y. App. Div. 2d Dep't 2007).

Although the trial court properly directed the defendants to make a supplemental accounting, in accordance with generally accepted accounting principles, and provide it to the plaintiff, there was no basis under N.Y. C.P.L.R. 2221(e) for including a direction upon renewal that the supplemental accounting be made using the accrual method. Wiesenthal v Wiesenthal, 52 A.D.3d 698, 860 N.Y.S.2d 187, 2008 N.Y. App. Div. LEXIS 5577 (N.Y. App. Div. 2d Dep't 2008).

Because mold samples taken by the tenants’ industrial hygienist had lost their testable value by the time the manager sought them, and because the manager could have taken its own samples, it was not prejudiced by the destruction of the samples; therefore, the tenants’ N.Y. C.P.L.R. 2221 motion for leave to renew should have been granted and the manager’s N.Y. C.P.L.R. 3216 motion to preclude the samples should have been vacated. Holland v W.M.

Realty Mgt., Inc., 64 A.D.3d 627, 883 N.Y.S.2d 555, 2009 N.Y. App. Div. LEXIS 5690 (N.Y. App. Div. 2d Dep't 2009).

As for the the Metropolitan Transit Authority’s (MTA) renewal motion, Even if improperly presented evidence were considered, it would not change the outcome because a property owner’s apparent acknowledgement to a developer concerning the transit-related purpose of its construction was not relevant to whether the MTA exercised its right to occupy the sidewalk out side of the owner’s property or issued its stop work order arbitrarily or failed to provide due process. Matter of Trinity NYC Hotel, LLC v Metropolitan Transp. Auth., 191 A.D.3d 448, 142 N.Y.S.3d 482, 2021 N.Y. App. Div. LEXIS 633 (N.Y. App. Div. 1st Dep't 2021).

A motion to renew a prior motion to vacate a default judgment would be granted, where, on the prior motion, defendant asserted that he had never received any legal papers in the action and plaintiff’s opposition papers, which alleged substituted service upon defendant pursuant to CPLR § 308(2) and personal service upon his daughter at defendant’s residence, but did not contain the affidavit of service contradicted on the renewed motion by an affidavit of defendant’s daughter alleging she was never served. Defendant was justified in not previously submitting the daughter’s affidavit on the prior motion because the affidavit of service was not before the court. Albers v Luizzi Enterprises, Inc., 127 Misc. 2d 190, 485 N.Y.S.2d 710, 1985 N.Y. Misc. LEXIS 2575 (N.Y. Sup. Ct. 1985).

Pro se plaintiff, incarcerated husband, would be granted leave to renew motion seeking divorce even though additional facts had been in existence at time of prior motion and had not been presented to court in underlying papers submitted in connection therewith, since those facts pertained to terms of imprisonment and circumstances under which he met wife, which, if originally alleged, might have been determinative of court’s original decision. Defeo v Defeo, 159 Misc. 2d 490, 605 N.Y.S.2d 202, 1993 N.Y. Misc. LEXIS 472 (N.Y. Sup. Ct. 1993).

Even though a private antitrust trial had been bifurcated into two proceedings, since it was necessary to show some injury in order to establish liability, the trial judge revisited an earlier judge’s order in limine, which had been purely advisory in nature, and held that evidence of

damages would be admissible in the liability trial to the extent necessary to show liability. George Miller Brick Co., Inc. v Stark Ceramics, Inc., 801 N.Y.S.2d 120, 9 Misc. 3d 151, 2005 N.Y. Misc. LEXIS 1163 (N.Y. Sup. Ct. 2005).

Although plaintiff's N.Y. C.P.L.R. 2221(d), (e), motion for reargument and renewal of defendants' dismissal motion was granted, and the court considered plaintiff's claims, it adhered to its original order dismissing plaintiff's complaint pursuant to N.Y. C.P.L.R. 3211(a)(1), (7). Plaintiff did not show that the court had any conflict of interest, and the court did not err in failing to consider plaintiff's sur-reply, which plaintiff claimed was "new evidence," because plaintiff had filed the submission after the court had denied plaintiff's motion seeking leave to file a sur-reply. Kupersmith v Winged Foot Golf Club Inc., 235 N.Y.L.J. 46, 2006 N.Y. Misc. LEXIS 4018 (N.Y. Sup. Ct. Mar. 9, 2006), aff'd in part, 38 A.D.3d 847, 832 N.Y.S.2d 675, 2007 N.Y. App. Div. LEXIS 3960 (N.Y. App. Div. 2d Dep't 2007).

10. — — —Expert evidence

In an action for personal injuries, the trial court properly granted plaintiff's motion for renewal of a prior motion, which was denied without prejudice to renewal upon proper papers, and properly ordered the action removed from the civil court to the supreme court, where the previous order denying plaintiff's motion to remove the action to the supreme court without prejudice to the renewal upon submission of an affidavit from a medical doctor stating what the injury was and whether there was any causal connection between the condition alleged and the accident in question, and where the medical affidavit annexed to the motion for renewal demonstrated such causal connection and that plaintiff's delay in seeking relief arose from the inability to assess initially the true extent of plaintiff's injuries. Best v New York City Transit Authority, 88 A.D.2d 579, 449 N.Y.S.2d 803, 1982 N.Y. App. Div. LEXIS 16741 (N.Y. App. Div. 2d Dep't 1982).

In a medical malpractice action the trial court erred in granting plaintiffs' motion for leave to renew and to reargue a prior order that had dismissed their complaint on the basis of plaintiffs' submission of an affidavit from a medical expert for the purpose of remedying an evidentiary

deficiency where such affiant had not been retained solely after the granting of defendants' motion for summary judgment, but had been engaged as a medical expert by plaintiffs for some time prior to the determination of such motion, and where plaintiffs failed to offer any explanation for their failure to have submitted an affidavit from a qualified medical expert in opposition to the original motion for summary judgment. Kratter v Weintraub, 97 A.D.2d 491, 467 N.Y.S.2d 414, 1983 N.Y. App. Div. LEXIS 20082 (N.Y. App. Div. 2d Dep't 1983).

In medical malpractice action, Special Term erred in granting hospital's motion to renew its motion for summary judgment where papers in support of motion to renew consisted of affidavit from same physician containing same material as that submitted with original motion for summary judgment, thus violating rule prohibiting successive motions for summary judgment in guise of motion to renew where "new" material could have been submitted with original motion. Echeverri v Flushing Hospital & Medical Center, 123 A.D.2d 818, 507 N.Y.S.2d 433, 1986 N.Y. App. Div. LEXIS 60950 (N.Y. App. Div. 2d Dep't 1986).

In personal injury action, court erred in granting plaintiff's renewal motion and vacating summary judgment for defendant based on affidavit of same chiropractor who submitted affidavit in opposition to defendant's summary judgment motion, where second affidavit merely contained more detailed and factually embellished description of plaintiff's injuries and thus did not represent new material, and there was no compelling reason to vacate prior grant of summary judgment. Green v Wright, 126 A.D.2d 514, 510 N.Y.S.2d 635, 1987 N.Y. App. Div. LEXIS 41656 (N.Y. App. Div. 2d Dep't 1987).

In medical malpractice action wherein court vacated plaintiffs' default despite lack of expert's affidavit of merit on ground that claimed malpractice was within ordinary knowledge of lay person, it was not abuse of discretion to grant defendants' renewal motion since additional facts were provided by affidavit of medical doctor who attested that question as to whether alleged injuries were caused by malpractice was outside ordinary knowledge of lay person; failure to submit such information in first instance was excusable, in view of defendants' reasonable belief that plaintiffs' failure to provide affidavit of merits would preclude vacatur of default under

generally accepted law. Nutting v Associates in Obstetrics & Gynecology, P.C., 130 A.D.2d 870, 515 N.Y.S.2d 926, 1987 N.Y. App. Div. LEXIS 46870 (N.Y. App. Div. 3d Dep't 1987).

It was proper exercise of discretion for Court of Claims to deny leave to renew and, on reargument, adhere to its original decision where state failed to offer plausible excuse for not initially presenting expert affidavits, especially since newly proffered evidence would not have altered result. Koumianos v State, 141 A.D.2d 189, 534 N.Y.S.2d 512, 1988 N.Y. App. Div. LEXIS 10370 (N.Y. App. Div. 3d Dep't 1988).

In action to recover for personal injuries, plaintiff was not entitled to leave to renew defendants' motion for summary judgment, which had been granted on basis that plaintiff failed to show that he suffered serious injury within meaning of CLS Ins § 5102(d), where plaintiff sought to present medical reports prepared several months after summary judgment had been granted to defendants, and several years after date of underlying accident, but offered no explanation as to why similar medical reports could not have been prepared at earlier date and made no allegation that his condition deteriorated after original motion for summary judgment had been made. Egan v Greene, 154 A.D.2d 574, 546 N.Y.S.2d 635, 1989 N.Y. App. Div. LEXIS 13536 (N.Y. App. Div. 2d Dep't 1989).

Trial court abused its discretion in rejecting defendant's offer of affidavit by non-employee expert, and in denying defendant's motion for renewal or reargument of its summary judgment motion, even though affidavit did not constitute new matter unknown to defendant prior to making summary judgment motion, where court had rejected testimony of original expert due to his interest in litigation as employee of defendant, and in response thereto defendant had offered affidavit of non-employee expert who had reached same conclusion as employee expert. Whelan v GTE Sylvania, Inc., 182 A.D.2d 446, 582 N.Y.S.2d 170, 1992 N.Y. App. Div. LEXIS 5743 (N.Y. App. Div. 1st Dep't 1992).

Court abused its discretion by denying plaintiff's application for leave to renew defendant's motion for summary judgment in motor vehicle accident case where material facts relating to plaintiff's current physical condition were not available to plaintiff or his counsel at time of motion

through inadvertence of examining physician but were communicated shortly thereafter, and physician’s affidavit definitively diagnosed plaintiff as suffering from herniated disc causally related to accident. Seifts v Markle, 211 A.D.2d 848, 620 N.Y.S.2d 620, 1995 N.Y. App. Div. LEXIS 61 (N.Y. App. Div. 3d Dep't 1995).

Court in medical malpractice action properly granted plaintiffs’ motion for renewal to permit consideration of subsequently obtained expert’s affidavit. Weissman v Wider, 235 A.D.2d 474, 652 N.Y.S.2d 1006, 1997 N.Y. App. Div. LEXIS 419 (N.Y. App. Div. 2d Dep't 1997).

Recruitment of new expert is not legitimate basis for renewal. Welch Foods v Wilson, 247 A.D.2d 830, 669 N.Y.S.2d 109, 1998 N.Y. App. Div. LEXIS 1127 (N.Y. App. Div. 4th Dep't 1998).

Town was not entitled to renewal of its motion for summary judgment dismissing complaint against it where expert’s affidavit submitted with motion to renew was based on facts within possession and knowledge of town at time of its original motion. Conley v Central Square Sch. Dist., 255 A.D.2d 981, 679 N.Y.S.2d 872, 1998 N.Y. App. Div. LEXIS 12259 (N.Y. App. Div. 4th Dep't 1998).

In trip and fall case, affidavit of plaintiff’s expert would have been sufficient to defeat defendant supermarket’s summary judgment motion where expert stated that history of prior accidents and bumps in floor mat should have put defendant on notice of problems, and that its failure to secure mat was departure from good and accepted safe practice, and thus plaintiff’s renewal motion should have been granted. Allison v D'Agostino Supermarkets, Inc., 282 A.D.2d 219, 723 N.Y.S.2d 30, 2001 N.Y. App. Div. LEXIS 3362 (N.Y. App. Div. 1st Dep't 2001).

Supreme Court properly denied an injured party’s motion for leave to renew a prior motion seeking to submit unsigned certified deposition testimony at trial, despite her contention that her motion was based on grounds she possessed new information purportedly establishing that the engineer’s deposition transcript at issue had been submitted to the tortfeasor’s counsel for signature and therefore, the court erred in refusing to admit the engineer’s deposition testimony as substantive evidence at trial, as the injured party merely offered a more detailed explanation

of her failure to submit the engineer's deposition testimony to the tortfeasor and provided no explanation for her failure to present these additional facts in her prior motion. Lattimore v Port Auth., 305 A.D.2d 639, 760 N.Y.S.2d 224, 2003 N.Y. App. Div. LEXIS 5968 (N.Y. App. Div. 2d Dep't 2003).

Automobile accident victim's motion to renew, under N.Y. C.P.L.R. 2221(e), was properly denied as the victim did not establish that she suffered a "serious injury," pursuant to N.Y. Ins. Law § 5102(d). Defendants' neurologist concluded that the victim had recovered from the sprain/strain-type injuries to her cervical, thoracic, and lumbar spine suffered as a result of the accident, and the medical reports of the victim's doctors were both deficient. Nagbe v Minigreen Hacking Group, 22 A.D.3d 326, 802 N.Y.S.2d 416, 2005 N.Y. App. Div. LEXIS 10901 (N.Y. App. Div. 1st Dep't 2005).

Trial court properly denied plaintiffs' motion which was for leave to renew following an order granting defendant summary judgment in plaintiff's personal injury case; the affidavit of a doctor, which reiterated the findings of his report which had been submitted by plaintiff in opposition to the original motion, did not constitute "new facts." Yunatanov v Stein, 69 A.D.3d 708, 893 N.Y.S.2d 569, 2010 N.Y. App. Div. LEXIS 240 (N.Y. App. Div. 2d Dep't 2010).

In a medical malpractice action, plaintiff cured the technical defect in his expert's affirmation by submitting in support of his motion for leave to renew an affidavit from his expert, which included the statement that the expert was licensed to practice medicine in New York and plaintiff also provided a reasonable justification for the failure to include that necessary information in the original affirmation. Stradtman v Cavaretta, 179 A.D.3d 1468, 118 N.Y.S.3d 828, 2020 N.Y. App. Div. LEXIS 848 (N.Y. App. Div. 4th Dep't 2020).

Trial court providently exercised its discretion in granting a personal injury claimant's motion for leave to renew opposition to a defense motion for summary judgment because the claimant established a reasonable justification for a failure to provide an expert affidavit in admissible form to the court in the opposition to the original motion. Shvyetsov v 1900 Newkirk Ave., LLC,

217 A.D.3d 704, 191 N.Y.S.3d 113, 2023 N.Y. App. Div. LEXIS 3047 (N.Y. App. Div. 2d Dep't 2023).

As an expert’s affidavit, which plaintiff had not submitted with its original summary judgment motion, established as matter of law that defendant’s tree damaged plaintiff’s retaining wall, and defendant failed to refute the affidavit or submit any evidence that the owner’s lack of maintenance of the wall caused the damage to it, plaintiff was entitled to renew its motion for partial summary judgment under N.Y. C.P.L.R. 2221(e), and the renewed motion was granted. 1212 Ocean Ave. Hous. Dev. Corp. v Brunatti, 237 N.Y.L.J. 108, 2007 N.Y. Misc. LEXIS 4188 (N.Y. Sup. Ct. May 9, 2007), aff'd in part, modified, 50 A.D.3d 1110, 857 N.Y.S.2d 649, 2008 N.Y. App. Div. LEXIS 3853 (N.Y. App. Div. 2d Dep't 2008).

11. — — —Lay person affidavits

Defendant was not entitled to renewal and reconsideration of plaintiff’s prior motion to dismiss counterclaim in action for wrongful interference with contractual relationships since affidavits submitted thereon by defendant did not serve to cure critical defects in its counterclaim. Barrier Gasoline Service, Inc. v Shoreline Oil Co., 126 A.D.2d 692, 510 N.Y.S.2d 1023, 1987 N.Y. App. Div. LEXIS 41835 (N.Y. App. Div. 2d Dep't 1987).

In action sounding in intentional tort against coemployee for personal injuries sustained when he picked up end of conference table during business meeting and slammed it down, striking and injuring plaintiff’s foot, court erred in denying defendant’s motion to renew motion for summary judgment since defendant presented new facts which were previously unavailable where motion for renewal was supported not only by affirmations and sworn statements of 2 eyewitnesses which had been submitted on prior application, but also by excerpts from deposition testimony of plaintiff, which was previously unavailable to defendant. Bulis v Di Lorenzo, 142 A.D.2d 707, 531 N.Y.S.2d 107, 1988 N.Y. App. Div. LEXIS 7993 (N.Y. App. Div. 2d Dep't 1988).

Supreme Court properly exercised its discretion in personal injury action to grant renewal of defendant’s motion to dismiss and to order hearing to determine whether personal jurisdiction

had been obtained over defendants since (1) new proof was submitted, consisting of affidavits of defendants reaffirming allegation of their attorney that they did not reside at address where service was made, and (2) plaintiff was not prejudiced by defendants' failure to raise issue in first instance in notice of motion to dismiss as defendants' papers submitted in opposition to plaintiff's cross motion to amend complaint specifically raised issue. Blumstein v Menaldino, 144 A.D.2d 412, 533 N.Y.S.2d 987, 1988 N.Y. App. Div. LEXIS 11786 (N.Y. App. Div. 2d Dep't 1988).

Defendant's motion for renewal or for order setting aside default judgment on basis of new evidence was meritless where purported new evidence was presented solely through hearsay statements in attorney's affidavit; since purported new evidence involved defendant's own broker, motion was properly denied for defendant's failure to explain why evidence could not have been submitted on original motion, which is requirement both for renewal under CLS CPLR § 2221 and for presentation of new evidence under CLS CPLR § 5015. Marine Office of America Corp. v Regal Accessories, Inc., 162 A.D.2d 232, 556 N.Y.S.2d 596, 1990 N.Y. App. Div. LEXIS 7236 (N.Y. App. Div. 1st Dep't 1990).

In action against city for injuries sustained when plaintiff's automobile struck purportedly abandoned vehicle on city parkway, court properly granted plaintiff's motion for default judgment on ground that city failed to show meritorious defense because it submitted attorney's affidavit instead of affidavit from person with knowledge; however, it was abuse of discretion to deny city's motion for renewal and, on renewal, for vacatur of default where city submitted affidavit from police officer, who responded to scene, alleging that his investigation revealed that plaintiff was cut off by unidentified vehicle, causing him to lose control of his car, and that his car then struck disabled, rather than abandoned vehicle. Morales v New York, 172 A.D.2d 430, 568 N.Y.S.2d 941, 1991 N.Y. App. Div. LEXIS 5112 (N.Y. App. Div. 1st Dep't 1991).

In breach of contract and negligence action arising out of construction project, court properly granted motion to renew earlier cross motions seeking to preclude plaintiff from offering certain evidence at trial since unanticipated statements of nonparty witness made in examination before

trial and in subsequent affidavit only came to light after original cross motions had been denied, and fact that nonparty witness' deposition and affidavit were expected to relate solely to nature of repairs and not to yield evidence essential to motions to preclude provided reasonable excuse for parties' failure to procure his testimony before making their original preclusion motions. State University Constr. Fund v Turner Constr. Co., 181 A.D.2d 353, 586 N.Y.S.2d 430, 1992 N.Y. App. Div. LEXIS 9115 (N.Y. App. Div. 3d Dep't 1992).

In action for injuries sustained when plaintiff was struck and knocked to ground by vehicle identified only as blue and white bus bearing number 4030, trial court erred in refusing plaintiff's motion to renew following grant of summary judgment to defendant city transit authority, where plaintiff presented affidavit of previously unlocated eyewitness stating that plaintiff was struck by blue and white "City" bus, defendant's available trip reports and maintenance records did not conclusively establish that its bus number 4030 was being serviced in garage on date of accident, and more relevant documentary evidence in defendant's possession had been destroyed pursuant to transit authority policy during pendency of suit. Tesa v Transit Authority of New York, 184 A.D.2d 421, 585 N.Y.S.2d 52, 1992 N.Y. App. Div. LEXIS 8541 (N.Y. App. Div. 1st Dep't 1992).

On motion to reargue and renew motion for default judgment, court abused its discretion in refusing to consider affidavit from defendant corporation's former vice president, which set forth meritorious defense, on basis that information in affidavit could have been available to defendant on previous motion where (1) at time action was commenced, defendant was defunct and none of its officers could be found, (2) on original motion, same defense was offered but rejected because it was tendered in affirmation of attorney for defendant, and (3) vice president was located only after affirmation was rejected and default judgment was entered. Sachellaridou v Tap Elec., Inc., 188 A.D.2d 427, 592 N.Y.S.2d 3, 1992 N.Y. App. Div. LEXIS 14728 (N.Y. App. Div. 1st Dep't 1992).

Court did not improvidently exercise its discretion in denying motion to renew based on purportedly new evidence in form of affidavit of defendant's daughter-in-law denying that she

had ever been served with summons and complaint on defendant's behalf, where defendant failed to explain why he did not move for adjournment when it became obvious that plaintiff's attorney was attempting to establish through his examination of defendant and process server that it was daughter-in-law on whom substituted service had been made. Elgem, Inc. v National Gypsum, 192 A.D.2d 636, 596 N.Y.S.2d 465, 1993 N.Y. App. Div. LEXIS 3933 (N.Y. App. Div. 2d Dep't 1993).

Wife was not entitled to renew her prior motion to change venue of divorce action, which had been denied due to absence of sufficient affidavit regarding prospective witnesses, even though motion to renew included affidavits from potential witnesses on issue of abandonment, and wife claimed that she did not know which witnesses would be material until after complaint was served, where abandonment was listed in summons with notice, and there was nothing in affidavits to show that witnesses had any knowledge on issue of husband's constructive abandonment cause of action. Passante v Passante, 206 A.D.2d 770, 615 N.Y.S.2d 105, 1994 N.Y. App. Div. LEXIS 7973 (N.Y. App. Div. 3d Dep't 1994).

Retired teacher was entitled to renewal of her petition in Article 78 proceeding to compel her retroactive membership in Teachers' Retirement System under CLS Retire & S S § 803(b) where she submitted affidavit of system's Associate General Counsel, which tended to prove her case and was not available to her at time of system's motion to dismiss. Capone v Board of Educ., 245 A.D.2d 1045, 667 N.Y.S.2d 168, 1997 N.Y. App. Div. LEXIS 13794 (N.Y. App. Div. 4th Dep't 1997).

Court properly denied plaintiff's motion for renewal of prior decision granting summary judgment to defendant's where plaintiff did not explain, or set forth any justifiable excuse for, its failure to produce "new" evidence, consisting of affidavits of its former attorney and its president, in response to underlying summary judgment motion, there was no proof that attesting attorney, who no longer represented plaintiff at time of motion, would not have been available to provide evidence had plaintiff contacted him for that purpose, or that any such attempt was made, and plaintiff's claims of unilateral mistake and inequity, advanced for first time in its renewal motion,

could have been raised in opposition to summary judgment motion, when plaintiff first became aware that defendants were urging different interpretation of lease terms than that proposed by plaintiff's former attorney. Binghamton Plaza v Fashion Bug # 2470 of Binghamton, Inc., 252 A.D.2d 870, 675 N.Y.S.2d 710, 1998 N.Y. App. Div. LEXIS 8591 (N.Y. App. Div. 3d Dep't 1998).

Because an observer's relocation to another part of the state presented difficulties in securing the observer's affidavit describing the area where an invitee fell, the trial court did not abuse its discretion in granting the invitee's N.Y. C.P.L.R. 2221(e)(3) motion to renew. De Cicco v Longendyke, 37 A.D.3d 934, 829 N.Y.S.2d 284, 2007 N.Y. App. Div. LEXIS 1429 (N.Y. App. Div. 3d Dep't 2007).

Supreme court should have denied a trustee's motion for leave to renew its prior motion for summary judgment because the trustee failed to demonstrate that the purported new fact contained in a senior loan analyst's affidavit was not available to it at the time of the prior motion and otherwise failed to offer any excuse, let alone a reasonable justification, for failing to submit it on the prior motion. Wells Fargo Bank, N.A. v Mone, 185 A.D.3d 626, 127 N.Y.S.3d 488, 2020 N.Y. App. Div. LEXIS 3766 (N.Y. App. Div. 2d Dep't 2020).

Court would deny motion for reconsideration as to reasonableness of commissions requested by corporate trustee where movant did not assert that court overlooked or misapprehended facts or law, or mistakenly arrived at its decision, but instead relied on additional facts regarding services it performed as set forth in affidavit of its senior vice-president; having submitted additional facts and evidence, motion was in nature of motion to renew, but no reasonable excuse for failure to submit additional material in first instance was offered. In re Estate of McDonald, 140 Misc. 2d 49, 530 N.Y.S.2d 453, 1988 N.Y. Misc. LEXIS 350 (N.Y. Sur. Ct. 1988).

Trial court erred in denying a driver's motion to renew, pursuant to N.Y. C.P.L.R. 2221, a summary judgment motion pursuant to N.Y. C.P.L.R. 3212 in a personal injury action, because a deposition of a group home supervisor provided more detailed information concerning the injured party's employment status, and erred in denying summary judgment, because the injured party was a special employee of the group home, the driver's employer, and workers'

compensation was the exclusive remedy pursuant to N.Y. Workers' Comp. Law § 29(6) . Cruickshank v Dukes, 768 N.Y.S.2d 542, 1 Misc. 3d 53, 2003 N.Y. Misc. LEXIS 1438 (N.Y. App. Term 2003).

Because a lender explained that the owner's affidavit was not previously submitted since they believed that the owners would join in the motion to vacate a foreclosure sale, the explanation was reasonable and provided an ample basis to grant the lender's motion to renew under N.Y. C.P.L.R. 2221(e). First Union National Bank v Williams, 45 A.D.3d 1029, 845 N.Y.S.2d 189, 2007 N.Y. App. Div. LEXIS 11186 (N.Y. App. Div. 3d Dep't 2007).

12. — —Court discretion

Although at time of entry of judgment parties were aware there was already pending before court a motion to renew so that ideal ordered sequence was disposition of pending motion prior to entry of judgment based on original motion, Special Term continued to possess inherent discretionary power to vacate judgment for sufficient reason in absence of substantial justice, and properly granted motion to renew because factual issues were raised. In re Unterman, 57 A.D.2d 745, 394 N.Y.S.2d 15, 1977 N.Y. App. Div. LEXIS 11875 (N.Y. App. Div. 1st Dep't 1977).

It was improper to allow plaintiffs to renew motion on which they had already prevailed, particularly where motion to renew was made after defendants filed their notice of appeal from original order denying their motion for summary judgment; although Special Term entertained plaintiffs' renewal motion on basis that motion had been "allowed" by judicial administrative officer presiding at preargument conference, 22 NYCRR § 1000.12 does not so empower judicial administrative officer. Diviak v Schulefand, 140 A.D.2d 950, 530 N.Y.S.2d 713, 1988 N.Y. App. Div. LEXIS 5807 (N.Y. App. Div. 4th Dep't 1988).

In Article 78 proceeding and related action seeking injunctive relief, brought by landowner against town zoning board of appeals and adjoining landowner to challenge variance to enlarge family-type residence for senior citizens on adjoining property, in which court dismissed both Article 78 proceeding and related action for lack of standing, court would exercise discretion to

grant motion to renew, even though facts in papers in support of motion could have been presented on first motion, since respondents had never formally moved to dismiss and, had dismissal motion been made, petitioner would presumably have opposed by raising allegations made in renewal motion. Rosch v Milton Zoning Bd. of Appeals, 142 A.D.2d 765, 530 N.Y.S.2d 321, 1988 N.Y. App. Div. LEXIS 7901 (N.Y. App. Div. 3d Dep't 1988).

Court erred in entertaining third-party defendant's motion to renew its motion to dismiss third-party complaint, denial of which had been affirmed on appeal, and in granting motion to dismiss, based on fact that amount of subsequent jury verdict for plaintiff came within limits of coverage provided to third-party plaintiff as additional insured under comprehensive liability policy obtained by third-party defendant; although it might be proper under certain circumstances for court of original jurisdiction to entertain motion to renew based on newly discovered evidence after appellate court has affirmed original order, affirmance in instant case was not conditioned on any subsequent event, including amount of verdict. Rohring v Niagara Falls, 185 A.D.2d 685, 586 N.Y.S.2d 77, 1992 N.Y. App. Div. LEXIS 9237 (N.Y. App. Div. 4th Dep't 1992).

Requirement that motion for renewal be based on newly-discovered facts is flexible one, and thus court, in its discretion, may grant renewal on facts known to moving party at time of original motion. Weisser v Park Lane Foods, 202 A.D.2d 496, 610 N.Y.S.2d 804, 1994 N.Y. App. Div. LEXIS 2478 (N.Y. App. Div. 2d Dep't 1994).

It was abuse of discretion for court to deny respondent's motion for renewal and to consider matter on merits where affidavit of counsel presented by respondent on motion to renew redressed omission perceived by court in its initial determination. Bevona v Superior Maintenance Co., 204 A.D.2d 136, 611 N.Y.S.2d 193, 1994 N.Y. App. Div. LEXIS 5168 (N.Y. App. Div. 1st Dep't 1994).

While motion for leave to renew prior motion should generally be based on newly discovered facts, it is within court's discretion to grant renewal even on facts known to movant at time of original motion. Friedman v U-Haul Truck Rental, 216 A.D.2d 266, 627 N.Y.S.2d 765, 1995 N.Y. App. Div. LEXIS 5996 (N.Y. App. Div. 2d Dep't 1995).

Although motion to renew generally must be based on newly discovered facts, courts have discretion to grant such relief in interest of justice even though not all requirements for renewal are met. Strong v Brookhaven Mem. Hosp. Med. Ctr., 240 A.D.2d 726, 659 N.Y.S.2d 104, 1997 N.Y. App. Div. LEXIS 7126 (N.Y. App. Div. 2d Dep't 1997).

Requirement that motion for renewal be based on newly discovered facts is flexible, and court has discretion to grant renewal on facts known to moving party at time of original motion. Cronwall Equities v International Links Dev. Corp., 255 A.D.2d 354, 679 N.Y.S.2d 676, 1998 N.Y. App. Div. LEXIS 11820 (N.Y. App. Div. 2d Dep't 1998).

Court has broad discretion to grant renewal and properly did so where third-party defendant did not have notice of third-party plaintiff's prior motion to vacate default, and submitted additional information not previously before court on motion to vacate. John v City of New York, 260 A.D.2d 187, 688 N.Y.S.2d 40, 1999 N.Y. App. Div. LEXIS 3618 (N.Y. App. Div. 1st Dep't 1999).

In light of mandatory language used by legislature in CLS CPLR § 2221(e)(3), court lacked discretion to grant renewal where plaintiffs' counsel offered more detailed explanation of their law office failure and merits of action, but failed to provide any explanation for failing to present these additional facts on their prior motion to vacate default. Greene v N.Y. City Hous. Auth., 283 A.D.2d 458, 724 N.Y.S.2d 631, 2001 N.Y. App. Div. LEXIS 4962 (N.Y. App. Div. 2d Dep't 2001).

In action for personal injuries allegedly sustained when plaintiff was attacked by defendant neighbor's dog, Appellate Division would exercise its discretion to grant renewal of defendant's motion to vacate default judgment for plaintiff, entered on defendant's failure to appear and answer, where (1) minutes of inquest on damages were not available and were not submitted to Supreme Court until defendant moved to renew his prior motion to vacate judgment, (2) he had difficulty in securing those minutes because court reporter was no longer employed by Supreme Court, (3) plaintiffs claimed that those minutes were still incomplete, (4) Supreme Court awarded damages of $225,000, even though plaintiff's skin was not punctured in alleged attack, and she refused medical treatment, and (5) Appellate Division has inherent authority to set aside

excessive awards of damages made on default. Halle v Fernandez, 286 A.D.2d 662, 730 N.Y.S.2d 126, 2001 N.Y. App. Div. LEXIS 8450 (N.Y. App. Div. 2d Dep't 2001).

Upon renewal pursuant to N.Y. C.P.L.R. 2221, the trial court properly denied a motion for summary judgment pursuant to N.Y. C.P.L.R. 3212 by hospital staff members in a medical malpractice action; in opposition to the staff members' prima facie showing, plaintiffs adduced sufficient evidence to raise a triable issue of fact, inter alia, as to whether the staff members' alleged failure to diagnose the ruptured splenic artery aneurysm of the patient was a departure from appropriate standards of care, which increased the harm to a child in utero caused by oxygen deprivation. Barbuto v Winthrop Univ. Hosp., 305 A.D.2d 623, 760 N.Y.S.2d 199, 2003 N.Y. App. Div. LEXIS 6021 (N.Y. App. Div. 2d Dep't 2003).

Trial court erred in denying a lender's unopposed motion for leave to renew its prior motion for an order of reference because, although the lender should have been aware of a durable power of attorney at the time it initially sought an order of reference, the lender established its entitlement to an order of reference by submitting documentary proof that the borrowers failed to timely answer the complaint, that it was the holder of the note and mortgage, that the borrowers defaulted, and submitted, inter alia, the durable power of attorney in support of its renewal motion and the motion was unopposed. Citimortgage, Inc. v Espinal, 136 A.D.3d 857, 26 N.Y.S.3d 541, 2016 N.Y. App. Div. LEXIS 1147 (N.Y. App. Div. 2d Dep't 2016).

In an action to foreclose a mortgage, the supreme court properly denied that branch of defendants' motion which was for leave to renew their prior motion to cancel the notice of pendency because the defendants failed to present any new facts that would change the prior determination. Financial Freedom Acquisition, LLC v Braunsberg, 201 A.D.3d 788, 161 N.Y.S.3d 300, 2022 N.Y. App. Div. LEXIS 296 (N.Y. App. Div. 2d Dep't 2022).

13. —Change in law

Trial court erred in denying landlord's motion to renew its opposition to tenant's motion for summary judgment based on conclusion that the landlord's argument of adverse economic

consequences should have been offered in the original motion in opposition, where in granting summary judgment the trial court, relying on case law decided after submission of the motions, held that the landlord had not provided a rational basis for his refusal, where the landlord could not have known of that requirement, and where the landlord's economic argument was in response to the court's criterion. Brussel v Ruxton Hotel Associates, 91 A.D.2d 919, 457 N.Y.S.2d 805, 1983 N.Y. App. Div. LEXIS 16199 (N.Y. App. Div. 1st Dep't 1983).

When applicable law changes after time for appealing or rearguing original order has passed, even if new law would warrant different result, original order will stand unless change explicitly applies retroactively. Schwartzberg v Axelrod, 159 A.D.2d 807, 552 N.Y.S.2d 694, 1990 N.Y. App. Div. LEXIS 2919 (N.Y. App. Div. 3d Dep't 1990).

Renewal of defendants' previously denied motion to dismiss complaint, on ground that one of cases cited in court's decision had been reversed on appeal, was properly denied where case in question was neither controlling nor essential to court's denial of motion to dismiss. Caryl S.v Child & Adolescent Treatment Servs., 238 A.D.2d 953, 661 N.Y.S.2d 168, 1997 N.Y. App. Div. LEXIS 4814 (N.Y. App. Div. 4th Dep't 1997).

In plaintiff theater's action against defendants, a property owner and a general contractor, to recover for economic loss occasioned by temporary street closures after a construction disaster at defendants' property, defendants' motion to renew their prior summary judgment motion was properly based on an intervening clarification of the law pursuant to N.Y. C.P.L.R. 2221(e)(2), as two new cases made it clear that defendants' duty of care extended only to those who, as a result of the construction disaster, suffered personal injury or property damage, and not to those who, like the theater, suffered only economic loss. Roundabout Theatre Co. v Tishman Realty & Constr. Co., 302 A.D.2d 272, 756 N.Y.S.2d 12, 2003 N.Y. App. Div. LEXIS 1522 (N.Y. App. Div. 1st Dep't 2003).

Because a court's prior determination denying a landlord a vacancy allowance increase was based on its own reading of N.Y. Unconsol. Laws ch. 249-B, § 6 and the court did not defer to any interpretation by the Division of Housing and Community Renewal (DHCR), any alleged

change in the DHCR's interpretation of the relevant statutory and regulatory provisions would not change the prior determination under N.Y. C.P.L.R. § 2221(e)(2). Pinewood Apt. Assoc. v Wilcox, 51 A.D.3d 751, 856 N.Y.S.2d 872, 2008 N.Y. App. Div. LEXIS 6111 (N.Y. App. Div. 2d Dep't 2008).

Contrary to an occupant's contention, the trial court properly denied her cross motion, inter alia, for leave to renew, upon determining that the purported change in law, which she propounded as a ground for renewal, would not change the outcome of her prior cross motion for leave to amend her answer. Sheila Props., Inc. v A Real Good Plumber, Inc., 74 A.D.3d 779, 904 N.Y.S.2d 709, 2010 N.Y. App. Div. LEXIS 4677 (N.Y. App. Div. 2d Dep't 2010).

Trial court erred in reversing its previous decision denying summary judgment to a general contractor on a subcontractor's third-party beneficiary claim because, among other things, the geneal contractor did not come forward with any change in the law that would change the prior determination so as to qualify its latest motion as one to renew. Cives Corp. v Hunt Constr. Group, Inc., 91 A.D.3d 1178, 937 N.Y.S.2d 426, 2012 N.Y. App. Div. LEXIS 286 (N.Y. App. Div. 3d Dep't 2012).

Because an appellate decision merely restated and added clarity to existing law that set forth the pleading requirements for unjust enrichment, rather than changing the law, the appellate decision was not a sufficient basis for renewal. Philips Intl. Invs., LLC v Pektor, 117 A.D.3d 1, 982 N.Y.S.2d 98, 2014 N.Y. App. Div. LEXIS 1663 (N.Y. App. Div. 1st Dep't 2014).

Contrary to plaintiff's contention, it did not show that there had been a change in the law so as to warrant renewal of the subject branches of its prior motion. Bethpage Fed. Credit Union v Hernon, 216 A.D.3d 895, 190 N.Y.S.3d 372, 2023 N.Y. App. Div. LEXIS 2734 (N.Y. App. Div. 2d Dep't 2023).

Mortgagors' motion to renew was granted because the Foreclosure Abuse Prevention Act (FAPA) was enacted after the court's initial decision, and the court could not rely on pending legislation until it was enacted, so the mortgagors' failure to raise FAPA as a defense to a

second foreclosure in the mortgagors' initial appeal did not preclude them from raising it in a motion to renew. HSBC Bank, USA, N.A. v Bresler, 2025 N.Y. App. Div. LEXIS 3445 (N.Y. App. Div. 3d Dep't 2025).

After the high court, during the course of the litigation at issue, held that no-fault insurers, under N.Y. Comp. Codes R. & Regs. tit. 11, § 65-3.16(a)(12), were not required to reimburse under N.Y. Ins. Law § 5102(a) medical providers for basic economic loss that were fraudulently incorporated, the trial court granted the insurers' N.Y. C.P.L.R. 2221(e) motion to for renewal upon the intervening clarification of the law, reinstating the insurers' claims for fraud and unjust enrichment to the extent that the insurers made the payments to the providers on or after the regulation's effective date of April 4, 2002; the insurers alleged that the providers' controlling shareholder was not a physician in violation of N.Y. Bus. Corp. Law § 1507, and the insurers, therefore, had stated claims to recover payments made to the providers after April 4, 2002, and the insurers were not required to pay unpaid claims that accrued prior to April 4, 2002. Allstate Ins. Co. v Belt Parkway Imaging, P.C., 813 N.Y.S.2d 867, 11 Misc. 3d 810, 2006 N.Y. Misc. LEXIS 140 (N.Y. Sup. Ct.), aff'd, 33 A.D.3d 407, 823 N.Y.S.2d 9, 2006 N.Y. App. Div. LEXIS 12194 (N.Y. App. Div. 1st Dep't 2006).

No-fault insurer was entitled to leave to renew under N.Y. C.P.L.R. § 2221(e), which was timely as no judgment had been entered and the insurer's appeal was pending, because after an order granting a directed verdict to an assignee was rendered, new case law concluded that a denial of claim form did not have to include the medical rationale for a claim of lack of medical necessity pursuant to N.Y. Comp. Codes R. & Regs tit. 11, § 65-3.8(b)(4) if such a claim was based on a peer review report or a medical examination. Odessa Med. Supply v Govt. Employees Ins. Co., 852 N.Y.S.2d 685, 18 Misc. 3d 722, 239 N.Y.L.J. 6, 2007 N.Y. Misc. LEXIS 8499 (N.Y. Civ. Ct. 2007).

Because a client misperceived the meaning of an appellate case, and because the result of the client's N.Y. Jud. Ct. Acts Law § 487 claim against an attorney would not change, the client was

not entitled to renewal under N.Y. C.P.L.R. § 2221(e)(2). Dupree v Voorhees, 883 N.Y.S.2d 454, 25 Misc. 3d 451, 2009 N.Y. Misc. LEXIS 1846 (N.Y. Sup. Ct. 2009).

Town was not entitled to renew the town's unsuccessful summary judgment motion, as to a design defect claim, based on a change in decisional law providing the town absolute immunity for the town's discretionary design decisions, because (1) there was no change in the law, as decisions upon which the town relied merely distilled existing law, and (2) the town was still only afforded qualified immunity for the town's design decisions. Madden v Town of Greene, 949 N.Y.S.2d 326, 36 Misc. 3d 852, 2012 N.Y. Misc. LEXIS 3053 (N.Y. Sup. Ct. 2012).

Manufacturer was granted leave to renew since the prior denial of its motion to dismiss was based on a case that had been reversed, and the reversal constituted a change in the law that was essential to, and would have changed the prior decision. Washington Apts., L.P. v Oetiker, Inc., 978 N.Y.S.2d 731, 43 Misc. 3d 265, 2013 N.Y. Misc. LEXIS 6158 (N.Y. Sup. Ct. 2013).

Petitioner's renewal motion was timely, because a final judgment had not been entered and the petitioner had made the instant motion to renew prior to the entry of a final judgment, and *Matter of Diegelman v City of Buffalo*, 28 N.Y.3d 231, 43 N.Y.S.3d 803, 66 N.E.3d 673 (2016), decision reflected a change in the law that would permit the petitioner, who was receiving disability benefits pursuant to General Municipal Law 207-a, to commence an action against his employer. Lockwood v City of Yonkers, 57 Misc. 3d 728, 60 N.Y.S.3d 798, 2017 N.Y. Misc. LEXIS 3369 (N.Y. Sup. Ct. 2017), rev'd, 179 A.D.3d 688, 116 N.Y.S.3d 383, 2020 N.Y. App. Div. LEXIS 123 (N.Y. App. Div. 2d Dep't 2020), app. dismissed, 179 A.D.3d 660, 113 N.Y.S.3d 598, 2020 N.Y. App. Div. LEXIS 100 (N.Y. App. Div. 2d Dep't 2020).

In a foreclosure action, the court granted the bank's motion to renew its prior motion for summary judgment and, upon renewal, granted summary judgment against the homeowners because there had been a change in law that established the bank's standing. Deutsche Bank Natl. Trust Co. v Dormer, 60 Misc. 3d 550, 78 N.Y.S.3d 626, 2018 N.Y. Misc. LEXIS 2069 (N.Y. Sup. Ct. 2018).

Tenants' association and tenants (jointly, the tenants) were entitled to renew their opposition to the landlords' motion to dismiss their action for rent overcharges, to vacate a prior judgment, and to restore the action to the calendar for a conference to address the completion of discovery because it was undisputed that the tenants' time to appeal the decision had not expired, their motion to renew was timely, the Housing Stability and Tenant Protection Act of 2019 applied solely to any pending claims, the tenants' claims remained unresolved and pending until the appeal of the decision was decided, and the Act effected a change in the law that would change the prior determination. 560-568 Audubon Tenants Assn. v 560-568 Audubon Realty, LLC, 65 Misc. 3d 759, 110 N.Y.S.3d 280, 2019 N.Y. Misc. LEXIS 4972 (N.Y. Sup. Ct. 2019).

In a mortgage foreclosure action, the Foreclosure Abuse Prevention Act (FAPA) constituted a change in the law that would alter the court's prior determination, which was sufficient to grant defendant's application to renew, because CPLR 3217(e) as amended by FAPA rejected the determination that the 2009 Stipulation of Discontinuance revoked acceleration of the underlying debt, and as such, the action was time-barred as a matter of law. Ditech Fin. LLC v Naidu, 82 Misc. 3d 452, 206 N.Y.S.3d 441, 2023 N.Y. Misc. LEXIS 22694 (N.Y. Sup. Ct. 2023).

Defendant's motion to dismiss pursuant to CPL 30.30 was properly denied, and thus, his motion to renew failed, because the rule set forth in Hamizane, which settled the issue of the scope of disclosure under CPL 245.20(1)(k)(iv) as it related to testifying police officers, should not be afforded retroactive application as the People provided underlying impeachment material for testifying prosecution witnesses well in advance of trial, providing the defense with adequate time to review it, and the People relied on that and other court's rulings that the failure to disclose underling material did not invalidate a certificate of compliance. People v Z.S., 82 Misc. 3d 185, 204 N.Y.S.3d 884, 2023 N.Y. Misc. LEXIS 22660 (N.Y. City Crim. Ct. 2023).

14. —Law of the case

In a matrimonial action in which the husband sought to dismiss the action for lack of in personam jurisdiction and in which he had originally brought the motion to dismiss on the ground

of improper service of process, the husband waived the right to raise objection to personal jurisdiction by his failure to raise such objections on his earlier motion to dismiss, where the husband's attorney stated in his affidavit in support of the second motion that it was made upon different grounds from the previous motion making clear that the first motion was not intended to raise issues pertaining to the basis for asserting personal jurisdiction over the husband; the general rule is that if the relief sought upon a motion is the same as that sought upon a prior motion, and the second motion is only distinguished in that different grounds are set forth, the second motion is in fact in the nature of renewal, and the doctrine of the law of the case foreclosed the second motion to dismiss brought after the court had determined the first motion for that relief. Osserman v Osserman, 92 A.D.2d 932, 460 N.Y.S.2d 355, 1983 N.Y. App. Div. LEXIS 17341 (N.Y. App. Div. 2d Dep't 1983).

Plaintiffs were not entitled to renewal of action where Appellate Division's prior reversal of order denying defendants' motion to dismiss complaint was not conditional, was affirmed by Court of Appeals, and thus was law of case. Booth v 3669 Del., Inc., 275 A.D.2d 974, 714 N.Y.S.2d 251, 2000 N.Y. App. Div. LEXIS 9597 (N.Y. App. Div. 4th Dep't 2000), app. dismissed, 96 N.Y.2d 730, 722 N.Y.S.2d 796, 745 N.E.2d 1018, 2001 N.Y. LEXIS 63 (N.Y. 2001).

On appeal from denial of petition to modify prior order of same court, dated May 13, 1997, awarding custody of petitioners' daughter to respondents, petitioners were barred from raising any issues regarding propriety of that order where, by decision and order on motion dated June 10, 1998, their appeal from that order was dismissed for lack of prosecution. Maggio v Furia, 281 A.D.2d 628, 722 N.Y.S.2d 72, 2001 N.Y. App. Div. LEXIS 3124 (N.Y. App. Div. 2d Dep't 2001).

In action by former state trooper for sex discrimination, sexual harassment, and retaliation, State of New York, State Division of Police, and individual police defendant were prohibited by law of case from raising attorney-client and work-product privileges as grounds for withholding from disclosure certain internal police reports on discriminatory treatment of women where, on prior appeal, Appellate Division had ordered those defendants to "turn over all documents identified in

plaintiffs' original discovery request," which included those reports. Kimmel v State, 286 A.D.2d 881, 730 N.Y.S.2d 648, 2001 N.Y. App. Div. LEXIS 9013 (N.Y. App. Div. 4th Dep't 2001), app. denied, 2001 N.Y. App. Div. LEXIS 12843 (N.Y. App. Div. 4th Dep't Nov. 29, 2001).

In action by former state trooper for sex discrimination, sexual harassment, and retaliation, Supreme Court's order would be modified by striking answers of State of New York, State Division of Police, and individual police defendant where (1) on prior appeal, Appellate Division had afforded them "one final chance" to comply with plaintiffs' discovery requests, (2) 4 days later, those defendants brought current motion raising attorney-client and work-product privileges, (3) thus, they tried to relitigate issues in violation of law of case, and (4) they had repeatedly disobeyed orders of Supreme Court and Appellate Division. Kimmel v State, 286 A.D.2d 881, 730 N.Y.S.2d 648, 2001 N.Y. App. Div. LEXIS 9013 (N.Y. App. Div. 4th Dep't 2001), app. denied, 2001 N.Y. App. Div. LEXIS 12843 (N.Y. App. Div. 4th Dep't Nov. 29, 2001).

Directed verdict for plaintiff was not precluded by fact that another justice of Supreme Court, in denying plaintiff's motion for summary judgment, had previously found triable issue of fact as to whether defendant complied with parties' agreement where denial of motion for summary judgment is not necessarily res judicata or law of case as to whether there is issue of fact that will be proved at trial. Wyo. County Bank v Ackerman, 286 A.D.2d 884, 730 N.Y.S.2d 898, 2001 N.Y. App. Div. LEXIS 9085 (N.Y. App. Div. 4th Dep't 2001).

Trial court properly granted a husband's motion to renew and denied the wife's cross-motion for an order directing the husband to pay certain expenses because the appellate court's previous determination that marital funds were used to purchase a condominium unit was law of the case, contradicted the wife's claim that the parties financed the purchase of a condominium unit through a margin loan taken out against her separate property, and decisively resolving the ambiguity that the wife alleged gave rise to the need for clarification, and the wife's contentions that she should be entitled to use the proceeds of the sale of the unit to satisfy the margin loan were an improper attempt to relitigate an issue that she previously had a full and fair opportunity

to litigate. Mula v Mula, 151 A.D.3d 1326, 59 N.Y.S.3d 146, 2017 N.Y. App. Div. LEXIS 4850 (N.Y. App. Div. 3d Dep't 2017).

Trial court properly granted a husband's motion to renew and denied the wife's cross-motion for an order directing the husband to pay certain expenses because the appellate court's previous determination that marital funds were used to purchase a condominium unit was law of the case, contradicted the wife's claim that the parties financed the purchase of a condominium unit through a margin loan taken out against her separate property, and decisively resolving the ambiguity that the wife alleged gave rise to the need for clarification, and the wife's contentions that she should be entitled to use the proceeds of the sale of the unit to satisfy the margin loan were an improper attempt to relitigate an issue that she previously had a full and fair opportunity to litigate. Mula v Mula, 151 A.D.3d 1326, 59 N.Y.S.3d 146, 2017 N.Y. App. Div. LEXIS 4850 (N.Y. App. Div. 3d Dep't 2017).

Trustee was not entitled to leave to renew under N.Y. C.P.L.R. § 2221 because the law of the case did not preclude the court from directing the trustee to account as a prior legal malpractice case only decided that a trust accounting was not necessary to prove the malpractice. Matter of Shore, 854 N.Y.S.2d 293, 19 Misc. 3d 663, 2008 N.Y. Misc. LEXIS 1500 (N.Y. Sur. Ct. 2008).

15. —Treatment as reargument motion

Special Term did not err in denying defendant’s motion to renew prior motion for change of venue and his opposition to cross motion for default judgment in CLS RPAPL Art 15 action to terminate his interest in certain real property where no material facts existing at time of prior motion had been made known to defendant since prior motion was made and no valid reason was presented for defendant’s failure to submit affidavit on merits in opposition to cross motion; motion to renew was, in essence, merely motion to reargue and no appeal may be taken from denial of motion for leave to reargue. Loeb v Tanenbaum, 124 A.D.2d 941, 508 N.Y.S.2d 688, 1986 N.Y. App. Div. LEXIS 62258 (N.Y. App. Div. 3d Dep't 1986).

Supreme Court properly characterized defendants' motion to renew prior motion to set aside verdict and for judgment on counterclaim as motion for reargument rather than for renewal where defendants' motion raised no new facts. Luming Cafe, Inc. v Birman, 125 A.D.2d 180, 508 N.Y.S.2d 444, 1986 N.Y. App. Div. LEXIS 62456 (N.Y. App. Div. 1st Dep't 1986).

Court properly considered defendants' renewal motion as one to reargue original order, denial of which is not appealable, where additional material facts on which defendants relied in support of renewal motion were contained in bill of particulars served on defendants almost 5 years before original motion was made, and they failed to offer reasonable explanation as to why that information was not submitted to court in support of original motion. Tedaldi v Lerner, 172 A.D.2d 603, 570 N.Y.S.2d 948, 1991 N.Y. App. Div. LEXIS 4605 (N.Y. App. Div. 2d Dep't 1991).

Defendant's purported motion for "renewal" of its previously denied motion for summary judgment was belated attempt to reargue prior summary judgment motion, even though defendant contended that deposition testimony of certain witness was obtained after unappealed denial of first summary judgment motion, and that deposition contained new information, where affidavit had been submitted by same witness in connection with prior motion and had raised same issues. Morgan v Morgan Manhattan Storage Co., 184 A.D.2d 366, 587 N.Y.S.2d 140, 1992 N.Y. App. Div. LEXIS 8152 (N.Y. App. Div. 1st Dep't 1992).

Court did not improvidently exercise its discretion in deeming motion by plaintiff for leave to renew as motion for leave to reargue where plaintiff did not present any new evidence which had not already been placed before court. Shopsin v Gray, 184 A.D.2d 688, 587 N.Y.S.2d 180, 1992 N.Y. App. Div. LEXIS 8450 (N.Y. App. Div. 2d Dep't 1992).

Supreme Court properly treated plaintiffs' motion, denominated as one for renewal, as motion for reargument, which was not appealable, where motion was not based on any new facts or proof that was unavailable when original motion to vacate dismissal of complaint was made, and plaintiffs argued in part that court overlooked significant facts and misapplied law when it denied original motion. SantaMaria v Schwartz, 238 A.D.2d 569, 657 N.Y.S.2d 68, 1997 N.Y. App. Div. LEXIS 4387 (N.Y. App. Div. 2d Dep't 1997).

Motion characterized as one for reargument and renewal of motion to vacate order dismissing complaint was properly deemed motion for reargument, denial of which is not appealable, where plaintiff did not offer valid excuse for her failure to submit earlier additional evidence offered on her present motion. Flomenhaft v Baron, 281 A.D.2d 389, 721 N.Y.S.2d 381, 2001 N.Y. App. Div. LEXIS 2072 (N.Y. App. Div. 2d Dep't 2001).

In Article 78 proceeding, court properly denied petitioner’s motion denominated as one for leave to renew and/or reargue where petitioner did not justify its failure to present allegedly new facts when it filed petition, and thus motion was, in effect, one for leave to reargue, denial of which is not appealable. Residents for a More Beautiful Port Wash., Inc. v Newburger, 281 A.D.2d 484, 721 N.Y.S.2d 788, 2001 N.Y. App. Div. LEXIS 2377 (N.Y. App. Div. 2d Dep't), app. denied, 96 N.Y.2d 717, 730 N.Y.S.2d 791, 756 N.E.2d 79, 2001 N.Y. LEXIS 1958 (N.Y. 2001).

Plaintiff’s motion, denominated as one for renewal, was in effect motion for reargument, and thus its denial was not appealable, where (1) motion was based on her treating chiropractor’s affidavit, (2) chiropractor’s opinion was known and available to plaintiff when original summary judgment motions were made, and (3) plaintiff did not offer reasonable excuse for her failure to submit that affidavit in opposition to those motions. Holmes v Hanson, 286 A.D.2d 750, 730 N.Y.S.2d 528, 2001 N.Y. App. Div. LEXIS 8643 (N.Y. App. Div. 2d Dep't 2001).

Supreme court erred in treating plaintiff’s motion for leave to renew as one for leave to reargue, as the renewal motion was based upon new proof which was unavailable when the original motion was made, N.Y. C.P.L.R. 2221. Ben Krupinski Bldr. & Assoc., Inc. v Baum, 36 A.D.3d 843, 828 N.Y.S.2d 583, 2007 N.Y. App. Div. LEXIS 1009 (N.Y. App. Div. 2d Dep't 2007).

In an action for property damage filed by residents, two contractors’ motion and cross-motion for leave to renew and reargue were in actuality for leave to reargue, the denial of which was not appealable, as the motions were not based on new facts as required by N.Y. C.P.L.R. 2221(e) for leave to renew. Hatzioannides v City of New York, 39 A.D.3d 706, 833 N.Y.S.2d 630, 2007 N.Y. App. Div. LEXIS 4721 (N.Y. App. Div. 2d Dep't 2007).

Trial court properly treated plaintiffs' motion, denominated as one for leave to renew and reargue, as a motion for leave to reargue. It was not based upon new facts which were unavailable at the time of defendant's motion to dismiss and plaintiffs' cross-motion to restore, and plaintiffs had not offered a reasonable justification for the failure to present the new facts at the time of the original motions. Berktas v McMillian, 40 A.D.3d 563, 835 N.Y.S.2d 388, 2007 N.Y. App. Div. LEXIS 5607 (N.Y. App. Div. 2d Dep't 2007).

Branch of the clients' motion which was denominated as one for leave to renew in a legal malpractice case was, in actuality, for leave to reargue, as it was not based upon new facts, N.Y. C.P.L.R. 2221(e); rather, the facts set forth in the affidavit of one of the clients were already before the court in other pleadings. Richardson v Lindenbaum & Young, 56 A.D.3d 645, 868 N.Y.S.2d 116, 2008 N.Y. App. Div. LEXIS 8780 (N.Y. App. Div. 2d Dep't 2008).

Where plaintiff injured parties' motion, denominated as one for renewal and reargument, was based on certain physicians' affirmations but was not based upon new evidence that was unavailable at the time of defendant individual's original summary judgment motion, and where the injured parties did not offer a reasonable excuse for their failure to submit the physicians' affirmations in opposition to the original motion, the trial court, in light of N.Y. C.P.L.R. 2221(e), properly treated the motion as one for reargument, not renewal. Boboyev v Gomez, 304 A.D.2d 600, 757 N.Y.S.2d 469, 2003 N.Y. App. Div. LEXIS 3942 (N.Y. App. Div. 2d Dep't 2003).

Because a patient in a medical malpractice action failed to show that the purported "new" material sought from a doctor in discovery was not in existence or was unavailable at the time of the initial motion, the trial court properly construed the motion as one for leave to reargue only. Serrano v Rajamani, 6 A.D.3d 1191, 775 N.Y.S.2d 921, 2004 N.Y. App. Div. LEXIS 6193 (N.Y. App. Div. 4th Dep't 2004).

Defendants' motion to renew the denial of their dismissal motion with respect to plaintiff's claims for nonpecuniary damages in a legal malpractice action was actually a motion to reargue, as there was no intervening change in the law. D'Alessandro v Carro, 123 A.D.3d 1, 992 N.Y.S.2d 520, 2014 N.Y. App. Div. LEXIS 6178 (N.Y. App. Div. 1st Dep't 2014).

Grantors' motion, denominated as one for leave to renew their opposition to the cross motion of a limited liability company, was not based upon new facts that were not known to the grantors at the time of the original cross motion, and was, in effect, based on their assertion that the supreme court misapprehended the facts and the law in its prior determination; accordingly, the motion in actuality was a motion for leave to reargue, and the supreme court properly treated it as such. Coke-Holmes v Holsey Holdings, LLC, 189 A.D.3d 1162, 139 N.Y.S.3d 227, 2020 N.Y. App. Div. LEXIS 7821 (N.Y. App. Div. 2d Dep't 2020).

16. —Appellate issues

Although on order granting defendant's motion for a change of venue was made by the Appellate Division, not by Special Term and plaintiff moved at Special Term for leave to renew and rehear the motion for change of venue, in the interest of justice and avoid circuity of action it would be deemed that plaintiff's application for permission to renew had been made to the Appellate Division, which granted the renewal based on additional facts set forth in plaintiff's supporting affidavits. Weinstein v Kiamesha Concord, Inc., 29 A.D.2d 878, 288 N.Y.S.2d 384, 1968 N.Y. App. Div. LEXIS 4455 (N.Y. App. Div. 2d Dep't 1968).

Test on review of denial of motion to renew prior motion was whether refusal to grant the renewal motion was abuse of discretion. Hooker v Town Board of Guilderland, 60 A.D.2d 684, 399 N.Y.S.2d 935, 1977 N.Y. App. Div. LEXIS 14699 (N.Y. App. Div. 3d Dep't 1977).

A party's characterization of a motion as one to "renew and reargue" is not determinative of its appealability, since the denial of a motion for reargument is not appealable, while a motion to renew requires the presentation of "additional material facts which existed at the time the prior motion was made but were not then known to the parties seeking leave to renew" in order to be appealable. Smith v Smith, 97 A.D.2d 932, 470 N.Y.S.2d 726, 1983 N.Y. App. Div. LEXIS 20722 (N.Y. App. Div. 3d Dep't 1983).

Defendant's motion, which resulted in order appealed from, was one for renewal and not reargument and thus was appealable since defendant presented new evidence not known at

time of prior motion, and reasonable excuse for its presentation on second motion. Danois v Danois, 154 A.D.2d 504, 546 N.Y.S.2d 130, 1989 N.Y. App. Div. LEXIS 12780 (N.Y. App. Div. 2d Dep't 1989).

Appeal from Supreme Court order denying motion to reargue (denominated motion to renew and reargue) would be dismissed since no appeal lies from denial of motion to reargue. Schenkers Int'l Forwarders, Inc. v Meyer, 164 A.D.2d 541, 564 N.Y.S.2d 323, 1991 N.Y. App. Div. LEXIS 76 (N.Y. App. Div. 1st Dep't), app. denied, 78 N.Y.2d 852, 573 N.Y.S.2d 465, 577 N.E.2d 1057, 1991 N.Y. LEXIS 985 (N.Y. 1991).

Defendant’s motion for renewal with respect to judgment holding it in contempt was properly denied, even though defendant still owed $20,000 to seller of subject merchandise, where contempt judgment required it to pay plaintiff $20,212, representing increased expenses to plaintiff resulting from defendant’s refusal to comply with court order; former sum had nothing to do with, and could not offset, latter. G & S Quality v Bank of China, 245 A.D.2d 94, 665 N.Y.S.2d 878, 1997 N.Y. App. Div. LEXIS 12902 (N.Y. App. Div. 1st Dep't 1997).

If order—that motion for summary judgment be adjourned for 12 weeks and that parties conduct further discovery and submit appropriate evidence—were construed as denying motion with leave to renew on proper showing, it was not appealable, and defendant’s remedy was not to appeal but to renew motion supported by necessary and proper papers found to be lacking on original application. Fisher v Ives, 251 A.D.2d 1022, 675 N.Y.S.2d 570, 1998 N.Y. App. Div. LEXIS 7057 (N.Y. App. Div. 4th Dep't 1998).

Court improperly treated plaintiffs’ motion as one for reargument rather than renewal motion due to alleged absence of any new evidence, where motion was based on facts not previously presented, including additional documentation of plaintiffs’ allegedly substantial discovery compliance and defendant’s own lapses in that regard, and procedural irregularities in preliminary conference order; although evidence was not technically newly discovered, such requirement would be relaxed in interests of justice since motion court’s procedurally improper dismissal of action deprived plaintiffs of full and fair opportunity to present documentary

evidence they attached to renewal motion. Postel v New York Univ. Hosp., 262 A.D.2d 40, 691 N.Y.S.2d 468, 1999 N.Y. App. Div. LEXIS 6430 (N.Y. App. Div. 1st Dep't 1999).

Medical malpractice defendants' motion for leave to renew their motion to amend answer was timely where motion for leave to renew may be made after time to appeal from original order has expired. Sorto v S. Nassau Cmty. Hosp., 273 A.D.2d 373, 710 N.Y.S.2d 910, 2000 N.Y. App. Div. LEXIS 7093 (N.Y. App. Div. 2d Dep't 2000).

Petitioner's appeals from dismissal of his Article 78 proceeding and from denial of his motion for reconsideration were untimely where (1) his pro se status did not relieve him of obligation to comply with time requirements for taking appeal, and (2) order deny his motion for reconsideration of dismissal of petition was essentially denial of motion to reargue, which is not appealable. Pravda v N.Y. State DMV, 286 A.D.2d 838, 730 N.Y.S.2d 746, 2001 N.Y. App. Div. LEXIS 9082 (N.Y. App. Div. 3d Dep't 2001).

The issue of whether a plaintiff should have been granted renewal to submit a certified death certificate in support of her proposed cause of action for wrongful death was waived by defendants' failure to appeal from a prior order denying plaintiff leave to amend, but without prejudice to her ability to file a subsequent motion to amend as long as it was supported by a certified death certificate. Trinidad v Lantigua, 2 A.D.3d 163, 767 N.Y.S.2d 618, 2003 N.Y. App. Div. LEXIS 12938 (N.Y. App. Div. 1st Dep't 2003).

Denial of a motion for reargument is not appealable. Neroni v Follender, 137 A.D.3d 1336, 26 N.Y.S.3d 621, 2016 N.Y. App. Div. LEXIS 1516 (N.Y. App. Div. 3d Dep't), app. dismissed, 27 N.Y.3d 1147, 57 N.E.3d 1099, 37 N.Y.S.3d 61, 2016 N.Y. LEXIS 1793 (N.Y. 2016).

Defendants' motion for leave to renew did not offer any new facts in support of their prior motion and was, in actuality, one for leave to reargue, the denial of which was not appealable. Matter of Jenkins v Astorino, 155 A.D.3d 733, 64 N.Y.S.3d 285, 2017 N.Y. App. Div. LEXIS 7807 (N.Y. App. Div. 2d Dep't 2017).

Trial court properly denied a loan assignee's motion for, among other things, reconsideration of the denial of its prior motion to reargue because no appeal lay from the denial of a motion to reargue, the assignee failed to satisfy the standard for renewal by coming forward with new facts or a change in law that would change the prior determination, and the assignee could not seek to avoid the dire consequence of its failure to appeal the earlier order by simply denominating its motion as one for summary judgment and attempting to have the appellate court consider the merits underlying the trial court's prior order from which it did not appeal. GMAT Legal Tit. Trust 2014-1, U.S. Bank, Natl. Assn. v Wood, 173 A.D.3d 1533, 105 N.Y.S.3d 571, 2019 N.Y. App. Div. LEXIS 5031 (N.Y. App. Div. 3d Dep't 2019).

17. Reargument motions

Court lacked power to grant a reargument of claimant's motion to strike defenses after judgment dismissing plaintiff's complaint had been answered. Liberty Nat'l Bank & Trust Co. v Bero Constr. Corp., 29 A.D.2d 627, 286 N.Y.S.2d 287, 1967 N.Y. App. Div. LEXIS 2835 (N.Y. App. Div. 4th Dep't 1967).

In action to recover on construction surety payment bond, court abused its discretion in granting plaintiff's motion for reargument following its initial denial of plaintiff's motion for summary judgment, and in then granting plaintiff summary judgment, where there was no indication that court had misapprehended facts or law or mistakenly arrived at its initial denial, and where triable issue was raised as to whether plaintiff had completely and satisfactorily performed its work. Huber Lathing Corp. v Aetna Casualty & Surety Co., 132 A.D.2d 597, 517 N.Y.S.2d 758, 1987 N.Y. App. Div. LEXIS 49138 (N.Y. App. Div. 2d Dep't 1987).

In right of privacy action under CLS Civ R §§ 50 and 51 for unauthorized marketing of plaintiff's photograph on packages or hand-tags attached to articles of clothing manufactured, distributed or sold by defendants, defendants' claim of ambiguity in written release provision consenting to use of photograph "for print advertising only" was not sufficient basis to grant their motion for reargument and to vacate prior grant of summary judgment to plaintiff since (1) same release

clearly provided that “certain products, packaging usage, billboards, countercards, and similar special usage requires separate negotiations,” (2) court had not overlooked or misapplied any controlling principle of law or fact, and (3) no new facts were presented. Walden v F. W. Woolworth Co., 138 A.D.2d 261, 525 N.Y.S.2d 224, 1988 N.Y. App. Div. LEXIS 2179 (N.Y. App. Div. 1st Dep't), app. dismissed, 72 N.Y.2d 840, 530 N.Y.S.2d 555, 526 N.E.2d 46, 1988 N.Y. LEXIS 1103 (N.Y. 1988).

In action pertaining to plaintiff’s claim that she was entitled to possess, occupy and purchase cooperative shares of stock allocated to specific apartment, court properly granted reargument to defendants where (1) pursuant to requirement of landlord, plaintiff obtained assistance of defendant individual, who was president of defendant corporation, and corporation executed lease for apartment, even though plaintiff actually occupied apartment and paid rent, (2) when landlord announced plan for conversion of premises, it accepted subscription of defendant individual for cooperative shares, (3) plaintiff prevailed on summary judgment motion after she established that defendants never occupied apartment and never paid any rent or security, and (4) on motion for reargument, defendants produced check for first month’s rent and security deposit, and demonstrated valid reason for lack of diligence in producing check at earlier date. De Almeida v Finesod, 160 A.D.2d 491, 554 N.Y.S.2d 155, 1990 N.Y. App. Div. LEXIS 4375 (N.Y. App. Div. 1st Dep't 1990).

On reargument in proceeding under CLS N-PCL § 621(d) against not-for-profit corporation to inspect and copy various of its records, court applied incorrect standard for reargument when it essentially provided petitioners with opportunity to merely repeat their earlier unsuccessful argument to new judge. Mayer v National Arts Club, 192 A.D.2d 863, 596 N.Y.S.2d 537, 1993 N.Y. App. Div. LEXIS 3747 (N.Y. App. Div. 3d Dep't 1993).

On motion for reargument of motion for summary judgment, original determination by court should have been adhered to where movant failed to allege that court overlooked or misapprehended facts or that court misapplied any controlling principle of law. Diorio v City of New York, 202 A.D.2d 625, 609 N.Y.S.2d 304, 1994 N.Y. App. Div. LEXIS 2946 (N.Y. App. Div.

2d Dep't 1994), app. dismissed, 85 N.Y.2d 857, 624 N.Y.S.2d 375, 648 N.E.2d 795, 1995 N.Y. LEXIS 182 (N.Y. 1995).

Court properly treated plaintiff's motion to amend prior order and judgment as motion for reargument where motion was based on court's misapprehension of facts. Porowski v Mason, 238 A.D.2d 559, 657 N.Y.S.2d 71, 1997 N.Y. App. Div. LEXIS 4418 (N.Y. App. Div. 2d Dep't 1997).

In combined Article 78 proceeding and action for judgment declaring null and void particular local law of town and any subdivision approval granted under that law, and for injunction against clearing of any land that had received such subdivision approval, to extent that petitioners asserted that Appellate Division's prior decision, which remitted matter to Supreme Court for analysis under CLS CPLR § 1001(b) as to whether petitioners should be allowed to maintain proceeding in absence of necessary parties, their proper remedy was motion to reargue. Llana v Town of Pittstown, 245 A.D.2d 968, 667 N.Y.S.2d 112, 1997 N.Y. App. Div. LEXIS 13631 (N.Y. App. Div. 3d Dep't 1997), app. denied, 91 N.Y.2d 812, 672 N.Y.S.2d 848, 695 N.E.2d 717, 1998 N.Y. LEXIS 1054 (N.Y. 1998).

Motion for reargument is addressed to sound discretion of court that decided prior motion and may be granted on showing that court overlooked or misapprehended facts or law or for some other reason mistakenly arrived at its earlier decision. Long v Long, 251 A.D.2d 631, 675 N.Y.S.2d 557, 1998 N.Y. App. Div. LEXIS 7879 (N.Y. App. Div. 2d Dep't 1998).

Divorced husband in matrimonial action was properly granted reargument where court failed to make determination of child support arrears as directed in 1995 order of reference. Long v Long, 251 A.D.2d 631, 675 N.Y.S.2d 557, 1998 N.Y. App. Div. LEXIS 7879 (N.Y. App. Div. 2d Dep't 1998).

Prison inmate, who brought petition to determine his paternity but was unable to attend paternity hearing because of his incarceration, was entitled to reargument—at least to extent that he sought scientific testing to determine whether he was genetically related to child—where (1)

inmate learned that child's mother might have had affair with another man during conception period, (2) inmate was unfairly deprived of opportunity to request testing before end of hearing, because his assigned attorney failed to inform court that inmate had doubts about his paternity, that he wanted to be tested, and that inmate had requested to be allowed to represent himself due to conflicts with counsel, and (3) at hearing, counsel never asked mother whether she had engaged in sexual relations with anyone other than inmate at or around time of conception. Walter P. v Melissa O., 251 A.D.2d 902, 674 N.Y.S.2d 849, 1998 N.Y. App. Div. LEXIS 7745 (N.Y. App. Div. 3d Dep't 1998).

Divorced wife's motion for reconsideration would not be treated as appealable motion to renew, because motion was not based on newly discovered evidence, where she failed to credibly explain why her additional evidence was not presented at time of original motion. Mancino v Mancino, 251 A.D.2d 963, 674 N.Y.S.2d 866, 1998 N.Y. App. Div. LEXIS 7732 (N.Y. App. Div. 3d Dep't 1998).

In action for slip and fall, in which Supreme Court granted plaintiff's motion to reargue branch of defendants' summary judgment motion that was to dismiss second cause of action sounding in breach of contract, merits of second cause of action could be considered on appeal, even though defendants' motion papers did not specifically address its merits, where parties addressed second cause of action in motion to reargue, and arguments made by defendants for first time on appeal could be considered because issue was one of law that appeared on face of record and could not have been avoided by plaintiff if brought to her attention on original motion. Green v Fox Island Park Autobody, Inc., 255 A.D.2d 417, 680 N.Y.S.2d 560, 1998 N.Y. App. Div. LEXIS 12023 (N.Y. App. Div. 2d Dep't 1998).

Court did not err in granting motion for reargument and vacating its prior dismissal of medical malpractice complaint where record showed that, in dismissing complaint, it had "misapprehended" fact that mental disability attested to by psychiatrist in support of plaintiff's application for guardian ad litem, concerned only her present and future incompetence to maintain action, and did not date back to commencement of action. Mitsinicos v New Rochelle

Nursing Home, 258 A.D.2d 630, 685 N.Y.S.2d 758, 1999 N.Y. App. Div. LEXIS 1439 (N.Y. App. Div. 2d Dep't 1999).

After initially granting plaintiff's summary judgment motion on issue of damages, Supreme Court properly granted leave to reargue and then denied motion where first phase of bifurcated trial had not included any proof of loss suffered by plaintiff, and record reflected understanding that defendant would be afforded opportunity at damages phase to submit expert response on issue of damages. Peak v Northway Travel Trailers Inc., 260 A.D.2d 840, 688 N.Y.S.2d 738, 1999 N.Y. App. Div. LEXIS 4044 (N.Y. App. Div. 3d Dep't 1999).

In special proceeding under CLS Town § 91, by individual who was both town board member and water commissioner, to invalidate referendum petitions by property owners regarding change in water supplier, referendum petitions could not be invalidated on reargument on grounds not raised by petitioner in his objections filed with town clerk or in his petitions filed in Supreme Court; fundamental fairness requires that prior notice by given of basis for challenge to referendum petitions, and reargument is not vehicle for parties to raise new questions or advance arguments different from those tendered on original application. Santoro v Schreiber, 263 A.D.2d 953, 695 N.Y.S.2d 443, 1999 N.Y. App. Div. LEXIS 7913 (N.Y. App. Div. 4th Dep't), app. dismissed, 94 N.Y.2d 817, 701 N.Y.S.2d 708, 723 N.E.2d 564, 1999 N.Y. LEXIS 3805 (N.Y. 1999).

Court acted within its discretion in granting leave to reargue motion on ground that it had misapplied law. Dixon v New York Cent. Mut. Fire Ins. Co., 265 A.D.2d 914, 695 N.Y.S.2d 826, 1999 N.Y. App. Div. LEXIS 10039 (N.Y. App. Div. 4th Dep't 1999).

Plaintiff's motion, although denominated as one for reargument and renewal, was properly treated solely as motion for reargument where plaintiff did not offer valid excuse as to why allegedly new facts were not previously submitted in opposition to defendant's original motion for summary judgment. Harewood v Aiken, 273 A.D.2d 199, 710 N.Y.S.2d 82, 2000 N.Y. App. Div. LEXIS 6256 (N.Y. App. Div. 2d Dep't 2000).

Defendants' motion to reargue plaintiffs' motion to strike their answer was properly granted where defendants proved that they did not default in responding to motion to strike and that they had submitted opposition papers in which they provided reasonable excuse for their failure to furnish court-ordered discovery. Brown v City of New York, 281 A.D.2d 381, 721 N.Y.S.2d 281, 2001 N.Y. App. Div. LEXIS 2117 (N.Y. App. Div. 2d Dep't 2001).

Court, on People's request for reconsideration of prior order under Sex Offender Registration Act (SORA), had authority to make new determination based on further argument by People and/or additional information as (1) legislature explicitly incorporated CLS CPLR Arts 55, 56 and 57 into SORA proceedings, including references to motions to reargue or renew, (2) even if SORA did not contemplate that either party could seek reargument or renewal with respect to court's risk level determination, court could grant relief under CLS CPLR § 2221, and (3) given overriding purposes and objectives of SORA, court also had inherent power to correct its own mistakes of law or fact. People v Wroten, 286 A.D.2d 189, 732 N.Y.S.2d 513, 2001 N.Y. App. Div. LEXIS 10662 (N.Y. App. Div. 4th Dep't 2001), app. denied, 97 N.Y.2d 610, 740 N.Y.S.2d 694, 767 N.E.2d 151, 2002 N.Y. LEXIS 175 (N.Y. 2002).

An inconsistency between a judgment and the decision upon which it is based may be corrected either by way of a motion for resettlement or on appeal. Matwijczuk v Matwijczuk, 290 A.D.2d 854, 736 N.Y.S.2d 520, 2002 N.Y. App. Div. LEXIS 557 (N.Y. App. Div. 3d Dep't 2002).

Where the injured party failed to file a timely notice of claim, the trial court did not err under N.Y. Gen. Mun. Law § 50-e(5) in granting granting the injured party's motion for leave to reargue pursuant to N.Y. C.P.L.R. 2221(b) and, upon reargument, granting the injured party's motion for leave to serve a late notice of claim; there was a minimal delay in serving the notice of claim, and the delay did not substantially prejudice the New York City Transit Authority. Morales v N.Y. City Transit Auth., 15 A.D.3d 580, 790 N.Y.S.2d 212, 2005 N.Y. App. Div. LEXIS 1802 (N.Y. App. Div. 2d Dep't 2005).

Defendants' motion to reargue pursuant to N.Y. C.P.L.R. 2221 regarding defendants' motion to deem them in compliance with a prior discovery order was properly granted because

defendants' motion to reargue was not improperly based upon new arguments not previously advanced. Cruz v Masada Auto Sales, Ltd., 41 A.D.3d 417, 835 N.Y.S.2d 919, 2007 N.Y. App. Div. LEXIS 6966 (N.Y. App. Div. 2d Dep't 2007).

As the trial court overlooked or misapprehended the relevant facts and law in mistakenly denying the State's motion for summary judgment, it properly granted the State leave to reargue, after which it properly granted the State summary judgment. Cuomo v Ferran, 77 A.D.3d 698, 909 N.Y.S.2d 521, 2010 N.Y. App. Div. LEXIS 7458 (N.Y. App. Div. 2d Dep't 2010).

Trial court erred in, sua sponte, vacating a summary judgment order and denying, as academic, defendant's summary judgment motion dismissing the complaint as the court did not act under N.Y. C.P.L.R. 2221, 2214 or 5015 since defendant's pending motion to reargue sought only to modify the discontinuance order, and no relief was sought by any party from the summary judgment order. Baez v Parkway Mobile Homes, Inc., 125 A.D.3d 905, 5 N.Y.S.3d 154, 2015 N.Y. App. Div. LEXIS 1585 (N.Y. App. Div. 2d Dep't 2015).

Trial court erred when it denied debtors' motion to unseal the record in an action by the bank to collect on allegedly defaulted debt obligations and counterclaims asserting that the lending scheme was fraudulent, as it improperly considered it as an untimely motion for leave to reargue. Manufacturers & Traders Trust Co. v Client Server Direct, Inc., 156 A.D.3d 1364, 68 N.Y.S.3d 280, 2017 N.Y. App. Div. LEXIS 9043 (N.Y. App. Div. 4th Dep't 2017).

Supreme court providently exercised its discretion in granting reargument of the grantors' opposition to the cross motion of a limited liability company, as the grantors established that in determining the cross motion, the supreme court overlooked or misapprehended certain matters of fact and law. Coke-Holmes v Holsey Holdings, LLC, 189 A.D.3d 1162, 139 N.Y.S.3d 227, 2020 N.Y. App. Div. LEXIS 7821 (N.Y. App. Div. 2d Dep't 2020).

Where adequate papers were before the court for the first time, leave to reargue motion for summary judgment would be granted. Bowery Sav. Bank v Corner Bay Shore Associates, 46 Misc. 2d 788, 260 N.Y.S.2d 457, 1965 N.Y. Misc. LEXIS 1783 (N.Y. Sup. Ct. 1965).

Position which was inconsistent with that previously relied upon was not properly subject of motion to reargue. American Trading Co. v Fish, 87 Misc. 2d 193, 383 N.Y.S.2d 943, 1975 N.Y. Misc. LEXIS 3349 (N.Y. Sup. Ct. 1975).

A count of sexual abuse in the third degree in violation of Penal Law § 130.55, previously dismissed with the consent of the People on an erroneous point of law concerning the requirement that the victim be present to testify in a sexual abuse case, would be restored to the information charging defendant with public lewdness in violation of Penal Law § 245.00, without treating the prosecutor's motion as a motion to reargue subject to the requirements of CPLR §§ 2221 and 2214, where, even though the People did not have testimony from any of the women defendant was charged with having abused, defendant could still be convicted on the basis of police observations of his actions, which were sufficient to allow an inference of lack of consent on the part of the victims. People v Darryl M., 123 Misc. 2d 723, 475 N.Y.S.2d 704, 1984 N.Y. Misc. LEXIS 3070 (N.Y. Crim. Ct. 1984).

Court would grant reargument of its prior determination that adopted child was not distributee of her first adoptive father where court had not considered pertinency of recent statutory amendment regarding rights of adoptive children to intestate succession from and through their natural parents. In re Estate of D'Angelo, 140 Misc. 2d 522, 531 N.Y.S.2d 495, 1988 N.Y. Misc. LEXIS 469 (N.Y. Sur. Ct. 1988).

Court granted People's motion to reargue chargeability of postreadiness delay where it had determined issue on prereadiness rationale instead of postreadiness analysis. People v Myers, 184 Misc. 2d 394, 709 N.Y.S.2d 330, 2000 N.Y. Misc. LEXIS 146 (N.Y. Sup. Ct. 2000).

On defendant's motion for reargument of her motion to vacate default judgment against her for unpaid fee for advertising in plaintiff's business directory, defendant was entitled to factual hearing as to whether service was properly effectuated on member of her household where (1) process server attested that service was made on person identified as defendant's daughter, Sue Dimilia, and (2) defendant asserted that "no one in my household was ever served a paper regarding this matter. The paper was served to a Sue Dimilia. There is no such person at that

address." Yellow Book of NY L.P. v Dimilia, 188 Misc. 2d 489, 729 N.Y.S.2d 286, 2001 N.Y. Misc. LEXIS 202 (N.Y. Dist. Ct. 2001).

On defendant's motion for reargument of her motion to vacate default judgment against her for unpaid fee for advertising in plaintiff's business directory, defendant was entitled to factual hearing as to whether plaintiff, in signing plaintiff's form contract on ambiguous single signature line, was binding herself personally on behalf of sole proprietorship or was merely acting on behalf of corporate party. Yellow Book of NY L.P. v Dimilia, 188 Misc. 2d 489, 729 N.Y.S.2d 286, 2001 N.Y. Misc. LEXIS 202 (N.Y. Dist. Ct. 2001).

On defendant's motion for reargument of her motion to vacate default judgment against her for unpaid fee for advertising in plaintiff's business directory, unpublished summary decision of Appellate Term involving similar claim for unpaid advertising fees, in which it was held that contract "clearly and unambiguously made the defendant individually liable," would not be given controlling precedential effect where that decision did not set forth adjudicated facts even to extent of revealing whether contract was same as or similar to contract in present case. Yellow Book of NY L.P. v Dimilia, 188 Misc. 2d 489, 729 N.Y.S.2d 286, 2001 N.Y. Misc. LEXIS 202 (N.Y. Dist. Ct. 2001).

On defendant's motion for reargument of her motion to vacate default judgment against her for unpaid fee for advertising in plaintiff's business directory, contract clause stating that contract was "deemed transacted in Nassau County" was insufficient to confer jurisdiction on District Court of Nassau County where contract did not mention that defendant was consenting to jurisdiction in Nassau County, lay reader would not necessarily know legal significance of indirect formulation "deemed transacted," and clause appeared in plaintiff's form contract concerning transaction with many indicia of consumer transactions. Yellow Book of NY L.P. v Dimilia, 188 Misc. 2d 489, 729 N.Y.S.2d 286, 2001 N.Y. Misc. LEXIS 202 (N.Y. Dist. Ct. 2001).

On defendant's motion for reargument of her motion to vacate default judgment against her for unpaid fee for advertising in plaintiff's business directory, unpublished summary decision of Appellate Term, in which it was held that same contract clause as that involved in present case

"was sufficient to establish the basis for personal jurisdiction over defendant," would not be given controlling precedential effect where that decision did not set forth specific legal grounds on which it was based. Yellow Book of NY L.P. v Dimilia, 188 Misc. 2d 489, 729 N.Y.S.2d 286, 2001 N.Y. Misc. LEXIS 202 (N.Y. Dist. Ct. 2001).

Wife's motion to reargue was granted and upon reargument, the parties' separation agreement was held to be valid and enforceable as N.Y. Exec. Law § 142-a(2)(f) clearly validated the certificate of acknowledgement; any objection the husband might have had as to the original defect in the certificate of acknowledgement was waived after six months. Kudrov v Kudrov, 820 N.Y.S.2d 405, 12 Misc. 3d 205, 234 N.Y.L.J. 14, 2005 N.Y. Misc. LEXIS 3098 (N.Y. Sup. Ct. 2005).

With respect to the dismissal of an information, granting the People's second motion for reargument was not improper because N.Y. C.P.L.R. 2221 did not expressly prohibit successive motions to reargue and the People's moving papers demonstrated that the trial court misconstrued the law. People v Oceanside Institutional Indus., Inc., 833 N.Y.S.2d 350, 15 Misc. 3d 22, 2007 N.Y. Misc. LEXIS 380 (N.Y. App. Term), app. denied, 8 N.Y.3d 989, 838 N.Y.S.2d 492, 869 N.E.2d 668, 2007 N.Y. LEXIS 1940 (N.Y. 2007).

After a family court granted defendant juvenile's oral motion to dismiss at the conclusion of the presentment agency's case at a fact-finding hearing in juvenile delinquency proceedings, the agency could not bring a N.Y. C.P.L.R. 2221 motion to reargue because jeopardy had attached when the family court granted the oral motion to dismiss and entered the order of dismissal; double jeopardy applied to juvenile delinquency proceedings under N.Y.Fam. Ct. Act § 303.2, Matter of S.S., 837 N.Y.S.2d 863, 16 Misc. 3d 660, 237 N.Y.L.J. 117, 2007 N.Y. Misc. LEXIS 4159 (N.Y. Fam. Ct. 2007).

In a personal injury case, a property owner's motion for renewal and reargument under N.Y. C.P.L.R. 2221 was not in compliance with N.Y. C.P.L.R. 2221(f) since it did not identify and separately support each item of relief sought. Rosario v Ortiz Funeral Home Corp., 839 N.Y.S.2d 674, 16 Misc. 3d 739, 238 N.Y.L.J. 5, 2007 N.Y. Misc. LEXIS 4237 (N.Y. Civ. Ct.

2007), aff'd, 862 N.Y.S.2d 699, 20 Misc. 3d 12, 2008 N.Y. Misc. LEXIS 3179 (N.Y. App. Term 2008).

In view of the disposition of the appeal and cross appeal from an order entered in a holdover proceeding, the motion by the tenant, which, in essence, merely sought reargument and did not properly constitute a motion for leave to renew, N.Y. C.P.L.R. 2221(e), and the cross motion by the landlord were rendered academic. McFadden v Sassower, 900 N.Y.S.2d 585, 27 Misc. 3d 45, 2010 N.Y. Misc. LEXIS 381 (N.Y. App. Term 2010).

Motion for leave to reargue under N.Y. C.P.L.R. 2221 is addressed to the sound discretion of the court and may be granted only upon a showing that the court overlooked or misapprehended the facts or the law or for some reason mistakenly arrived at its earlier decision. Alpert v Wolf, 194 Misc. 2d 126, 751 N.Y.S.2d 707, 2002 N.Y. Misc. LEXIS 1499 (N.Y. Civ. Ct. 2002).

Where defendants, a corporation and an estate’s co-executor, delayed in appearing in plaintiff academy’s action for specific performance of a contract, delayed in answering the complaint, and then furnished no reasonable excuse for their protracted delay in appearing and answering, the surrogate’s court correctly granted the academy’s motion under N.Y. C.P.L.R. 3215(a) for leave to enter judgment against defendants upon their default in appearing or answering; correctly adhered to that determination upon reargument; and providently exercised its discretion in denying defendants’ cross motion, in effect, to excuse their default. E. End Christian Acad. v Long Island Kitchens, Inc., 304 A.D.2d 523, 756 N.Y.S.2d 881, 2003 N.Y. App. Div. LEXIS 3657 (N.Y. App. Div. 2d Dep't 2003).

Following a grant of leave to reargue pursuant to N.Y. C.P.L.R. 2221, the trial court erred in denying plaintiffs’ motion pursuant to N.Y. C.P.L.R. 306-b for an extension of time to serve defendants with a summons and complaint and, in granting defendants’ motion to dismiss the personal injury action pursuant to N.Y. C.P.L.R. 3211(a)(8); while the trial court properly determined that attempts made by plaintiffs’ process servers to personally serve defendants at their residence did not satisfy the due diligence requirement of N.Y. C.P.L.R. 308(4), upon consideration of the relevant factors in the interest of justice, the appellate court held that

plaintiffs' motion for an extension of time to serve the summons and complaint should have been granted and that defendants' cross motion to dismiss the action for lack of personal jurisdiction should have been denied. Simonovskaya v Olivo, 304 A.D.2d 553, 759 N.Y.S.2d 329, 2003 N.Y. App. Div. LEXIS 3647 (N.Y. App. Div. 2d Dep't 2003).

Although the trial court properly granted a purchaser's motion for reargument pursuant to N.Y. C.P.L.R. 2221, the trial court erred in denying a cooperative corporation's motion to dismiss pursuant to N.Y. C.P.L.R. 3211 in an action by a purchaser to compel conveyance of shares; the contract was expressly made subject to and conditioned upon the corporation's proprietary lease and by-laws, and a proprietary lease expressly provided for written notification by the seller of the shares, and stated the conditions under which the notice requirement might be waived, and here, the seller did not provide notice in accordance with the terms of the proprietary lease, and the corporation never issued a certificate stating that the right of first refusal had been released or waived. Leist v Goldstein, 305 A.D.2d 468, 760 N.Y.S.2d 191, 2003 N.Y. App. Div. LEXIS 5342 (N.Y. App. Div. 2d Dep't 2003).

In an action by grandparents for visitation with a grandchild pursuant to N.Y. Fam. Ct. Act art. 6, upon granting the grandparents' motion for reargument pursuant to N.Y. C.P.L.R. 2221, the trial court erred in adhering to its decision to dismiss the action, as the trial court erred in making a determination regarding the best interest of the child based upon the father's submissions where the issue before it on reargument strictly concerned the trial court's error in dismissing the proceeding on the ground of lack of standing and where the trial court afforded the grandparents no opportunity to present evidence or testimony. Gavrusinas v Melnichenko, 305 A.D.2d 679, 760 N.Y.S.2d 518, 2003 N.Y. App. Div. LEXIS 5944 (N.Y. App. Div. 2d Dep't 2003).

Injured party's appeal of a decision by the trial court granting summary judgment to defendants pursuant to N.Y. C.P.L.R. 3212, and the trial court's decision to adhere to that decision upon granting reargument pursuant to N.Y. C.P.L.R. 2221, on the basis that the injured party failed to show a serious injury pursuant to N.Y. Ins. Law § 5102(d), was dismissed; the injured party had filed an earlier appeal which was dismissed for failure to prosecute, and the injured party could

have made the arguments in the instant appeal during the pendency of the earlier appeal. Azor v Delva, 306 A.D.2d 234, 762 N.Y.S.2d 94, 2003 N.Y. App. Div. LEXIS 6254 (N.Y. App. Div. 2d Dep't 2003).

Where the parties resided together, the wife was ineligible for maintenance; although a pendente lite award was proper, in the absence of any specification by the trial court, it was nontaxable and nondeductible. Zizza v Zizza, 306 A.D.2d 126, 762 N.Y.S.2d 590, 2003 N.Y. App. Div. LEXIS 6983 (N.Y. App. Div. 1st Dep't 2003).

Trial court properly granted an injured party’s motion for leave to reargue pursuant to N.Y. C.P.L.R. 2221, since it apparently misapprehended certain facts in arriving at its earlier determination; however, the trial court erred in denying a landlord’s motion for summary judgment pursuant to N.Y. C.P.L.R. 3212 upon reargument, as the landlord established her entitlement to judgment as a matter of law by demonstrating that placing a carpet remnant on top of the carpeted floor as a doormat did not constitute an inherently dangerous condition, and in opposition, the injured party failed to come forward with evidentiary proof to raise a triable issue of fact. Mansueto v Worster, 1 A.D.3d 412, 766 N.Y.S.2d 691, 2003 N.Y. App. Div. LEXIS 11762 (N.Y. App. Div. 2d Dep't 2003).

In an insured’s breach of contract action against a title insurer, the trial court erroneously granted the insurer’s motion for leave to reargue the trial court’s order granting the insured’s motion for partial summary judgment because the insurer did not show that the trial court had misapplied the law or the facts, as required by N.Y. C.P.L.R. § 2221(d)(2), and the purpose of a motion for leave to reargue was not to allow a party to argue a new theory of law that was not previously asserted. Pryor v Commonwealth Land Title Ins. Co., 1 A.D.3d 494, 767 N.Y.S.2d 256, 2003 N.Y. App. Div. LEXIS 12064 (N.Y. App. Div. 2d Dep't 2003), recalled, vacated, sub. op., 17 A.D.3d 434, 793 N.Y.S.2d 452, 2005 N.Y. App. Div. LEXIS 3867 (N.Y. App. Div. 2d Dep't 2005).

Upon renewal and reargument pursuant to N.Y. C.P.L.R. 2221, the trial court erred in denying defendants’ summary judgment motion pursuant to N.Y. C.P.L.R. 3212 in a personal injury

action; there was no objective medical evidence that the injured party suffered a serious injury as required by N.Y. Ins. Law § 5102(d). Caldwell v Malone, 2 A.D.3d 1378, 770 N.Y.S.2d 228, 2003 N.Y. App. Div. LEXIS 14452 (N.Y. App. Div. 4th Dep't 2003).

Upon reargument pursuant to N.Y. C.P.L.R. 2221, the trial court erred in denying a corporation's summary judgment motion pursuant to N.Y. C.P.L.R. 3212 in a personal injury action; plaintiffs failed to raise a triable issue of fact that the corporation negligently performed repairs on a forklift. Venuto v RCS Elec. Equip. Corp., 5 A.D.3d 672, 774 N.Y.S.2d 729, 2004 N.Y. App. Div. LEXIS 3296 (N.Y. App. Div. 2d Dep't 2004).

In a personal injury suit where defendants had successfully sought summary judgment, court erred in granting plaintiff leave to reargue the motion for summary judgment because plaintiff did not show that trial court had misapplied the law or facts in its original order, as required under N.Y. C.P.L.R. 2221(d)(2). Collins v Stone, 8 A.D.3d 321, 778 N.Y.S.2d 79, 2004 N.Y. App. Div. LEXIS 7879 (N.Y. App. Div. 2d Dep't 2004).

Billing agent's motion to reargue a preliminary injunction and an order of attachment in an N.Y. C.P.L.R. art. 13-A forfeiture action was denied because, inter alia, pending a determination by the criminal court as to the sufficiency of a related indictment, it was proper for the court in the forfeiture action to, inter alia, give adequate weight to the indictment which was regular on its face and which was presumed to have been properly returned; the indictment, the complaint, and an affidavit, when read together, contained enough factual allegations about the criminal enterprise to demonstrate a substantial probability that the district attorney would succeed in the forfeiture action. The billing agent's affidavit failed to assert that every single bill submitted as part of the billing and fee collection services during the investigation period were correct and corroborated by medical records. Morgenthau v Vinarsky, 875 N.Y.S.2d 821, 21 Misc. 3d 1137A (Sup 2008).

On reargument, it was determined that, regardless of whether the first doctor was a "covered person" under a medical center's self insurance fund, and entitled to be indemnified by the medical center, the first doctor was not subject to the medical center's 11 U.S.C.S. § 524

bankruptcy discharge or injunctive relief in a malpractice claim because he was a non-debtor, third party. Brash v Richards, 910 N.Y.S.2d 346, 30 Misc. 3d 436, 2010 N.Y. Misc. LEXIS 5183 (N.Y. Sup. Ct. 2010), transferred, 87 A.D.3d 556, 929 N.Y.S.2d 745, 2011 N.Y. App. Div. LEXIS 6090 (N.Y. App. Div. 2d Dep't 2011).

Motion for reargument was properly granted because the trial court overlooked the arguments plaintiff initially set forth in opposition to defendants' motion regarding the electronic signatures on the doctors' affirmations submitted by defendants. Martin v Portexit Corp., 98 A.D.3d 63, 948 N.Y.S.2d 21, 2012 N.Y. App. Div. LEXIS 4974 (N.Y. App. Div. 1st Dep't 2012).

Court properly struck a provider's notice of trial and allowed an insurer to amend its answer to assert a fraudulent incorporation defense to the provider's no-fault reimbursement claim because, inter alia, that defense was nonwaivable and was therefore not subject to the 30-day preclusion rule of N.Y. Ins. Law § 5106(a); further, the provider was mistaken in its position that the insurer never requested certain documents in writing, and the court's order compelling production of those document was also proper. The court did not overlook or misapprehend any matters of fact or law when it entered its prior order, which was adhered to on reargument. Eastern Med., P.C. v Allstate Ins. Co., 854 N.Y.S.2d 299, 19 Misc. 3d 775, 239 N.Y.L.J. 72, 2008 N.Y. Misc. LEXIS 1603 (N.Y. Dist. Ct. 2008).

In view of the disposition of the appeal and cross appeal from an order entered in a holdover proceeding, the motion by the tenant, which, in essence, merely sought reargument and did not properly constitute a motion for leave to renew, N.Y. C.P.L.R. 2221(e), and the cross motion by the landlord were rendered academic. McFadden v Sassower, 900 N.Y.S.2d 585, 27 Misc. 3d 45, 2010 N.Y. Misc. LEXIS 381 (N.Y. App. Term 2010).

Criminal court has the discretion to entertain a motion to reargue or renew, so long as the criminal action remains pending before it; whether the specific procedural requirements of CPLR 2221 should be applicable to motions to reargue or renew in a criminal case is not determinative of the motion, and irrespective of CPLR 2221, the criminal courts retain the inherent authority to

consider motions to reargue and renew. People v Jones, 57 Misc. 3d 590, 57 N.Y.S.3d 371, 2017 N.Y. Misc. LEXIS 2882 (N.Y. City Crim. Ct. 2017).

Defendant's motion for leave to reargue was denied because the motion did not contain reasonable justification for the failure to annex its answer to the complaint to the prior motion and there was no error in denying his prior motion because the requirements to annex a pleading were statutorily mandated, and the failure to do so provided a basis for denial of the motion without prejudice. Stahlman v NYU Langone Health Sys., 63 Misc. 3d 496, 94 N.Y.S.3d 798, 2019 N.Y. Misc. LEXIS 668 (N.Y. Sup. Ct. 2019).

Because a witness's affidavit was not submitted in support of the motion in limine, the supreme court declined to consider it. Butler v Fort Hudson Nursing Ctr., Inc., 71 Misc. 3d 275, 142 N.Y.S.3d 714, 2021 N.Y. Misc. LEXIS 448 (N.Y. Sup. Ct.), aff'd, 202 A.D.3d 45, 161 N.Y.S.3d 374, 2021 N.Y. App. Div. LEXIS 7202 (N.Y. App. Div. 3d Dep't 2021).

Because the filing of a responsive pleading, which includes a motion to dismiss, waives the right to dismissal based on abandonment, a defendant alleged to be in default for failure to timely answer waived its right to seek dismissal based on abandonment by appearing for purposes of motions to dismiss and to renew and reargue; the court granted leave to interpose an answer based on the strong preference for resolving cases on the merits and on a representation of readiness to serve an answer. 2023 N.Y. Misc. LEXIS 1455.

18. —Timeliness

Regardless of statutory time limits concerning motions to reargue, every court retains continuing jurisdiction to reconsider its prior interlocutory orders during pendency of action. Liss v Trans Auto Systems, Inc., 68 N.Y.2d 15, 505 N.Y.S.2d 831, 496 N.E.2d 851, 1986 N.Y. LEXIS 19363 (N.Y. 1986).

A motion to reargue cannot be used to extend the time to appeal and such a motion must therefore, be made before the time to appeal has expired. Liberty Nat'l Bank & Trust Co. v Bero

Constr. Corp., 29 A.D.2d 627, 286 N.Y.S.2d 287, 1967 N.Y. App. Div. LEXIS 2835 (N.Y. App. Div. 4th Dep't 1967).

Although CPLR 2221, which controls motions for reargument, contains no time limit, such motions should be made prior to the expiration of the time within which an appeal from the original order may be taken. Henegar v Freudenheim, 40 A.D.2d 825, 337 N.Y.S.2d 280, 1972 N.Y. App. Div. LEXIS 3469 (N.Y. App. Div. 2d Dep't 1972).

A motion to renew may be brought after time to appeal from original order has expired, but it should be returnable before justice has signed original order or transferred it to him. Begler v Saltzman, 53 A.D.2d 578, 385 N.Y.S.2d 60, 1976 N.Y. App. Div. LEXIS 13218 (N.Y. App. Div. 1st Dep't 1976).

Motion to reargue should be made no later than the time limited for taking an appeal from the order. Fitzpatrick v Cook, 58 A.D.2d 642, 396 N.Y.S.2d 51, 1977 N.Y. App. Div. LEXIS 12720 (N.Y. App. Div. 2d Dep't 1977).

In an action on a policy of fire insurance, defendant’s motion designated as one for renewal of its prior motion for summary judgment was, in effect, a motion for reargument since no new evidence was offered, was untimely since it was not made within the time to appeal from the original order and was improperly brought before Special Term, in that court was bound by the decision of this court on a prior appeal. Catalogue Service of Westchester, Inc. v Insurance Co. of North America, 90 A.D.2d 838, 456 N.Y.S.2d 79, 1982 N.Y. App. Div. LEXIS 19094 (N.Y. App. Div. 2d Dep't 1982).

Special term did not abuse its discretion by granting plaintiff’s motion for reargument where motion was brought within time for taking appeal from original order granting summary judgment to defendant. Reape v New York News, Inc., 122 A.D.2d 29, 504 N.Y.S.2d 469, 1986 N.Y. App. Div. LEXIS 59103 (N.Y. App. Div. 2d Dep't), app. denied, 68 N.Y.2d 610, 508 N.Y.S.2d 1027, 501 N.E.2d 600, 1986 N.Y. LEXIS 20579 (N.Y. 1986), app. denied, 69 N.Y.2d 707, 512 N.Y.S.2d 1031, 504 N.E.2d 399, 1986 N.Y. LEXIS 21336 (N.Y. 1986).

Defendants' motion to reargue was timely when it was made within requisite 30 days after service upon defendants of copy of judgment with notice of entry thereon, and judgment had not been settled or entered. Luming Cafe, Inc. v Birman, 125 A.D.2d 180, 508 N.Y.S.2d 444, 1986 N.Y. App. Div. LEXIS 62456 (N.Y. App. Div. 1st Dep't 1986).

In action for legal fees, court erred in granting clients' motion for reargument and vacating its prior order, which had confirmed referee's report finding value of attorney's services to be $10,000, since reargument motion was not made until 2 years after order directing payment, and order appealed from was counter to Appellate Division decision confirming referee's report in its entirety. Namer v 152-154-156 West 15th Street Realty Corp., 138 A.D.2d 333, 526 N.Y.S.2d 817, 1988 N.Y. App. Div. LEXIS 3382 (N.Y. App. Div. 1st Dep't), app. dismissed, 72 N.Y.2d 954, 534 N.Y.S.2d 667, 531 N.E.2d 299, 1988 N.Y. LEXIS 3999 (N.Y. 1988).

Defendant was entitled to reversal of order of court which rejoined him, some 1 ½ years after he was granted summary judgment, on basis that interest of justice required rejoinder because complete relief could not otherwise be afforded; court lacked power to rejoin defendant as time for reargument of motion for summary judgment had long passed, and rejoinder impermissibly vitiated finality of 1 ½ -year-old judgment in defendant's favor. Hitzig v Borough-Tel Service, Inc., 168 A.D.2d 276, 562 N.Y.S.2d 519, 1990 N.Y. App. Div. LEXIS 15119 (N.Y. App. Div. 1st Dep't 1990).

Court properly considered evidence submitted by plaintiffs in support of their second motion to renew and reargue motion to restore action to calendar, even though evidence had been available at time of original motion to restore, since it conclusively established that plaintiffs' first motion had been timely made, which had been plaintiffs' position on their first motion to renew and reargue, albeit with proof then deemed inadequate by court. Cohen v Otis Elevator, 241 A.D.2d 342, 660 N.Y.S.2d 972, 1997 N.Y. App. Div. LEXIS 7183 (N.Y. App. Div. 1st Dep't 1997).

Motion to reargue was untimely where it was made after expiration of time in which to appeal from underlying order. Lynch v Williams, 265 A.D.2d 870, 695 N.Y.S.2d 855, 1999 N.Y. App. Div. LEXIS 9967 (N.Y. App. Div. 4th Dep't 1999).

Although motion to reargue ordinarily may not be made after period for appealing prior order has expired, it may be made thereafter if notice of appeal as been timely filed and motion is brought before submission of appeal or, at latest, before appeal is determined. Millson v Arnot Realty Corp., 266 A.D.2d 918, 697 N.Y.S.2d 435, 1999 N.Y. App. Div. LEXIS 11851 (N.Y. App. Div. 4th Dep't 1999), overruled in part, Bax v Allstate Health Care, Inc., 26 A.D.3d 861, 809 N.Y.S.2d 378, 2006 N.Y. App. Div. LEXIS 1514 (N.Y. App. Div. 4th Dep't 2006).

Since there was no showing that an alleged neurological condition was linked to the infant’s consumption of a baby formula allegedly sold after its expiration date, and the court was not bound to deny a motion to reargue because it was made beyond the 30-day limit defined in N.Y. C.P.L.R. 2221(d)(3), the motion for leave to amend the bill of particulars was properly denied. Itzkowitz v King Kullen Grocery Co., Inc., 22 A.D.3d 636, 804 N.Y.S.2d 350, 2005 N.Y. App. Div. LEXIS 11126 (N.Y. App. Div. 2d Dep't 2005).

Denial of a former inmate’s motion for reargument of the denial of his application for permission to file a late notice of claim was proper because it was not disputed that the State served upon the former inmate the original order of the Court of Claims denying permission to serve a late notice of claim, together with notice of entry, and the former inmate did not move for what was properly determined to have been reargument until long after the time in which he had to make such a motion had expired pursuant to CPLR 2221(d)(3), 2103(b)(2). Bramble v State of New York, 54 A.D.3d 1138, 864 N.Y.S.2d 223, 2008 N.Y. App. Div. LEXIS 6901 (N.Y. App. Div. 3d Dep't 2008).

Borrower’s reargument motion in a foreclosure suit was properly denied because it was untimely under N.Y. C.P.L.R. 2221(d)(3). Wells Fargo, N.A. v Levin, 101 A.D.3d 1519, 958 N.Y.S.2d 227, 2012 N.Y. App. Div. LEXIS 9091 (N.Y. App. Div. 3d Dep't 2012).

An order granting leave to reargue (CPLR 2221) may be made ex parte upon a showing of some controlling decision or principle of law which has been overlooked. Leave to reargue should not be granted where the party seeking rehearing has not appealed in timely fashion, otherwise litigants might be inclined to use the reargument device as a means to circumvent the

time limits for appeal. Hill v Edelman, 92 Misc. 2d 485, 399 N.Y.S.2d 565, 401 N.Y.S.2d 697, 1977 N.Y. Misc. LEXIS 2573 (N.Y. Sup. Ct. 1977).

A motion to reargue may not be made after the time to appeal has expired, but a motion to renew is not so limited and can be made within a reasonable time. On a motion to renew, the party must present new facts and must indicate the reason that the information was not brought to the court's attention on the previous motion. Liantonio v Baum, 95 Misc. 2d 636, 408 N.Y.S.2d 257, 1978 N.Y. Misc. LEXIS 2488 (N.Y. Sup. Ct. 1978).

Court denied motion to reargue denial of a summer program's motion to be relieved from default since it did not file its motions within 30 days as required by N.Y. C.P.L.R. 2221(d)(3). The program's filing of its notice of appeal, which was not yet perfected, did not serve to extend the 30 days under Millson, since Millson applied rules in effect prior to § 2221(d)(3)'s amendment to include the 30-day period. Williams v Church of the Transfiguration, 794 N.Y.S.2d 781, 7 Misc. 3d 553, 2004 N.Y. Misc. LEXIS 2907 (N.Y. Sup. Ct. 2004).

Because a management company did not file timely N.Y. C.P.L.R. 2221(d), 5513(a) motions to reargue or appeal the issue of damages, and because there was no clerical error that could be corrected, the company's N.Y. C.P.L.R. 5019(a) motion to correct an error in a court decision was denied. Fleming v Sarva, 833 N.Y.S.2d 887, 15 Misc. 3d 892, 237 N.Y.L.J. 73, 2007 N.Y. Misc. LEXIS 1123 (N.Y. Sup. Ct. 2007).

Thirty day limit under N.Y. C.P.L.R. 2221(d)(3) applies only to filing of motions for leave to reargue and not to motions for leave to renew. Alpert v Wolf, 194 Misc. 2d 126, 751 N.Y.S.2d 707, 2002 N.Y. Misc. LEXIS 1499 (N.Y. Civ. Ct. 2002).

Trial court held that it was not bound by the Supreme Court of New York, Appellate Division, Fourth Department's Millson decision because that decision interpreted the version of N.Y. C.P.L.R. 2221 which was in force before changes were made on July 20, 1999, and it denied a union's motion for leave to reargue its cross-motion for summary judgment because the current version of N.Y. C.P.L.R. 2221(d)(3) required the union to file its motion no later than 30 days

after the court denied its cross-motion for summary judgment, and the motion it filed three and a half months after its cross-motion was denied was untimely. Kern v City of Rochester, 775 N.Y.S.2d 505, 3 Misc. 3d 948, 2004 N.Y. Misc. LEXIS 419 (N.Y. Sup. Ct. 2004).

Because a doctor’s motion for reargument was made more than 30 days after service upon the defendant of a copy of the order, pursuant to N.Y. C.P.L.R. 2221(d)(3), it was untimely; the original motion for summary judgment dismissing a patient’s medical malpractice complaint was properly denied. Selletti v Liotti, 45 A.D.3d 668, 845 N.Y.S.2d 816, 2007 N.Y. App. Div. LEXIS 11870 (N.Y. App. Div. 2d Dep't 2007).

Defendant client, having served the motion for leave to reargue on September 12, 2005, satisfied the time requirements of CPLR 2221(d)(3), because a motion was made when it was served (service of papers in a pending action by mail was deemed complete upon mailing), and CPLR 2103(b)(2) permitted an additional five days from service by mail of the notice of entry of the underlying order. Schaeffer & Krongold LLP v Richter, 836 N.Y.S.2d 489, 14 Misc. 3d 1217A, 234 N.Y.L.J. 108 (Sup 2005).

Defendant's motions to dismiss the complaint and re-open, reargue and/or reconsider a prior decision were denied because defendant raised the affirmative defenses of res judicata and collateral estoppel in his answer, which was stricken by the court for willful failure to comply with discovery, the defendant failed to establish a reasonable excuse for his default, the motion was untimely, and the defendant submitted no opposition to the motion he was seeking to “reargue.” Zhang Hua Lin v Zhang Li Lin, 52 Misc. 3d 229, 29 N.Y.S.3d 777, 2016 N.Y. Misc. LEXIS 1063 (N.Y. Sup. Ct. 2016).

Defendant’s motion to reargue was denied because prosecutor’s motion was untimely pursuant to N.Y. C.P.L.R. 2221(d)(3) as it was filed 40 days after decision on defendant’s omnibus motion was rendered to parties. People v Buchanan, 60 Misc. 3d 861, 80 N.Y.S.3d 909, 2018 N.Y. Misc. LEXIS 3099 (N.Y. City Ct. 2018).

An order denying reargument is not appealable; nor may such a motion be made after the period for appeal has expired. Klein v Spear, Leeds & Kellogg, 65 F.R.D. 406, 1974 U.S. Dist. LEXIS 11805 (S.D.N.Y. 1974).

19. —Treatment as renewal motion

Defense motion for reargument which contained an additional affidavit by defendant's former chief executive was, in reality, a motion for renewal. Turkel v I.M.I. Warp Knits, Inc., 50 A.D.2d 543, 375 N.Y.S.2d 333, 1975 N.Y. App. Div. LEXIS 12275 (N.Y. App. Div. 1st Dep't 1975).

Motion to "reargue" which was supported by additional affidavits containing information not before court on original motion was in effect motion to "renew." Mindy's Wine Cellar, Inc. v American & Foreign Ins. Co., 51 A.D.2d 650, 378 N.Y.S.2d 540, 1976 N.Y. App. Div. LEXIS 11000 (N.Y. App. Div. 4th Dep't 1976).

Even if dismissal by one Justice of Supreme Court of motion for leave to take deposition was based on insufficiency of the moving papers and even if papers presented in subsequent motion before another justice of same court alleged additional grounds, the latter application, at most, constituted a motion to renew rather than to reargue and, as such, came within scope of rule barring a party from appealing from one judge to another of coordinate jurisdiction; absent showing of some sufficient reason why the original judge was unable to entertain the motion it was incumbent on the second judge to transfer the motion to the former. Riggle v Buffalo General Hospital, 52 A.D.2d 751, 382 N.Y.S.2d 204, 1976 N.Y. App. Div. LEXIS 12455 (N.Y. App. Div. 4th Dep't 1976).

The motion to reargue by plaintiff in a personal injury action should have been treated as one for renewal because it presented new evidence in support of plaintiff's original motion to raise the ad damnum clause. The motion would be granted where the record indicated that the original damages requested had been grossly underestimated, and where defendants could not show prejudice nor laxity on the part of the plaintiff. Fontaine v Morse Diesel, Inc., 83 A.D.2d 809, 442 N.Y.S.2d 9, 1981 N.Y. App. Div. LEXIS 15167 (N.Y. App. Div. 1st Dep't 1981).

The motion to reargue by plaintiff in a personal injury action should have been treated as one for renewal because it presented new evidence in support of plaintiff's original motion to raise the ad damnum clause. Fontaine v Morse Diesel, Inc., 83 A.D.2d 809, 442 N.Y.S.2d 9, 1981 N.Y. App. Div. LEXIS 15167 (N.Y. App. Div. 1st Dep't 1981).

In an action to recover money owing for electrical supplies purchased from plaintiff, an order granting reargument and denying a motion for summary judgment against defendant would be reversed, where the motion for reargument was in fact a motion to renew, inasmuch as it was supported by defendant's affidavit setting forth new facts and evidence which was available at the time of the original argument, but where no explanation was presented of why the facts supplied on the motion to renew were not presented on the earlier motion as required. Champlain Valley Electric Supply Co. v Miller, 89 A.D.2d 1036, 454 N.Y.S.2d 350, 1982 N.Y. App. Div. LEXIS 18304 (N.Y. App. Div. 3d Dep't 1982).

In a breach of contract action, Special Term erred in deeming plaintiff's motion to vacate a prior order to be a motion to reargue a prior motion and in denying said motion, where the motion, although inartfully drawn, was one to renew a prior motion made by plaintiff's former counsel to vacate an order dismissing the complaint as a sanction for plaintiff's failure to comply with a prior order directing plaintiff to appear on a specified date for an examination before trial, where the mental illness of plaintiff's former attorney, which illness was corroborated by medical documentation, sufficed as a reasonable excuse for vacatur of the default, and where plaintiff's affidavit demonstrated a meretorious claim and defense to the counterclaims interposed in defendant's answer. Norowitz v Ponconco, Inc., 96 A.D.2d 581, 465 N.Y.S.2d 276, 1983 N.Y. App. Div. LEXIS 19116 (N.Y. App. Div. 2d Dep't 1983).

Motorcycle accident victim's motion for renewal of motion to serve late notice of claim to municipality would be deemed motion for reargument, so that appeal of denial required dismissal, where additional facts which he presented, pertaining to duration of his confinement at home for recuperation and specific efforts to ascertain ownership of property where accident

occurred, were known to him at time of original application. In re Cali, 132 A.D.2d 555, 517 N.Y.S.2d 548, 1987 N.Y. App. Div. LEXIS 49079 (N.Y. App. Div. 2d Dep't 1987).

Supreme court providently exercised its discretion in granting a bank's motion for leave to renew and reargue and, upon renewal and reargument, properly denied a nominee's motion for summary judgment, and properly granted the bank's cross motion for leave to interpose a reply to the nominee's counterclaim and a response to the notice to admit because the nominee's notice to admit was palpably improper, as it sought the admission of contested ultimate issues regarding the satisfaction of the mortgage debt owed to the bank. HSBC Bank USA, N.A. v Halls, 98 A.D.3d 718, 950 N.Y.S.2d 172, 2012 N.Y. App. Div. LEXIS 5997 (N.Y. App. Div. 2d Dep't 2012).

After a judgment in favor of a tenant in the landlord's holdover summary proceeding was entered, based upon a finding that the landlord had waived the "no pet" rider by not bringing an action within three months of knowledge that the tenant had two cats, pursuant to New York City, N.Y., Admin. Code § 27-2009.1(b), the landlord's motion under N.Y. C.P.L.R. 2221(d) to "reargue" that was made seven months after the judgment was really one to set aside the verdict under N.Y. C.P.L.R. 4404(b); the motion should have been denied as untimely under N.Y. C.P.L.R. 4405, and the motion also lacked substantive merit where there was no basis offered to change the verdict. 184 W. 10th St. Corp. v Marvits, 852 N.Y.S.2d 557, 18 Misc. 3d 46, 238 N.Y.L.J. 103, 2007 N.Y. Misc. LEXIS 7672 (N.Y. App. Term 2007), aff'd, 59 A.D.3d 287, 874 N.Y.S.2d 403, 2009 N.Y. App. Div. LEXIS 1321 (N.Y. App. Div. 1st Dep't 2009).

Wife's presentation of a Certificate of Proof of Execution by one of the subscribing witnesses to the parties' separation agreement that the wife argued established the validity of the agreement, even if the acknowledgment was otherwise defective, was treated as a motion to renew; however, the motion was denied as the wife failed to show why she failed to present the new facts on the prior motion. Kudrov v Kudrov, 820 N.Y.S.2d 405, 12 Misc. 3d 205, 234 N.Y.L.J. 14, 2005 N.Y. Misc. LEXIS 3098 (N.Y. Sup. Ct. 2005).

Because the People’s moving papers offered new facts not argued on the prior motion, the People’s motion for leave to reargue was, in effect, a motion for leave to renew. People v Jones, 57 Misc. 3d 590, 57 N.Y.S.3d 371, 2017 N.Y. Misc. LEXIS 2882 (N.Y. City Crim. Ct. 2017).

20. —New or additional facts or evidence

Intermediate appellate court erred in characterizing an inmate’s second application for a writ of error coram nobis as a motion to reargue because the application raised new and more substantial arguments than were raised in the inmate’s previous application; under N.Y. C.P.L.R. 2221(d)(2), a motion to reargue was not an appropriate vehicle for raising new questions. People v D'Alessandro, 13 N.Y.3d 216, 889 N.Y.S.2d 536, 918 N.E.2d 126, 2009 N.Y. LEXIS 3996 (N.Y. 2009).

Motion for reargument is made on papers submitted on original motion and new facts may not be presented thereon. Phillips v Oriskany, 57 A.D.2d 110, 394 N.Y.S.2d 941, 1977 N.Y. App. Div. LEXIS 10932 (N.Y. App. Div. 4th Dep't 1977).

Additional facts contained in papers in support of and in opposition to motion for reargument following granting of summary judgment to plaintiffs could not be considered on appeal. Phillips v Oriskany, 57 A.D.2d 110, 394 N.Y.S.2d 941, 1977 N.Y. App. Div. LEXIS 10932 (N.Y. App. Div. 4th Dep't 1977).

Reasonableness of counsel fees should not have been determined on reargument where issue of reasonableness involved both new proof and prayer for relief that was not part of original motion. Pistolesi v North Country Ins. Co., 210 A.D.2d 961, 621 N.Y.S.2d 965, 1994 N.Y. App. Div. LEXIS 13440 (N.Y. App. Div. 4th Dep't 1994).

After initially upholding human rights commission’s finding of lack of probable cause to believe that corrections department refused to employ petitioner because of his Maryland arrest record, court properly granted reargument on basis that it had failed to apprehend that Maryland court documents in department’s possession actually indicated that criminal proceedings against

petitioner were disposed of in manner analogous to New York's adjournment in contemplation of dismissal. Johnson v New York City Comm'n of Human Rights, 270 A.D.2d 186, 706 N.Y.S.2d 18, 2000 N.Y. App. Div. LEXIS 3297 (N.Y. App. Div. 1st Dep't 2000).

In action against insured and injured party seeking declaration that insurer had no obligation to defend or indemnify insured due to her failure to notify it of underlying action by injured party, court properly granted injured party's motion to reargue insured's summary judgment motion based on letter from her attorney pointing out that his affidavit was not listed among papers considered by court in making its initial decision. GA Ins. Co. v Simmes, 270 A.D.2d 664, 704 N.Y.S.2d 700, 2000 N.Y. App. Div. LEXIS 2909 (N.Y. App. Div. 3d Dep't 2000).

Plaintiff was entitled to summary judgment declaring that defendant was obligated to indemnify plaintiff's insureds in underlying action where defendant's unexplained 42-day delay in disclaiming coverage was unreasonable as matter of law under CLS Ins § 3420(d), and although additional evidence submitted by defendant on later motion to reargue tended to explain part of delay, that evidence should have been submitted earlier and thus could not be relied on. Faas v N.Y. Cent. Mut. Fire Ins. Co., 281 A.D.2d 586, 722 N.Y.S.2d 173, 2001 N.Y. App. Div. LEXIS 3079 (N.Y. App. Div. 2d Dep't 2001).

Court improperly granted a motion to reargue the dismissal of a complaint, sua sponte, after finding there were no grounds upon which to grant renewal or reargument. Andrea v E.I. Du Pont De Nemours & Co., 289 A.D.2d 1039, 735 N.Y.S.2d 683, 2001 N.Y. App. Div. LEXIS 12672 (N.Y. App. Div. 4th Dep't 2001), review or reh'g denied, Dietz v Jamestown Pub. Schs., 97 N.Y.2d 609, 739 N.Y.S.2d 357, 765 N.E.2d 853, 2002 N.Y. LEXIS 1455 (N.Y. 2002), review or reh'g denied, Francisco v Jamestown Pub. Schs., 97 N.Y.2d 609, 739 N.Y.S.2d 357, 765 N.E.2d 853, 2002 N.Y. LEXIS 1456 (N.Y. 2002), review or reh'g denied, Seekings v Jamestown City Sch. Dist., 97 N.Y.2d 609, 739 N.Y.S.2d 357, 765 N.E.2d 853, 2002 N.Y. LEXIS 1457 (N.Y. 2002), review or reh'g denied, 97 N.Y.2d 749, 742 N.Y.S.2d 607, 769 N.E.2d 354, 2002 N.Y. LEXIS 538 (N.Y. 2002).

Despite the fact that an employee had obtained some documents from the employer, the general and conclusory allegations in the affirmation of the employee's attorney and the exhibits attached thereto were insufficient to establish that the employee met the statutory requirements for a class action under N.Y. C.P.L.R. § 2221(e). Weitzberg v Nassau County Dept. of Recreation & Parks, 29 A.D.3d 682, 815 N.Y.S.2d 466, 2006 N.Y. App. Div. LEXIS 6353 (N.Y. App. Div. 2d Dep't 2006).

In a pedestrian's suit alleging that a city was negligent in setting the timing of the traffic signal at an intersection where the pedestrian was struck by an auto, the trial court properly granted reargument and renewal and vacated a prior summary judgment dismissing the pedestrian's suit under circumstances in which the pedestrian tendered an affidavit of a witness who testified that while the pedestrian was crossing, the traffic signal changed, and a car then struck the pedestrian; additionally, the pedestrian tendered the affidavit of an expert who opined that the crossing time at the intersection where the pedestrian was struck was inadequate, but that, before rendering a final opinion, he needed to review the city's traffic planning study, which was part of the pedestrian's outstanding discovery requests. Smith v City of New York, 38 A.D.3d 641, 831 N.Y.S.2d 517, 2007 N.Y. App. Div. LEXIS 3371 (N.Y. App. Div. 2d Dep't 2007).

In a personal injury action, defendants third-party plaintiffs were not entitled to pursuant to N.Y. C.P.L.R. 2221(e) to reargue a prior motion for summary judgment, because the motion was based upon evidence that could have been discovered earlier with due diligence and because that evidence was merely cumulative to the evidence presented in opposition to the motion of third-party defendant for summary judgment. Siegel v Monsey New Sq. Trails Corp., 40 A.D.3d 960, 836 N.Y.S.2d 678, 2007 N.Y. App. Div. LEXIS 6432 (N.Y. App. Div. 2d Dep't 2007).

Because a mother did not demonstrate that the Family Court misapprehended any of the relevant facts before it or misapplied any controlling principle of law, pursuant to N.Y. C.P.L.R. 2221(e), the Family Court properly adhered to its prior determination granting the custody of the parties' children to the father without a hearing. Matter of Mattie M. v Administration for

Children's Servs., 48 A.D.3d 392, 851 N.Y.S.2d 236, 2008 N.Y. App. Div. LEXIS 586 (N.Y. App. Div. 2d Dep't 2008).

Trial court did not err in granting a motion to reargue a motion to change venue in a medical malpractice case because the trial court mistakenly arrived at its earlier decision changing the venue of the action pursuant to N.Y. C.P.L.R. 2221(d)(2). Davis v Firman, 53 A.D.3d 1101, 862 N.Y.S.2d 877, 2008 N.Y. App. Div. LEXIS 6021 (N.Y. App. Div. 4th Dep't 2008).

Because plaintiff sought to raise new matter in a motion to reargue a motion to dismiss filed by defendants, a school district and others, rendering the motion also one for leave to renew under CPLR 2221(e), plaintiff had to provide a reasonable justification for failing to present the new facts on the prior motion under CPLR 2221(e)(2), (3), but did not do so. Boakye-Yiadom v Roosevelt Union Free School Dist., 57 A.D.3d 929, 871 N.Y.S.2d 314, 2008 N.Y. App. Div. LEXIS 10216 (N.Y. App. Div. 2d Dep't 2008).

Although the trial court properly granting a mother’s N.Y. C.P.L.R. 2221 motion for leave to reargue, it erred in directing the parties to submit additional evidence; in any event, the school was entitled to judgment as a matter of law since a child’s injury could not have been prevented by the most intense supervision. Scarito v St. Joseph Hill Acad., 62 A.D.3d 773, 878 N.Y.S.2d 460, 2009 N.Y. App. Div. LEXIS 3978 (N.Y. App. Div. 2d Dep't 2009).

In a personal injury action, a trial court erred by granting an injured woman’s motion to renew/reargue her opposition to summary judgment motions seeking to dismiss the complaint as she failed to justify why a medical report was not presented as evidence on the original motions and she failed to raise any triable fact that she sustained a serious injury under N.Y. Ins. Law § 5102(d). Barnett v Smith, 64 A.D.3d 669, 883 N.Y.S.2d 573, 2009 N.Y. App. Div. LEXIS 5786 (N.Y. App. Div. 2d Dep't 2009).

Trial court improvidently exercised its discretion in denying the hit and run victim’s motion for leave to renew and reargue because he maintained that, with respect to his failure to submit certain evidence with his petition for leave to commence an action against the Motor Vehicle

Accident Indemnification Corporation, he believed that his statement that he was a “person qualified” under the insurance statute had established that he was not covered by any other insurance policy and, therefore, did not need to submit any further evidence. Matter of Osorio v Motor Veh. Acc. Indem. Corp., 112 A.D.3d 831, 977 N.Y.S.2d 663, 2013 N.Y. App. Div. LEXIS 8388 (N.Y. App. Div. 2d Dep't 2013).

In a medical malpractice action, the trial court erred in denying plaintiff's motion for leave to renew his opposition to a protective order entered for defendant physician because defendant's deposition testimony revealed new facts demonstrating that the documents at issue did not constitute voluntary adverse event reports by a physician that were protected from disclosure under 21 U.S.C.S. § 360i(b). Borgia v Rothberg, 148 A.D.3d 1109, 50 N.Y.S.3d 452, 2017 N.Y. App. Div. LEXIS 2356 (N.Y. App. Div. 2d Dep't 2017).

Purchaser’s motion to renew a prior cross-motion as to the appointment of a receiver was properly denied where the alleged new facts were cumulative of other evidence already considered by the court in the prior cross-motion. Dan's Hauling & Demo, Inc. v GMMM Hickling, LLC, 218 A.D.3d 1248, 193 N.Y.S.3d 798, 2023 N.Y. App. Div. LEXIS 4020 (N.Y. App. Div. 4th Dep't 2023).

Plaintiff failed to demonstrate that the new facts submitted in support of that branch of his motion for leave to renew would have changed the trial court’s prior determination to grant that branch of the defendants’ prior motion for summary judgment dismissing the complaint insofar as asserted against them as time-barred. Plaintiff also failed to provide a reasonable justification for his failure to present the allegedly new facts supporting renewal in opposition to defendants’ prior motion. Aloi v Tobal, 236 A.D.3d 618, 229 N.Y.S.3d 192, 2025 N.Y. App. Div. LEXIS 1236 (N.Y. App. Div. 2d Dep't 2025).

In commercial landlord-tenant action, plaintiff landlord’s motion to reargue order denying his motion for summary judgment would be denied where assertion that plaintiff attempted to relet premises by listing space with certain named real estate agents or brokers was made for first time on motion to reargue, although known to plaintiff at time of original motion. Rubin v

Dondysh, 147 Misc. 2d 221, 555 N.Y.S.2d 1004, 1990 N.Y. Misc. LEXIS 224 (N.Y. Civ. Ct. 1990), dismissed, 153 Misc. 2d 657, 588 N.Y.S.2d 504, 1991 N.Y. Misc. LEXIS 821 (N.Y. App. Term 1991).

People's motion to reargue court's speedy trial determination was not properly labeled where, although adhering to earlier legal assertion that defendant was "without counsel through no fault of the court" within meaning of CLS CPL § 30.30(4)(f), People sought to argue from true facts of what occurred as reflected in minutes of hearing; however, strict labeling of motion was not prerequisite to determination on merits where People's application was promptly filed, and there was no prejudice to defendant in treating it as motion for leave to renew. People v Valentine, 187 Misc. 2d 582, 725 N.Y.S.2d 524, 2001 N.Y. Misc. LEXIS 74 (N.Y. Sup. Ct. 2001).

Trial court erred in granting plaintiffs' motion for leave to renew defendants' motion to dismiss for lack of personal jurisdiction where plaintiffs did not proffer any justification for failing to present facts known to them at the time of the original motion, and improperly relied on facts not in existence at the time of the original motion. Johnson v Marquez, 2 A.D.3d 786, 770 N.Y.S.2d 377, 2003 N.Y. App. Div. LEXIS 14191 (N.Y. App. Div. 2d Dep't 2003).

New affidavit submitted by an injured party's physician did not offer new facts that were unavailable at the time the trial court found that defendants were entitled to summary judgment because the injured party did not sustain a serious injury, within the meaning of N.Y. Ins. Law § 5102(d), that arose out of an accident they allegedly caused, and the trial court erred when it vacated its order granting defendants summary judgment and entered an order denying their motion. McNeil v Dixon, 9 A.D.3d 481, 780 N.Y.S.2d 635, 2004 N.Y. App. Div. LEXIS 10116 (N.Y. App. Div. 2d Dep't 2004).

New facts offered by a homeowners' insurer upon renewal of its motion for summary judgment, in effect, declaring that it was not obligated to provide the subject insurance coverage, and dismissing cross claims insofar as asserted against it, were not sufficient to warrant changing the original determination, and the motion to reargue was properly denied. RLI Ins. Co. v Steely,

88 A.D.3d 975, 932 N.Y.S.2d 80, 2011 N.Y. App. Div. LEXIS 7493 (N.Y. App. Div. 2d Dep't 2011).

Defendant advanced cognizable grounds for her motion to reargue her N.Y. Crim. Proc. Law § 440.10 motion by alleging that the court overlooked or misapprehended certain facts in determining the previous motion, that the court overlooked or misapprehended the applicable law on the underlying motion with regard to the federal Strickland-Padilla standard, and that the court failed to recognize that defendant was advancing a state constitutional claim. People v De Jesus, 935 N.Y.S.2d 464, 34 Misc. 3d 748, 2011 N.Y. Misc. LEXIS 5558 (N.Y. Sup. Ct. 2011).

Since the executor failed to proffer a reasonable explanation for failing to submit his additional evidence in opposition to a beneficiary’s moving papers, the Surrogate’s Court providently exercised its discretion in denying his motion for leave to renew his opposition to the summary judgment motion. Carbone v Betz (In re Carbone), 101 A.D.3d 866, 955 N.Y.S.2d 209, 2012 N.Y. App. Div. LEXIS 8455 (N.Y. App. Div. 2d Dep't 2012).

Plaintiffs’ attorney’s motion under N.Y. C.P.L.R. § 2221(e)(3) to renew and reargue a court order that had imposed sanctions against him of court costs and attorneys fees had merit in part where the order was based on newspaper articles that contained quotes from the attorney regarding out-of-court material and information from depositions taken in the matter, as it was later determined that one of the plaintiffs had disseminated the depositions to the newspaper reporter; however, as the attorney had violated N.Y. Comp. Codes R. & Regs. tit. 22, § 1200.38 by his comments, imposition of sanctions in the form of a set amount for court costs was deemed proper. Nicholson v Luce, 238 N.Y.L.J. 12, 2007 N.Y. Misc. LEXIS 5158 (N.Y. Sup. Ct. June 21, 2007).

21. —Change in law

On motion for reargument, made after time to appeal expired, the original decision should not be reversed simply because an appellate court in interim overruled its own or another statement of existing law. Deeves v Fabric Fire Hose Co., 19 A.D.2d 735, 242 N.Y.S.2d 955, 1963 N.Y. App.

Div. LEXIS 3322 (N.Y. App. Div. 2d Dep't 1963), aff'd, 14 N.Y.2d 633, 249 N.Y.S.2d 423, 198 N.E.2d 595, 1964 N.Y. LEXIS 1287 (N.Y. 1964).

Third party complaint in personal injuries action would be reinstated pursuant to rule of relative contribution adopted by Court of Appeals in Dole v Dow Chemical Co. despite fact that motion for reargument was not made until 17 months after the third party complaint had been dismissed. Mosca v Pensky, 41 A.D.2d 775, 342 N.Y.S.2d 76, 1973 N.Y. App. Div. LEXIS 4855 (N.Y. App. Div. 2d Dep't 1973).

Special term properly granted plaintiff’s motion to reargue prior motion to amend her complaint based on intervening change in law, and upon reargument, correctly determined her motion on merits, since her motion to reargue was made prior to dismissal of her appeal from initial denial of her motion to amend. Ferrizz v Jahelka, 125 A.D.2d 537, 509 N.Y.S.2d 613, 1986 N.Y. App. Div. LEXIS 62837 (N.Y. App. Div. 2d Dep't 1986).

In action to recover damages arising out of alleged gross negligence of burglar alarm company, Supreme Court properly granted defendant’s motion to reargue summary judgment motion in light of appearance of change or conflict in law occasioned by recent Appellate Division decision. Hanover Ins. Co. v D & W Cent. Station Alarm Co., 164 A.D.2d 112, 560 N.Y.S.2d 293, 1990 N.Y. App. Div. LEXIS 11614 (N.Y. App. Div. 1st Dep't 1990).

Supreme Court’s denial of petitioner’s application to stay arbitration, made in context of special proceeding, constituted final order disposing of special proceeding; thus, petitioner’s motion based on intervening change in law had to be brought within time to appeal. Barnes v Council 82, AFSCME ex rel. Monroe, 235 A.D.2d 826, 652 N.Y.S.2d 383, 1997 N.Y. App. Div. LEXIS 321 (N.Y. App. Div. 3d Dep't 1997).

Motion for reargument based on intervening change in law may be made even after time to appeal prior order has expired where prior order can still be reviewed by appellate court as part of appeal from later final judgment. Riverbay Corp. v Steiner, 144 Misc. 2d 530, 544 N.Y.S.2d 914, 1989 N.Y. Misc. LEXIS 442 (N.Y. Sup. Ct. 1989).

In a mortgage foreclosure case, the improper status of a process server was a mere irregularity that could be disregarded by the court because there was additional proof that the summons and complaint likely reached the borrower. Case law that arguably changed the law was inapplicable and thus did not support the borrower's renewed request to vacate default. Federal Natl. Mtge. Assn. v Chiusano, 60 Misc. 3d 326, 76 N.Y.S.3d 803, 2018 N.Y. Misc. LEXIS 1646 (N.Y. Sup. Ct. 2018).

22. —Applicability to final judgment

Court erred in granting husband's cross motion, characterized as one to reargue, thereby agreeing to reconsider issues of maintenance and support arrears as determined in divorce judgment; final judgment, made after trial, is not subject to motion to reargue under CLS CPLR § 2221. Able v Able, 209 A.D.2d 972, 619 N.Y.S.2d 461, 1994 N.Y. App. Div. LEXIS 11977 (N.Y. App. Div. 4th Dep't 1994).

Court improperly granted respondents' motion to reargue that portion of their motion seeking dismissal on statute of limitations grounds where reargument motion did not claim that court overlooked any significant facts or misapplied law in its original decision. Smith v Town of Plattekill, 274 A.D.2d 900, 711 N.Y.S.2d 838, 2000 N.Y. App. Div. LEXIS 8261 (N.Y. App. Div. 3d Dep't 2000).

As a judgment dismissing an N.Y. C.P.L.R. art. 78 petition to review the grant of a variance was a final judgment terminating the proceeding, petitioner should have sought relief pursuant to N.Y. C.P.L.R. § 5015 and not by way of a motion for leave to renew under N.Y. C.P.L.R. § 2221. In any event, however, the allegedly new evidence failed to proffer any additional facts that would change the prior determination, and petitioner failed to provide a reasonable excuse why the allegedly new facts were not presented when she filed the petition. Matter of McCabe v Town of Clarkstown Bd. of Appeals, 31 A.D.3d 451, 817 N.Y.S.2d 507, 2006 N.Y. App. Div. LEXIS 8891 (N.Y. App. Div. 2d Dep't 2006).

After reargument, it was held that a wife could seek to enforce, by post-judgment motion, the provisions of an agreement that had been incorporated into a judgment of divorce; as a husband never moved to vacate or appeal the judgment of divorce that incorporated the terms of the parties' agreement, he was bound by its terms, including the characterization of the separation agreement as a stipulation of settlement. Kudrov v Kudrov, 820 N.Y.S.2d 405, 12 Misc. 3d 205, 234 N.Y.L.J. 14, 2005 N.Y. Misc. LEXIS 3098 (N.Y. Sup. Ct. 2005).

23. —Denial of motion

Where Article 78 proceeding to annul special use permit and building permit issued for construction on adjacent property had been dismissed and no appeal had been taken from order of denial, Special Term properly denied motion for relief brought under rule concerning motion for leave to renew or reargue prior motion, for leave to appeal from or to stay, vacate or modify order, in view of fact that petitioners merely realleged same facts that had been presented in original petition relating to timeliness of their attack upon issuance of the special use permit. Hooker v Town Board of Guilderland, 60 A.D.2d 684, 399 N.Y.S.2d 935, 1977 N.Y. App. Div. LEXIS 14699 (N.Y. App. Div. 3d Dep't 1977).

A motion by plaintiff for reargument of a motion for summary judgment, as to the need for further discovery proceedings, would be denied and the complaint would be dismissed where plaintiff's assertion that further discovery was necessary was set forth in mere conclusory terms, no attempt being made to explain what further discovery was necessary or to what extent such further discovery would overcome the legal insufficiency of the complaint and where, for over two years immediately prior to filing of the note of issue, the only discovery attempted by plaintiff was a simple 4-page set of interrogatories containing 14 questions, which had already been answered. Pro Brokerage, Inc. v Home Ins. Co., 99 A.D.2d 971, 472 N.Y.S.2d 661, 1984 N.Y. App. Div. LEXIS 17379 (N.Y. App. Div. 1st Dep't), app. dismissed, 64 N.Y.2d 646, 474 N.E.2d 261, 1984 N.Y. LEXIS 6504 (N.Y. 1984).

Order of depublication of sister state case relied on in determination of appeal had no effect on persuasive value inherent in reasoning expressed in sister state case, and thus did not warrant granting reargument. Niesig v Team I, 156 A.D.2d 650, 559 N.Y.S.2d 639, 1989 N.Y. App. Div. LEXIS 16531 (N.Y. App. Div. 2d Dep't 1989).

Court improperly granted plaintiffs' motion for reargument where they raised same argument they had made in opposition to motion to dismiss their original complaint, on reargument thereof, and in opposition to motion to dismiss their second amended complaint; having heard same argument repeated 3 times, court was not obliged to articulate plaintiffs' claim further or state why authorities they advanced did not overcome defects of second amended complaint, and once court found that they had failed to set forth any grounds on which to grant reargument, it should have concluded its analysis and denied motion. William P. Pahl Equip. Corp. v Kassis, 182 A.D.2d 22, 588 N.Y.S.2d 8, 1992 N.Y. App. Div. LEXIS 9933 (N.Y. App. Div. 1st Dep't), app. denied in part, app. dismissed, 80 N.Y.2d 1005, 592 N.Y.S.2d 665, 607 N.E.2d 812, 1992 N.Y. LEXIS 3981 (N.Y. 1992).

Court erred in granting reargument and, on reargument, vacating its prior determination confirming arbitration award where respondent, in seeking reargument, argued that there was no agreement to arbitrate, but it was undisputed that respondent never sought stay of arbitration within 20 days after service of notice of intention to arbitrate; by failing to so move, respondent was precluded from arguing absence of agreement to arbitrate. RRN Assocs. v DAK Elec. Contr. Corp., 224 A.D.2d 250, 637 N.Y.S.2d 409, 1996 N.Y. App. Div. LEXIS 1037 (N.Y. App. Div. 1st Dep't 1996).

Confirmation of arbitration award in favor of insured would be affirmed where (1) insurer's motion to reargue and/or renew was, in effect, one for reargument, (2) insurer failed to produce any additional evidence which, with exercise of due diligence, it could not have produced at time of original motion, (3) insurer did not offer any reasonable explanation for its failure to do so, (4) policy terms and facts necessary to support insurer's claims—that it was not subject to personal jurisdiction in New York and did not receive notice of intention to arbitrate—were available to

insurer at time of original motion, and (5) insurer failed to show that court overlooked controlling rule of law or misconstrued fact in denying original motion. Lyerly v Victoria Fire & Cas. Co., 245 A.D.2d 515, 666 N.Y.S.2d 698, 1997 N.Y. App. Div. LEXIS 13256 (N.Y. App. Div. 2d Dep't 1997).

Supreme Court's 1998 order refusing to reconsider its previous order was proper and in accordance with Child Support Standards Act where father, in his original motion, never sought to modify his child support obligation to which he agreed in 1992. Clark v Liska, 263 A.D.2d 640, 692 N.Y.S.2d 825, 1999 N.Y. App. Div. LEXIS 7854 (N.Y. App. Div. 3d Dep't 1999).

Defendants' motion to renew and reargue was properly denied where allegedly new facts, although perhaps previously unknown to defendants personally, were known to their attorney and presented by him to court in affidavit on original motion. Shouse v Lyons, 265 A.D.2d 901, 695 N.Y.S.2d 821, 1999 N.Y. App. Div. LEXIS 10020 (N.Y. App. Div. 4th Dep't 1999).

Court properly denied defendant's motion to vacate striking of its answer on its failure to answer calendar call, and properly denied its motion to reargue that denial, where defendant had pattern of willfully dilatory and contumacious conduct, and its defense was dubious at best. Pollan v Country-Wide Ins. Co., 266 A.D.2d 130, 698 N.Y.S.2d 483, 1999 N.Y. App. Div. LEXIS 12344 (N.Y. App. Div. 1st Dep't 1999), app. dismissed, 94 N.Y.2d 899, 707 N.Y.S.2d 144, 728 N.E.2d 340, 2000 N.Y. LEXIS 191 (N.Y. 2000).

There was triable issue of fact, in action for personal injuries with cross claim for contractual indemnification, as to whether home care agency was employee, rather than independent contractor, of defendant medical center where (1) there was no provision in their contract stating that agency was independent contractor, and (2) with regard to agency home health care aide whom plaintiff patient claimed was negligent, contract provided that center would determine "scope and duration of the aide's activities on each assignment and professionally supervise the performance of those personnel" and would "provide orientation" and "on the job instruction" regarding patients. Willis v City of New York, 266 A.D.2d 208, 697 N.Y.S.2d 311, 1999 N.Y. App. Div. LEXIS 11131 (N.Y. App. Div. 2d Dep't 1999).

Mother was not entitled to reconsideration of visitation order where she did not allege any material change in circumstances but merely sought to relitigate old allegations and issues previously adjudicated by Family Court in numerous prior proceedings concerning custody and visitation. King v King, 266 A.D.2d 546, 698 N.Y.S.2d 906, 1999 N.Y. App. Div. LEXIS 12297 (N.Y. App. Div. 2d Dep't 1999).

In action to set aside conveyance of real property and for injunctive relief, Appellate Division would not reconsider its prior decision that there were triable issues of fact precluding summary dismissal of cause of action for tortious interference with contract, absent new facts in record; thus, cause of action for permanent injunction would be reinstated where plaintiff would be entitled to such relief if it prevailed on tortious interference claim. Hicksville Props., L.L.C. v Wollenhaupt, 273 A.D.2d 356, 711 N.Y.S.2d 729, 2000 N.Y. App. Div. LEXIS 7090 (N.Y. App. Div. 2d Dep't 2000).

Purchasers' motion to renew or reargue was properly denied because the purchasers could not establish that the title abstract, which they claimed showed that the title insurance company was negligent, could not have been produced at the motion for summary judgment. Johnson v Title N., Inc., 31 A.D.3d 1071, 820 N.Y.S.2d 345, 2006 N.Y. App. Div. LEXIS 9634 (N.Y. App. Div. 3d Dep't 2006).

Even if the documents submitted by a town constituted new evidence, it was within the trial court's discretion to reject the town's proffered justifications, particularly considering the evidence that the applicant made efforts to identify to the town certain deficiencies in their filings; accordingly, there was no basis on which to disturb the part of the trial court's judgment which denied a town's motion to renew and/or reargue its order invalidating the town's comprehensive plan and zoning law. Matter of Troy Sand & Gravel Co., Inc. v Town of Nassau, 89 A.D.3d 1178, 932 N.Y.S.2d 564, 2011 N.Y. App. Div. LEXIS 7588 (N.Y. App. Div. 3d Dep't 2011).

Trial court should have denied the widow's motion for leave to reargue the medical malpractice action because she failed to demonstrate that the trial court overlooked or misapprehended any matters of fact or law in determining the doctors' separate motions for summary judgment.

Because the affirmations by the widow's experts were conclusory and speculative, and failed to respond to relevant issues raised by the doctors' experts, they were insufficient to raise a triable issue of fact. Ahmed v Pannone, 116 A.D.3d 802, 984 N.Y.S.2d 104, 2014 N.Y. App. Div. LEXIS 2518 (N.Y. App. Div. 2d Dep't 2014).

Trial court properly denied motions by a lender and a borrower to modify prior orders of the court because, although the borrower was entitled to an equitable setoff against the mortgage debt for any rents and profits that the lender might have received as a mortgagee in possession, there was no landlord-tenant relationship between the parties. 2016 N.Y. App. Div. LEXIS 2323, 2016 NY Slip Op 02336 (Mar. 30, 2016).

Trial court erred in denying a lender's motion for relief or for renewal and reargument because the lender followed the appropriate procedure in moving to vacate the court's dismissal for failure to prosecute, the lender could not have challenged the order by taking a direct appeal, and the order was not appealable as of right where a note of issue had not been filed and the lender was never served with the required statutory 90-day notice. Novastar Mtge., Inc. v Melius, 145 A.D.3d 1419, 45 N.Y.S.3d 607, 2016 N.Y. App. Div. LEXIS 8777 (N.Y. App. Div. 3d Dep't 2016).

Lower court providently exercised its discretion in denying plaintiff’s motion for leave to renew because plaintiff’s counsel’s explanation for the failure to submit the response and counterstatement of material facts in opposition to defendants’ statement of material facts amounted to mere neglect and was not a reasonable justification for failing to present the alleged new facts on the prior motion. In any event, the submission of plaintiff’s response and counterstatement of material facts did not amount to new facts not offered on the prior motion that would change the prior determination. Singleton v Summus, 219 A.D.3d 1366, 196 N.Y.S.3d 484, 2023 N.Y. App. Div. LEXIS 4569 (N.Y. App. Div. 2d Dep't 2023).

Absence of requisite evidentiary support in papers on application for leave to amend complaint, made in conjunction with motion for reargument, compelled conclusion that case was not proper one for such relief in exercise of court’s discretion, and where affidavit submitted, by same

person whose affidavit had been relied upon in original motion, took same facts and argued the required different conclusion, motion for reargument and renewal was in all respects denied. American Trading Co. v Fish, 87 Misc. 2d 193, 383 N.Y.S.2d 943, 1975 N.Y. Misc. LEXIS 3349 (N.Y. Sup. Ct. 1975).

After the court held, in a prior order, that a jury waiver clause in a lease was unenforceable for failure to meet the CPLR 4544 minimum standards for size of type in consumer contracts and leases, a motion by the landlord for reargument pursuant to CPLR 2221, asserting that the court misapprehended applicability of CPLR 4544, was denied since this point was never raised in the original motion papers and the court was not obligated to search out issues not raised in those papers; the court cannot convert the landlord’s reargument motion into a motion based upon newly discovered evidence in the interests of justice since there is no justice in the denial of such a substantial right as trial by jury and it is not a newly discovered fact that counsel could not have discovered prior to the motion, by the exercise of due diligence. Sorbonne Apartments Co. v Kranz, 96 Misc. 2d 396, 409 N.Y.S.2d 83, 1978 N.Y. Misc. LEXIS 2614 (N.Y. Civ. Ct. 1978).

Trial court would deny plaintiff’s motion to reargue and renew its prior motion for summary judgment since such motion may not be utilized to argue again the precise issues previously determined. Shell Oil Co. v New York State Tax Com., 111 Misc. 2d 460, 444 N.Y.S.2d 392, 1981 N.Y. Misc. LEXIS 3295 (N.Y. Sup. Ct. 1981), modified, 91 A.D.2d 81, 458 N.Y.S.2d 938, 1983 N.Y. App. Div. LEXIS 16099 (N.Y. App. Div. 3d Dep't 1983).

Court improperly granted respondent’s motion to reargue prior ruling validating designating petition where respondent had neither answered nor appeared in opposition to petition, since order as to him was granted on default and his proper remedy was to move to open default; additionally, motion for reargument could not be treated as one to open default because motion papers contained no excuse for failure to appear or answer. Di Matteo v Niagara County Bd. of Elections, 133 A.D.2d 519, 519 N.Y.S.2d 889, 1987 N.Y. App. Div. LEXIS 49987 (N.Y. App. Div. 4th Dep't 1987).

After unsuccessful Article 78 challenge to Department of Environmental Conservation regulations relating to municipal and private solid waste incineration facilities, 6 NYCRR part 219, petitioners' motion to renew or reargue would be denied given lack of merit to contention that decision of Commissioner of Environmental Conservation on application to construct particular municipal solid waste incineration facility constituted newly discovered evidence containing agency's interpretation and application of regulations as to emission limits for sulfur dioxide. New York Public Interest Research Group, Inc. v New York State Dep't of Environmental Conservation, 146 Misc. 2d 752, 552 N.Y.S.2d 548, 1990 N.Y. Misc. LEXIS 82 (N.Y. Sup. Ct. 1990).

In legal malpractice action brought by coexecutors of decedent's estate against attorney who drafted defective will provision resulting in estate tax liability, court would deny motion by coexecutors to reargue prior decision granting defendant's motion to dismiss for failure to state cause of action since motion court did not misinterpret existing case law, which required privity between parties, and there was no privity between instant parties. Deeb v Johnson, 146 Misc. 2d 858, 553 N.Y.S.2d 68, 1990 N.Y. Misc. LEXIS 110 (N.Y. Sup. Ct. 1990).

In commercial landlord-tenant action, landlord's motion to reargue order denying his motion for summary judgment, based on ground that court impermissibly shifted burden of proof on issue of mitigation of damages to landlord, would be denied where court required only that landlord in his direct case come forward with proof that he attempted to relet space after tenant had vacated. Rubin v Dondysh, 147 Misc. 2d 221, 555 N.Y.S.2d 1004, 1990 N.Y. Misc. LEXIS 224 (N.Y. Civ. Ct. 1990), dismissed, 153 Misc. 2d 657, 588 N.Y.S.2d 504, 1991 N.Y. Misc. LEXIS 821 (N.Y. App. Term 1991).

In commercial landlord-tenant action, plaintiff landlord's motion to reargue order denying his motion for summary judgment would be denied, notwithstanding plaintiff's assertion that he attempted to re-let premises by listing space with certain named real estate agents or brokers, since record was silent as to exactly what was done on plaintiff's behalf in terms of reasonable and diligent efforts to re-rent premises. Rubin v Dondysh, 147 Misc. 2d 221, 555 N.Y.S.2d 1004,

1990 N.Y. Misc. LEXIS 224 (N.Y. Civ. Ct. 1990), dismissed, 153 Misc. 2d 657, 588 N.Y.S.2d 504, 1991 N.Y. Misc. LEXIS 821 (N.Y. App. Term 1991).

Motion to reargue order denying motion for summary judgment would be denied where plaintiff failed to adhere to approved practice of submitting affidavit to judge who decided original motion, setting forth decision and ground for reargument, and plaintiff also failed to establish that court overlooked or misapprehended relevant facts or misapplied controlling principles of law on first motion. Rubin v Dondysh, 147 Misc. 2d 221, 555 N.Y.S.2d 1004, 1990 N.Y. Misc. LEXIS 224 (N.Y. Civ. Ct. 1990), dismissed, 153 Misc. 2d 657, 588 N.Y.S.2d 504, 1991 N.Y. Misc. LEXIS 821 (N.Y. App. Term 1991).

In mortgage foreclosure action, plaintiff's motion to reargue denial of its motion for summary judgment, on ground that court overlooked defendant's failure to introduce documentary evidence that he made monthly installments payments due after May 5, 1999, was denied because plaintiff, as moving party, had burden to establish its cause of action and, in light of defendant's sworn affidavit asserting that he made payments through December 1999 and plaintiff's own records indicating interest payments received from defendant in May-August 1999, plaintiff failed to make prima facie case establishing defendant's default. Bankers Trust Co of Cal., N.A. v Payne, 188 Misc. 2d 726, 730 N.Y.S.2d 200, 2001 N.Y. Misc. LEXIS 262 (N.Y. Sup. Ct. 2001).

Employee could not reargue the sealing of the record of a temporary restraining order as the employee failed to offer new facts or law in support of the motion as required by N.Y. C.P.L.R. 2221(e)(2). Tong v S.A.C. Capital Mgt., LLC, 835 N.Y.S.2d 881, 16 Misc. 3d 401, 237 N.Y.L.J. 116, 2007 N.Y. Misc. LEXIS 3663 (N.Y. Sup. Ct. 2007), aff'd in part, modified, 52 A.D.3d 386, 860 N.Y.S.2d 84, 2008 N.Y. App. Div. LEXIS 5490 (N.Y. App. Div. 1st Dep't 2008).

Pursuant to N.Y. C.P.L.R. 2221, the trial court properly denied the appellants' motion for leave to renew, since the appellants did not demonstrate reasonable justification for their failure to present the purported newly-discovered facts on the original motion and cross motion. Tower

Funding, Ltd. v David Berry Realty, Inc., 302 A.D.2d 513, 755 N.Y.S.2d 413, 2003 N.Y. App. Div. LEXIS 1621 (N.Y. App. Div. 2d Dep't 2003).

After granting defendant individual summary judgment dismissing a personal injury complaint by plaintiff injured parties on the ground that none of the injured parties had sustained a serious injury within the meaning of N.Y. Ins. Law § 5102(d), the trial court, upon reargument, properly adhered to its summary judgment determination, as the injured parties failed to demonstrate that the trial court had misapprehended any of the relevant facts that were before it or misapplied any controlling principle of law. Boboyev v Gomez, 304 A.D.2d 600, 757 N.Y.S.2d 469, 2003 N.Y. App. Div. LEXIS 3942 (N.Y. App. Div. 2d Dep't 2003).

Where the trial court had granted partial summary judgment pursuant to N.Y. C.P.L.R. 3212 in favor of the injured party in the injured party’s action against the taxicab owners seeking to recover damages for injuries suffered in a hit-and-run accident, the motion to renew was properly denied pursuant to N.Y. C.P.L.R. 2221(e)(3), as the motion failed to give a good reason for the driver and owners’ failure to adduce evidence in opposition to the summary judgment motion. Loperena v Buona, 309 A.D.2d 592, 765 N.Y.S.2d 355, 2003 N.Y. App. Div. LEXIS 10557 (N.Y. App. Div. 1st Dep't 2003).

Court denied an excess insurer’s motion to renew due to the insurer’s failure to reasonably explain, in accordance with N.Y. C.P.L.R. 2221(e)(3), why the new evidence was not presented on the prior motion. Interpublic Group of Cos. v Nat'l Union Fire Ins. Co., 8 A.D.3d 169, 779 N.Y.S.2d 78, 2004 N.Y. App. Div. LEXIS 8677 (N.Y. App. Div. 1st Dep't 2004).

Plaintiff’s motion for reargument pursuant to N.Y. C.P.L.R. 2221 was denied because she only reiterated arguments that had been expressly rejected by the court, thus she failed to set forth grounds for reargument. Laracuente v Mora, 784 N.Y.S.2d 921, 2 Misc. 3d 1012(A), 2004 N.Y. Misc. LEXIS 413 (N.Y. Sup. Ct. 2004).

Because a second individual offered a document not offered on a prior motion, and because a general release issued by the first individual did not release the second individual from future

claims, the trial court erred in denying the first individual's N.Y. C.P.L.R. § 2221(d)(2) motion to reargue a prior motion for contribution and/or indemnity from the second individual. HSBC Bank, USA v Infinity Auto Glass Distribs., Inc., 27 A.D.3d 1094, 811 N.Y.S.2d 829, 2006 N.Y. App. Div. LEXIS 3395 (N.Y. App. Div. 4th Dep't 2006).

Dismissal for an N.Y. Crim. Proc. Law § 30.30 speedy trial violation was proper because the People were chargeable with the period between December 16, 2008 and March 12, 2009; the People failed to announce their readiness for trial on the record on December 16, 2008, and an adjournment by the judge based on a congested calendar did not absolve the People of their obligation to be ready for trial. On reargument, the People failed to demonstrate that the court misconstrued the law or any fact in relation to the case. People v Jacobs, 905 N.Y.S.2d 468, 28 Misc. 3d 499, 2010 N.Y. Misc. LEXIS 1084 (N.Y. Dist. Ct. 2010).

Defendant not entitled to reargument under N.Y. C.P.L.R. 2221 because N.Y. R. Prof. Conduct 8.4-c (N.Y. Comp. Codes R. & Regs. tit. 22, § 1200.0) was not violated when there was no evidence that the district attorney's office made a promise that was likely to induce defendant to falsely confess or that it engaged in conduct that denied defendant due process, and defendant knowingly, intelligently, and voluntarily waived defendant's Miranda rights. People v Joseph, 947 N.Y.S.2d 879, 36 Misc. 3d 833, 2012 N.Y. Misc. LEXIS 3319 (N.Y. City Crim. Ct. 2012).

Defendant's motion under CPLR 2221 to reargue the disqualification of its counsel in plaintiff's action for, inter alia, breach of contract and misrepresentation, was denied because there was the potential for actual prejudice to plaintiff when there was a risk of eliminating the attorney-client privilege and when there was a high risk that plaintiff's former executive vice president, who was privy to information about the litigation before being terminated, divulged confidential information in an informal interview with defendant's counsel, as the vice president lacked the ability to determine what constituted confidential or privileged information. Plaintiff's deposition testimony was not additional evidence that was not previously before the court and was irrelevant to defendant's motion to renew and reargue. Muriel Siebert & Co. v Intuit Inc., 235

N.Y.L.J. 14, 2006 N.Y. Misc. LEXIS 3991 (N.Y. Sup. Ct. Jan. 23, 2006), app. dismissed, 32 A.D.3d 284, 820 N.Y.S.2d 54, 2006 N.Y. App. Div. LEXIS 10021 (N.Y. App. Div. 1st Dep't 2006).

Where a passenger allegedly was injured in a two-vehicle collision, it was determined on a motion to reargue that the passenger was not entitled to any relief against the Motor Vehicle Accident Indemnification Corporation (MVAIC) because (1) the passenger failed to timely notify MVAIC that the other vehicle was uninsured, and (2) regarding an insurer's insolvency, the only mechanism currently authorized to compensate the passenger was through the New York Public Motor Vehicle Liability Security Fund. Mejia v Santos, 847 N.Y.S.2d 903, 16 Misc. 3d 1120(A), 237 N.Y.L.J. 51, 2007 N.Y. Misc. LEXIS 5547 (N.Y. Sup. Ct. 2007).

In a summary proceeding wherein a landlord unsuccessfully attempted to evict the tenant for allegedly making unauthorized alterations to the leased premises, the landlord's motion for reargument was denied as the landlord failed to show that the court overlooked or misapprehended either fact or law when it determined that the landlord failed to establish that the improvements made were not consented to by him. Mengoni v Lorelli, 238 N.Y.L.J. 54, 2007 N.Y. Misc. LEXIS 6592 (N.Y. Civ. Ct. Aug. 17, 2007), app. dismissed, 886 N.Y.S.2d 71, 23 Misc. 3d 134(A), 2009 N.Y. Misc. LEXIS 966 (N.Y. App. Term 2009).

Because a customer did not demonstrate that the store manager on duty at the time of the customer's accident had insufficient knowledge or that the manager's testimony was inadequate, and because the customer did not demonstrate that relevant facts were overlooked or that any controlling principle of law was misapplied in the prior decision, the customer was not entitled to reargument under N.Y. C.P.L.R. 2221. Rosado v A & P Food Store, 891 N.Y.S.2d 636, 26 Misc. 3d 935, 242 N.Y.L.J. 124, 2009 N.Y. Misc. LEXIS 3360 (N.Y. Sup. Ct. 2009).

Because an owner failed to establish that the court overlooked or misapprehended the facts or law or for some other reason mistakenly arrived at its earlier decision in reaching a conclusion, and because the owner merely repeated the same arguments raised in opposition to an earlier motion that was rejected by the court, it was not entitled to N.Y. C.P.L.R. 2221(d) relief. Matter of City of New York, 25 Misc. 3d 1238A (Sup 2009).

People’s motion to reargue the chargeability of an adjournment period was denied as the criminal court did not overlook or misapprehend the facts or law when it determined the People’s in-court statement that they were “ready” failed to satisfy the requirements of a valid statement of trial readiness; the People announced their readiness at a court appearance that had not been scheduled by the court, and defense counsel was not made aware the People stated ready for trial at the calendar call. People v Jones, 57 Misc. 3d 590, 57 N.Y.S.3d 371, 2017 N.Y. Misc. LEXIS 2882 (N.Y. City Crim. Ct. 2017).

24. — —Appealability

An order of the Appellate Division denying a motion for reargument and reconsideration is nonfinal and no appeal from it may be brought. Glamm v Allen, 57 N.Y.2d 87, 453 N.Y.S.2d 674, 439 N.E.2d 390, 1982 N.Y. LEXIS 3578 (N.Y. 1982).

No appeal lies from an order denying reargument. Kahn v Kahn, 55 A.D.2d 638, 390 N.Y.S.2d 160, 1976 N.Y. App. Div. LEXIS 15383 (N.Y. App. Div. 2d Dep't 1976), app. denied, 41 N.Y.2d 804, 1977 N.Y. LEXIS 3045 (N.Y. 1977), modified, 43 N.Y.2d 203, 401 N.Y.S.2d 47, 371 N.E.2d 809, 1977 N.Y. LEXIS 2452 (N.Y. 1977).

No appeal lies from an order denying reargument. Bianca v Frank, 55 A.D.2d 642, 390 N.Y.S.2d 141, 1976 N.Y. App. Div. LEXIS 15391 (N.Y. App. Div. 2d Dep't 1976), aff'd, 43 N.Y.2d 168, 401 N.Y.S.2d 29, 371 N.E.2d 792, 1977 N.Y. LEXIS 2449 (N.Y. 1977).

No appeal lies from an order denying reargument. D.M.G. Constr. Corp. v Marcello, 55 A.D.2d 670, 390 N.Y.S.2d 181, 1976 N.Y. App. Div. LEXIS 15429 (N.Y. App. Div. 2d Dep't 1976).

Denial of motion for reargument is not appealable. Sunbeam Corp. v Morris Distributing Co., 55 A.D.2d 722, 389 N.Y.S.2d 173, 1976 N.Y. App. Div. LEXIS 15498 (N.Y. App. Div. 3d Dep't 1976), app. denied, 41 N.Y.2d 802, 1977 N.Y. LEXIS 2979 (N.Y. 1977).

Order denying motion for reargument was nonappealable. Snyder v Parke, Davis & Co., 56 A.D.2d 536, 391 N.Y.S.2d 579, 1977 N.Y. App. Div. LEXIS 10541 (N.Y. App. Div. 1st Dep't 1977).

Motions to reargue are not appealable. Hooker v Town Board of Guilderland, 60 A.D.2d 684, 399 N.Y.S.2d 935, 1977 N.Y. App. Div. LEXIS 14699 (N.Y. App. Div. 3d Dep't 1977).

No appeal lies from order denying motion for reargument of prior motion. Fishman v County of Nassau, 84 A.D.2d 806, 444 N.Y.S.2d 146, 1981 N.Y. App. Div. LEXIS 16011 (N.Y. App. Div. 2d Dep't 1981).

Where it was clear in the record that the motion was one for reargument, notwithstanding that Special Term’s order characterized it as one for renewal and rehearing, the appeal would be dismissed since no appeal lies from an order denying a motion for reargument. Nelson v Bushwick Family Health Center, 87 A.D.2d 837, 449 N.Y.S.2d 266, 1982 N.Y. App. Div. LEXIS 16307 (N.Y. App. Div. 2d Dep't 1982).

In an action to recover damages for breach of contract, defendant’s appeal from an order denying its application to “renew” a prior motion to dismiss a cause of action in the complaint was properly dismissed where the motion to “renew” had been, in reality, a motion to reargue in that no new matter had been presented which had been unavailable to defendant prior to denial of its prior motion, and where an order denying a motion for leave to reargue would not be appealable. Galaxy Export, Inc. v Bedford Textile Products, Inc., 89 A.D.2d 576, 452 N.Y.S.2d 233, 1982 N.Y. App. Div. LEXIS 17641 (N.Y. App. Div. 2d Dep't 1982).

In a matrimonial action in which new attorneys for plaintiff by motion compelled plaintiff’s former attorney to turn over his entire file, the denial of the former attorney’s motion to renew and reargue was a nonappealable order, insofar as the attorney’s motion was one for reargument. Spiro v Spiro, 91 A.D.2d 1103, 458 N.Y.S.2d 354, 1983 N.Y. App. Div. LEXIS 16446 (N.Y. App. Div. 3d Dep't), app. dismissed, 59 N.Y.2d 761, 1983 N.Y. LEXIS 4999 (N.Y. 1983).

Appeal from order denying motion to add derivative cause of action is not properly before court where denial was based on law of case stemming from denial by original judge 4 years earlier of similar motion; thus, motion is in effect one for reargument, despite fact that transfer pursuant to CPLR § 2221 is no longer possible due to elevation of original justice to federal branch, and order denying motion for reargument is not appealable. Cherchio v Alley, 111 A.D.2d 541, 489 N.Y.S.2d 413, 1985 N.Y. App. Div. LEXIS 51592 (N.Y. App. Div. 3d Dep't 1985).

Appellate Division would order Supreme Court to consider whether defendants' moving papers made sufficient showing to warrant granting of reargument despite rule that no appeal lies from order denying reargument, where Supreme Court's initial denial did not involve determination on merits and, instead, was based on incorrect conclusion that it lacked authority to entertain motion. Luming Cafe, Inc. v Birman, 125 A.D.2d 180, 508 N.Y.S.2d 444, 1986 N.Y. App. Div. LEXIS 62456 (N.Y. App. Div. 1st Dep't 1986).

Plaintiff could not appeal denial of its "renewed" motion for summary judgment where proof submitted on 2 motions was virtually identical; where renewal motion is nothing more than reprise of prior, unsuccessful motion for same relief, it will be deemed motion to reargue, denial of which is not appealable. Pixel Int'l Network v State, 228 A.D.2d 899, 644 N.Y.S.2d 377, 1996 N.Y. App. Div. LEXIS 7274 (N.Y. App. Div. 3d Dep't 1996).

Petitioner's motion for leave to serve late notice of claim was one for reargument, and thus denial thereof was not appealable, where petitioner failed to provide reasonable explanation as to why physician's medical opinion in support of petition for leave to serve late notice of claim, which was submitted as supplement to petitioner's motion to renew and reargue, could not have been provided with original petition. Thein v Mamaroneck Union Free Sch. Dist., 231 A.D.2d 730, 647 N.Y.S.2d 987, 1996 N.Y. App. Div. LEXIS 9706 (N.Y. App. Div. 2d Dep't 1996), app. dismissed, 89 N.Y.2d 938, 654 N.Y.S.2d 718, 677 N.E.2d 290, 1997 N.Y. LEXIS 47 (N.Y. 1997).

Plaintiffs' motion, denominated as one for leave to renew, was actually motion for leave to reargue, denial of which is not appealable, where motion was based on information that readily and with due diligence could have been presented as part of plaintiffs' opposition to defendant's

motion for summary judgment, and plaintiffs offered no excuse for failing to present such evidence at that time. Zdanis v Town of Islip, 238 A.D.2d 334, 656 N.Y.S.2d 914, 1997 N.Y. App. Div. LEXIS 3423 (N.Y. App. Div. 2d Dep't), app. dismissed in part, app. denied, 90 N.Y.2d 923, 664 N.Y.S.2d 258, 686 N.E.2d 1353, 1997 N.Y. LEXIS 3062 (N.Y. 1997).

Motion denominated by party as motion “to renew or reargue” was really motion for reargument where it was not based on any additional facts and was grounded on change in law, and thus order denying motion was not appealable. Safina v Queens Long Island Med. Group, P.C., 241 A.D.2d 444, 663 N.Y.S.2d 830, 1997 N.Y. App. Div. LEXIS 7291 (N.Y. App. Div. 2d Dep't 1997).

In negligence action for destruction of property, denial of plaintiff’s motion denominated as one to restore case to trial calendar was not appealable where it was actually motion to reargue his prior motion to restore case to calendar. Ackermann v Town of Riverhead, 245 A.D.2d 404, 666 N.Y.S.2d 471, 1997 N.Y. App. Div. LEXIS 13082 (N.Y. App. Div. 2d Dep't 1997).

Plaintiff’s motion, denominated as one to renew or reargue, would be treated as one for reargument, denial of which was not appealable, where plaintiff did not offer valid excuse for her failure to submit to court, in her original opposition to defendant’s motion for summary judgment, additional facts on which plaintiff’s motion was based. McNeil v Wagner College, 246 A.D.2d 516, 667 N.Y.S.2d 397, 1998 N.Y. App. Div. LEXIS 213 (N.Y. App. Div. 2d Dep't 1998).

In action to set aside fraudulent conveyance, denial of plaintiffs’ motion, characterized as one for renewal and reargument of defendants’ motions for summary judgment, was not appealable where it was not based on new facts that were unavailable at time of plaintiffs’ original opposition to defendants’ motions, and thus it was actually motion to reargue. White Rose Food v Mustafa, 251 A.D.2d 653, 674 N.Y.S.2d 438, 1998 N.Y. App. Div. LEXIS 7888 (N.Y. App. Div. 2d Dep't 1998).

Branch of motion that was denominated as one for leave to renew or reargue prior motion for class certification was actually motion to reargue where it was not based on facts unavailable at time of original motion, and thus was not appealable. Duffy v Wetzler, 260 A.D.2d 596, 688

N.Y.S.2d 659, 1999 N.Y. App. Div. LEXIS 4278 (N.Y. App. Div. 2d Dep't), app. dismissed, 93 N.Y.2d 1035, 697 N.Y.S.2d 557, 719 N.E.2d 917, 1999 N.Y. LEXIS 2894 (N.Y. 1999).

Motion characterized as one for renewal and reargument was not appealable where it was not based on new facts that were unavailable at time of original motion to intervene, and thus purported motion for renewal and reargument actually was motion to reargue. Cross Sound Ferry Servs., Inc. v Town of Southold, 263 A.D.2d 524, 693 N.Y.S.2d 215, 1999 N.Y. App. Div. LEXIS 8390 (N.Y. App. Div. 2d Dep't 1999).

Order denying petitioners' motion for leave to renew and reargue their prior application for leave to serve late notice of claim against city was not reviewable where they failed to perfect appeal from denial of prior application, which was dismissed for failure to prosecute, and that dismissal was adjudication on merits as to all issues that could have been reviewed therein. Gross v City of New York, 266 A.D.2d 214, 697 N.Y.S.2d 682, 1999 N.Y. App. Div. LEXIS 11090 (N.Y. App. Div. 2d Dep't 1999).

Plaintiffs' motion, although denominated as one for reargument and renewal, was motion for reargument where it was not based on new evidence that was unavailable at time of defendants' original motion for summary judgment; thus, appeal from order denying plaintiffs' motion would be dismissed, as no appeal lies from order denying reargument. McCorvey v Schoulder, 273 A.D.2d 207, 709 N.Y.S.2d 442, 2000 N.Y. App. Div. LEXIS 6239 (N.Y. App. Div. 2d Dep't 2000).

Plaintiffs' motion to "renew and reargue" defendants' prior motion for summary judgment was actually motion to reargue, denial of which was not appealable, where plaintiffs offered no valid excuse as to why medical evidence offered on their motion to "renew and reargue" was not submitted in opposition to prior motion. Sallusti v Jones, 273 A.D.2d 293, 710 N.Y.S.2d 547, 2000 N.Y. App. Div. LEXIS 6529 (N.Y. App. Div. 2d Dep't 2000).

Where movant does not demonstrate valid excuse for failure to produce purportedly new information, her motion is one for reargument, denial of which is not appealable. Rivers v Fuller

Brush Co., 275 A.D.2d 449, 713 N.Y.S.2d 133, 2000 N.Y. App. Div. LEXIS 8946 (N.Y. App. Div. 2d Dep't 2000).

Prisoner's motion for reconsideration of his application for writ of habeas corpus, where not based on newly discovered evidence, constituted motion to reargue, and no appeal could be taken from denial of such motion. Hill v Goord, 275 A.D.2d 492, 712 N.Y.S.2d 656, 2000 N.Y. App. Div. LEXIS 8407 (N.Y. App. Div. 3d Dep't 2000).

Motion characterized as one for reargument and renewal of motion to vacate order dismissing complaint was properly deemed motion for reargument, denial of which is not appealable, where plaintiff did not offer valid excuse for her failure to submit earlier additional evidence offered on her present motion. Flomenhaft v Baron, 281 A.D.2d 389, 721 N.Y.S.2d 381, 2001 N.Y. App. Div. LEXIS 2072 (N.Y. App. Div. 2d Dep't 2001).

In Article 78 proceeding, court properly denied petitioner's motion denominated as one for leave to renew and/or reargue where petitioner did not justify its failure to present allegedly new facts when it filed petition, and thus motion was, in effect, one for leave to reargue, denial of which is not appealable. Residents for a More Beautiful Port Wash., Inc. v Newburger, 281 A.D.2d 484, 721 N.Y.S.2d 788, 2001 N.Y. App. Div. LEXIS 2377 (N.Y. App. Div. 2d Dep't), app. denied, 96 N.Y.2d 717, 730 N.Y.S.2d 791, 756 N.E.2d 79, 2001 N.Y. LEXIS 1958 (N.Y. 2001).

Prison inmate's appeal in Article 78 proceeding would be dismissed where appeal was from denial of his motion to reargue, from which no appeal lies, rather than from original judgment. Suarez v Filion, 281 A.D.2d 743, 721 N.Y.S.2d 297, 2001 N.Y. App. Div. LEXIS 2299 (N.Y. App. Div. 3d Dep't 2001).

Plaintiff's motion, denominated as one for renewal, was in effect motion for reargument, and thus its denial was not appealable, where (1) motion was based on her treating chiropractor's affidavit, (2) chiropractor's opinion was known and available to plaintiff when original summary judgment motions were made, and (3) plaintiff did not offer reasonable excuse for her failure to

submit that affidavit in opposition to those motions. Holmes v Hanson, 286 A.D.2d 750, 730 N.Y.S.2d 528, 2001 N.Y. App. Div. LEXIS 8643 (N.Y. App. Div. 2d Dep't 2001).

Petitioner's appeals from dismissal of his Article 78 proceeding and from denial of his motion for reconsideration were untimely where (1) his pro se status did not relieve him of obligation to comply with time requirements for taking appeal, and (2) order deny his motion for reconsideration of dismissal of petition was essentially denial of motion to reargue, which is not appealable. Pravda v N.Y. State DMV, 286 A.D.2d 838, 730 N.Y.S.2d 746, 2001 N.Y. App. Div. LEXIS 9082 (N.Y. App. Div. 3d Dep't 2001).

Wife in a divorce action, who was enjoined from making any motions for claims arising from the matrimonial action without permission of the appropriate administrative judge, had no appeal from the trial court's order denying reargument of the enjoinment order. N.Y. C.P.L.R. 2221. Cangro v Cangro, 288 A.D.2d 417, 733 N.Y.S.2d 899, 2001 N.Y. App. Div. LEXIS 11366 (N.Y. App. Div. 2d Dep't 2001).

Because a plaintiff's second N.Y. C.P.L.R. 2221(d), (e) motion for leave to reargue a company's motion for summary judgment essentially sought the same relief as the first motion, the trial court properly denied it; consequently, the plaintiff's appeal was dismissed as the denial of reargument was not appealable. Jones v Amiee Lynn Accessories, 38 A.D.3d 613, 832 N.Y.S.2d 85, 2007 N.Y. App. Div. LEXIS 3378 (N.Y. App. Div. 2d Dep't 2007).

Denial of plaintiff's motion seeking to renew her prior, denied motion for exclusive occupancy of the subject premises in a partition action was not appealable because it was not based on new facts, and thus was a motion to reargue, the denial of which was not appealable. Trahan v Galea, 48 A.D.3d 791, 853 N.Y.S.2d 121, 2008 N.Y. App. Div. LEXIS 1705 (N.Y. App. Div. 2d Dep't 2008).

Plaintiffs' motion, denominated as one for leave to renew and reargue a trial court's order precluding evidence based on spoliation, was, in actuality, one for leave to reargue, because it was not based on new facts; an order denying a motion for leave to reargue was not appealable.

Cordero v Mirecle Cab Corp., 51 A.D.3d 707, 858 N.Y.S.2d 717, 2008 N.Y. App. Div. LEXIS 4205 (N.Y. App. Div. 2d Dep't 2008).

In an action alleging breach of contract for the sale of real property, a seller could not appeal the denial of her motion for leave to renew, which was in actuality a motion for leave to reargue as it was not based upon new facts under N.Y. C.P.L.R. § 2221(e), as such a denial was not appealable. Somma v Richardt, 52 A.D.3d 813, 861 N.Y.S.2d 720, 2008 N.Y. App. Div. LEXIS 5820 (N.Y. App. Div. 2d Dep't 2008).

Daughter's appeal of an order which denied her motion for an order, among other things, imposing surcharges upon a guardian for his alleged mismanagement of her father's property was dismissed because, as the daughter sought identical relief on identical grounds through one of her objections, and alleged no new facts to support her mismanagement claim in her motion, that branch of her motion was, in effect, for leave to reargue pursuant to N.Y. C.P.L.R. 2221(d), the denial of which was not appealable. Matter of Harry Y., 62 A.D.3d 892, 880 N.Y.S.2d 662, 2009 N.Y. App. Div. LEXIS 3906 (N.Y. App. Div. 2d Dep't 2009).

Trustee's appeal from an order which denied the trustee's motion, denominated as one for leave to renew and reargue the trial court's order granting summary judgment to accountants on the trustee's malpractice claim, was dismissed; the motion, denominated as one for leave to renew and reargue, was, in actuality, one for leave to reargue, because it was not based on new facts and was based on the trustee's assertion that the trial court misapprehended the facts. An order denying a motion for leave to reargue was not appealable. Weiss v Deloitte & Touche, LLP, 63 A.D.3d 1045, 882 N.Y.S.2d 229, 2009 N.Y. App. Div. LEXIS 5098 (N.Y. App. Div. 2d Dep't 2009).

In support of his motion for leave to reargue and renew, by which the owner sought to present additional arguments in opposition to the association's summary judgment motion, the owner did not submit any new facts which he had failed to offer in opposition to the association's motion; accordingly, the owner's motion was, in actuality, a motion to reargue, the denial of which was

not appealable Board of Directors of Squire Green at Pawling Homeowners Assn., Inc. v Bell, 89 A.D.3d 657, 933 N.Y.S.2d 288, 2011 N.Y. App. Div. LEXIS 7659 (N.Y. App. Div. 2d Dep't 2011).

Where defendants, a residential care facility and its owner, were sued by plaintiff child for negligent supervision, and the trial court ordered defendants to produce certain records and identities, defendant's later motion, which sought modification or reargument of the prior order as alternative forms of relief, was merely one to reargue under N.Y. C.P.L.R. 2221(d), as it offered no new evidence and only argued that the trial court overlooked or misunderstood a certain statute; thus, defendants' appeal from the denial of their motion was dismissed, as the denial of reargument was not appealable. C.R. v Pleasantville Cottage Sch., 302 A.D.2d 259, 756 N.Y.S.2d 2, 2003 N.Y. App. Div. LEXIS 1484 (N.Y. App. Div. 1st Dep't 2003).

Plaintiffs' appeal of the trial court's denial of motions for reargument pursuant to N.Y. C.P.L.R. 2221 was dismissed, because no appeal lay from the denial of reargument. Cassata v N.Y. New Eng. Exch., 304 A.D.2d 371, 756 N.Y.S.2d 845, 2003 N.Y. App. Div. LEXIS 3761 (N.Y. App. Div. 1st Dep't 2003).

No appeal lies from an order denying reargument; accordingly, the appellate court dismissed an appeal from the part of an order which denied the branch of defendant corporation's motion which sought leave to reargue a prior motion. Sattaur v Gallante Props., 304 A.D.2d 548, 756 N.Y.S.2d 901, 2003 N.Y. App. Div. LEXIS 3660 (N.Y. App. Div. 2d Dep't 2003).

Trial court properly granted summary judgment pursuant to N.Y. C.P.L.R. 3212 to defendants as to a personal injury claim, because defendants established that an injured party brought his vehicle to a stop, and then proceeded into the intersection and collided with the oncoming truck, which had the right of way, and thus demonstrated their prima facie entitlement to judgment as a matter of law pursuant to N.Y. Veh. & Traf. Law § 1142(a), and the injured parties injured parties failed to raise a triable issue of fact as to whether a driver was negligent in the operation of the tow truck involved in the accident; the injured parties' appeal of the denial of a motion for leave to reargue N.Y. C.P.L.R. 2221 was dismissed, because the denial of a motion for leave to

reargue was not appealable. Ali v Tip Top Tows, Inc., 304 A.D.2d 683, 757 N.Y.S.2d 757, 2003 N.Y. App. Div. LEXIS 4316 (N.Y. App. Div. 2d Dep't 2003).

Trial court erred in denying a landscaping company's summary judgment motion pursuant to N.Y. C.P.L.R. 3212 in a personal injury action, because in response to the company's prima facie demonstration of entitlement to judgment, the injured party did not raise an issue of fact as to whether the landscaping company's contract constituted a comprehensive and exclusive property maintenance obligation that displaced the landowner's duty to safely maintain the property, that the injured party detrimentally relied on the landscaping company's continued performance of its contractual duties, or that the landscaping company's performance of its duties had advanced to such a point as to have launched a force or instrument of harm; an appeal of the denial of the landscaping company's motion for reargument pursuant to N.Y. C.P.L.R. 2221 was dismissed, as no appeal lay from an order denying reargument. Gordon v Talleyrand Crescent Dev. Corp., 304 A.D.2d 712, 757 N.Y.S.2d 794, 2003 N.Y. App. Div. LEXIS 4320 (N.Y. App. Div. 2d Dep't 2003).

In an action which an injured party filed against New York City (New York) and the New York City Transit Authority, the appellate court held that the injured party could not appeal the trial court's order denying her motion for leave to reargue the court's order denying her motion, pursuant to N.Y. Gen. Mun. Law § 50-e(6), for leave to serve an amended notice of claim, but did allow the injured party to appeal the trial court's order denying her motion for leave to serve an amended notice of claim, and reversed that order. Lin v City of New York, 305 A.D.2d 553, 759 N.Y.S.2d 394, 2003 N.Y. App. Div. LEXIS 5700 (N.Y. App. Div. 2d Dep't 2003).

The denial of a motion for leave to reargue is not appealable; after the trial court denied a motion for leave to reargue because the denial of the motion did not constitute a final appealable order. Sabetfard v Smith, 306 A.D.2d 265, 760 N.Y.S.2d 525, 2003 N.Y. App. Div. LEXIS 6257 (N.Y. App. Div. 2d Dep't 2003).

Denial of a motion for a N.Y. C.P.L.R. 2221(d)(2) leave to reargue is not appealable. Viola v Blanco, 1 A.D.3d 506, 767 N.Y.S.2d 248, 2003 N.Y. App. Div. LEXIS 12066 (N.Y. App. Div. 2d Dep't 2003).

Where third-party defendant failed to present newly-discovered evidence or other sufficient cause to bring a second summary judgment motion pursuant to N.Y. C.P.L.R. 3212 seeking dismissal of the third-party complaint, the trial court properly treated the second motion as a N.Y. C.P.L.R. 2221 motion to reargue its original motion for summary judgment; the appeal from the denial of the motion for leave to reargue was, therefore, dismissed, as third-party defendant could not appeal an order denying reargument. Villatoro v Ambassador Apts., Inc., 2 A.D.3d 436, 767 N.Y.S.2d 837, 2003 N.Y. App. Div. LEXIS 12838 (N.Y. App. Div. 2d Dep't 2003).

No appeal lies from an order denying reargument. A plaintiff’s motion denominated as one for renewal and reargument was not based upon new facts which were unavailable to him at the time of the original motion, so the motion was, in effect, one for leave to reargue, the denial of which was not appealable. Scoma v Doe, 2 A.D.3d 432, 767 N.Y.S.2d 840, 2003 N.Y. App. Div. LEXIS 12925 (N.Y. App. Div. 2d Dep't 2003).

On renewal pursuant to N.Y. C.P.L.R. 2221, the trial court properly granted defendants’ motions for summary judgment pursuant to N.Y. C.P.L.R. 3212 in a personal injury action; a medical report was not sufficient to raise a triable issue of fact on whether the injured party sustained a serious injury pursuant to N.Y. Ins. Law § 5102(d); the trial court’s denial of the injured party’s motion to reargue pursuant to N.Y. C.P.L.R. 2221 was not appealable. Gadsden v Montes, 2 A.D.3d 674, 768 N.Y.S.2d 630, 2003 N.Y. App. Div. LEXIS 13835 (N.Y. App. Div. 2d Dep't 2003).

Plaintiffs’ appeal of an order which purportedly denied a motion to renew a summary judgment motion was dismissed, because the motion was in fact a motion for leave to reargue, N.Y. C.P.L.R. 2221, the denial of which was not appealable. Mount Sinai Hosp. v Progressive Cas. Ins. Co., 5 A.D.3d 745, 773 N.Y.S.2d 618, 2004 N.Y. App. Div. LEXIS 3608 (N.Y. App. Div. 2d Dep't 2004).

Where the inmate appealed the trial court’s denial of the motion for reargument pursuant to N.Y. C.P.L.R. 2221(d), the denial was not appealable. Dickan v State, 16 A.D.3d 760, 790 N.Y.S.2d 572, 2005 N.Y. App. Div. LEXIS 2142 (N.Y. App. Div. 3d Dep't 2005).

Plaintiff’s appeal from the trial court’s denial of its motion to renew its prior motion to vacate its default in opposing defendant’s summary judgment motion was dismissed because plaintiff’s motion to renew was not based upon new facts that were unavailable at time of the motion to vacate, and plaintiff failed to offer reasonable justification for the failure to present new facts under N.Y. C.P.L.R. 2221(e), so the motion to renew was really a motion to reargue, the denial of which was not appealable. CPI Contr., Inc. v Expert Elec., Inc., 36 A.D.3d 582, 827 N.Y.S.2d 661, 2007 N.Y. App. Div. LEXIS 199 (N.Y. App. Div. 2d Dep't 2007).

No appeal lay from an order denying reargument. Financial Pac. Leasing, LLC v D & D Wire, Inc., 44 A.D.3d 706, 843 N.Y.S.2d 657, 2007 N.Y. App. Div. LEXIS 10607 (N.Y. App. Div. 2d Dep't 2007).

Denial of the mortgagor's motion for leave to renew, which was actually one for leave to reargue, was not appealable under this section. Bank of N.Y. v Segui, 120 A.D.3d 1369, 993 N.Y.S.2d 330, 2014 N.Y. App. Div. LEXIS 6243 (N.Y. App. Div. 2d Dep't 2014).

An order denying reargument is not appealable; nor may such a motion be made after the period for appeal has expired. Klein v Spear, Leeds & Kellogg, 65 F.R.D. 406, 1974 U.S. Dist. LEXIS 11805 (S.D.N.Y. 1974).

25. Motions to resettle

Special Term erred in resettling judgment so as to substitute “without prejudice” for “with prejudice”, this being a matter of substance. Dependable Printed Circuit Corp. v Mnemotron Corp., 22 A.D.2d 911, 255 N.Y.S.2d 638, 1964 N.Y. App. Div. LEXIS 2464 (N.Y. App. Div. 2d Dep't 1964).

Plaintiff’s motion to resettle an order in a matrimonial action that contained discrepancies from decretal directions contained in an earlier order was properly denied where the later order may well have enlarged the scope of an accounting to include separately held property as well as assets that had been acquired by the parties during the marriage, in that relief could not be had by way of a motion to resettle the later order inasmuch as the change sought was substantial in nature. Tidball v Tidball, 108 A.D.2d 957, 484 N.Y.S.2d 945, 1985 N.Y. App. Div. LEXIS 43292 (N.Y. App. Div. 3d Dep't 1985).

Where plaintiff in breach of contract action appealed from order for immediate payment of defendants’ costs and attorneys’ fees pursuant to CLS CPLR § 6212, defendants’ motion to resettle order was misnamed since it did not seek to correct any error or omission as to form; motion was actually to reargue since it sought to establish that court misapprehended law in granting order for immediate payment, and therefore no appeal from motion was permitted. Sturgis v Wolfe, 148 A.D.2d 770, 538 N.Y.S.2d 350, 1989 N.Y. App. Div. LEXIS 2150 (N.Y. App. Div. 3d Dep't 1989).

Appeal does not generally lie from denial of motion to resettle order and judgment. Sturgis v Wolfe, 148 A.D.2d 770, 538 N.Y.S.2d 350, 1989 N.Y. App. Div. LEXIS 2150 (N.Y. App. Div. 3d Dep't 1989).

When there is inconsistency between judgment and decision on which it is based, decision controls, and such inconsistency may be corrected either by way of motion for resettlement or on appeal. Green v Morris, 156 A.D.2d 331, 548 N.Y.S.2d 899, 1989 N.Y. App. Div. LEXIS 15376 (N.Y. App. Div. 2d Dep't 1989), app. denied, 75 N.Y.2d 705, 552 N.Y.S.2d 927, 552 N.E.2d 175, 1990 N.Y. LEXIS 165 (N.Y. 1990).

Since purpose of resettlement is to revise order to reflect court’s decision, resettlement is not to be used to effect substantive change in or to amplify prior decision of court. Barretta v Webb Corp., 181 A.D.2d 1018, 581 N.Y.S.2d 508, 1992 N.Y. App. Div. LEXIS 4617 (N.Y. App. Div. 4th Dep't), app. dismissed, 80 N.Y.2d 892, 587 N.Y.S.2d 909, 600 N.E.2d 636, 1992 N.Y. LEXIS 1685 (N.Y. 1992).

There was no basis for court to entertain motion to resettle order to reflect that default judgment, which was vacated under CLS CPLR § 5015(a)(1), was vacated pursuant to grounds set forth in CLS CPLR § 5015(a)(3), as there was no discrepancy between court's decision and order. Golden v Barker, 223 A.D.2d 769, 636 N.Y.S.2d 444, 1996 N.Y. App. Div. LEXIS 7 (N.Y. App. Div. 3d Dep't 1996).

Court's alleged failure to decide defendant's motions in 1990 to resettle order and to compel arbitration did not preclude defendant's attorney from perfecting appeal from that order where (1) purpose of resettlement is to revise order to reflect court's decision, not to effect substantive change or to amplify court's decision, (2) in seeking resettlement, defendant did not claim that 1990 order did not substantively reflect court's decision, and (3) thus, time to appeal was measured from original order. Miller v Lanzisera, 273 A.D.2d 866, 709 N.Y.S.2d 286, 2000 N.Y. App. Div. LEXIS 6943 (N.Y. App. Div. 4th Dep't), app. dismissed, 95 N.Y.2d 887, 715 N.Y.S.2d 378, 738 N.E.2d 782, 2000 N.Y. LEXIS 3759 (N.Y. 2000), reh'g denied, 715 N.Y.S.2d 206, 2000 N.Y. App. Div. LEXIS 9507 (N.Y. App. Div. 4th Dep't 2000).

No appeal lies from order denying resettlement of substantive or decretal portions of prior order. GE Capital Auto Lease, Inc. v D'Agnese, 281 A.D.2d 514, 721 N.Y.S.2d 833, 2001 N.Y. App. Div. LEXIS 2577 (N.Y. App. Div. 2d Dep't 2001).

A motion to resettle an order of attachment for the royalties and other income of a book written by the defendant, obtained after defendant was indicted for the murder of plaintiff's decedent and sued for wrongful death, to the extent of excluding from the seizure the reasonable legal fees incurred by the defendant for the defense of his criminal action, a monthly amount for defendant's commisary privileges, increasing the amount of plaintiff's undertaking, and directing that the attached funds be held in a separate account, would be granted to the extent only that the attached fund be held in a separate interest-bearing account, since CPLR § 6203 was inapplicable in that defendant's attorney had never "acquired" anything which was the subject of the levy, but merely anticipated payment of his debt from royalties earned by defendant's book, the attorney did not have a charging lien pursuant to Jud Law § 475, there being no fund over

which he was attempting to assert a lien, and the attorney was a general creditor of the defendant with no greater priority than any other creditor. Adan v Abbott, 114 Misc. 2d 735, 452 N.Y.S.2d 476, 1982 N.Y. Misc. LEXIS 3556 (N.Y. Sup. Ct. 1982).

Written order in a divorce action was modified because a provision of the supreme court's decision which directed the parties and their children to receive therapy was left out and the decision controlled in the event of a conflict. The inconsistency could be corrected either by a motion for resettlement or on appeal, N.Y. C.P.L.R. 2221, 5019(a). Scheuering v Scheuering, 27 A.D.3d 446, 811 N.Y.S.2d 100, 2006 N.Y. App. Div. LEXIS 2609 (N.Y. App. Div. 2d Dep't 2006).

Motion pursuant to N.Y. C.P.L.R. 2221(a) by defendant involved in a multi-faceted, multiple lawsuit dispute regarding ownership and management of apartment buildings was warranted where defendant was entitled to correction of a decision and order that indicated that summary judgment was granted to plaintiff and against defendant; defendant was not a party to the summary judgment ruling in that matter, and correction thereof by resettlement pursuant to N.Y. C.P.L.R. 2001, 2005, 2221, and 5015(a)(1) was necessary in order to avoid claims of estoppel against defendant by other involved parties in later proceedings. Alizio v Perpignano, 240 N.Y.L.J. 70, 2008 N.Y. Misc. LEXIS 6163 (N.Y. Sup. Ct. Sept. 25, 2008).

26. Applications to original judge

Petitioner's application to take the oral deposition of respondent and to examine the books and records of the corporation of which respondent was an officer and an owner of a substantial stock interest was in the nature of a motion to renew or reargue the previous application which had been denied, and thus it should have been made to the judge who denied such application. Application of Fili, 27 A.D.2d 908, 278 N.Y.S.2d 557, 1967 N.Y. App. Div. LEXIS 4504 (N.Y. App. Div. 1st Dep't 1967).

Under CPLR § 2221 and § 2217, subd a, city seeking additional extension of time in which to file report of appraisal in tax assessment review proceeding should have applied to same judge who granted original extension, but the original extension was allowed to stand where it was based

on an application for modification on a showing of a change in circumstances, i.e. a major reassessment of all city property, and a major illness of tax assessor, occurring between first and second motions. Lansingburgh Realties, Inc. v Commissioner of Assessments & Taxation, 42 A.D.2d 646, 345 N.Y.S.2d 152, 1973 N.Y. App. Div. LEXIS 4113 (N.Y. App. Div. 3d Dep't 1973).

Where motion to open default judgment was granted by trial judge other than one who heard evidence and first judge was still in office, appellate division would reverse on the ground but for fact that amount awarded for punitive damages included in judgment was excessive and thus in the interest of justice defendants should have an opportunity to be present and defend on that issue. Buffalo Downtown Garage, Inc. v Winfield Associates, Inc., 42 A.D.2d 820, 345 N.Y.S.2d 788, 1973 N.Y. App. Div. LEXIS 3868 (N.Y. App. Div. 4th Dep't 1973).

Successor judge acted improvidently in ordering restoration of pistol permit and confiscated firearms subsequent to retirement of predecessor judge who had revoked pistol permit after hearing even though predecessor judge’s order had not been entered, as appeal was available and considerable period had elapsed between order of predecessor judge and expiration of his term without application to him for reargument. Wright v County of Monroe, 45 A.D.2d 932, 357 N.Y.S.2d 330, 1974 N.Y. App. Div. LEXIS 4504 (N.Y. App. Div. 4th Dep't 1974).

Statute providing that a motion to modify an order shall be made, on notice, to the judge who signed the order unless he is unable to hear it reflects the general policy that judges shall not pass on or review a matter already passed upon by another judge of equal authority or coordinate jursidiction; however, there are exceptions to the rule. Rosemont Enterprises, Inc. v Irving, 49 A.D.2d 445, 375 N.Y.S.2d 864, 1975 N.Y. App. Div. LEXIS 11409 (N.Y. App. Div. 1st Dep't 1975), app. dismissed, 41 N.Y.2d 829, 393 N.Y.S.2d 392, 361 N.E.2d 1040, 1977 N.Y. LEXIS 1872 (N.Y. 1977), app. dismissed, 393 N.Y.S.2d 399, 361 N.E.2d 1047 (N.Y. 1977).

In an action to recover damages for personal injuries, the trial court improperly granted defendants’ renewed motion to vacate a default judgment, where defendants failed to present the renewed motion to the same judge who had denied the first motion, where no new facts of

any significance were alleged to justify defendants' failure to interpose an answer, and where the neglect of the action by defendants' attorneys was too extreme and the excuses offered therefore unconvincing to justify vacating the default. Frascatore v Mione, 97 A.D.2d 809, 468 N.Y.S.2d 678, 1983 N.Y. App. Div. LEXIS 20579 (N.Y. App. Div. 2d Dep't 1983).

Defendant's application to vacate its default did not have to be made to the judge who issued the order since the order was entered upon a default. Claudio v Lefrak, 100 A.D.2d 837, 473 N.Y.S.2d 833, 1984 N.Y. App. Div. LEXIS 17941 (N.Y. App. Div. 2d Dep't), app. dismissed, 64 N.Y.2d 756, 1984 N.Y. LEXIS 5230 (N.Y. 1984).

Motion which attempts directly to affect prior order must be made to judge who rendered original order, particularly where motion affects prior order in such a way as might warrant exercise of judicial judgment. Vepco Impressions, Ltd. v Continental Casualty Co., 109 A.D.2d 994, 486 N.Y.S.2d 474, 1985 N.Y. App. Div. LEXIS 47489 (N.Y. App. Div. 3d Dep't 1985).

Defendant's motion to remove a prior 1982 disqualification of his attorney was improperly granted where defendant had brought ten prior separate motions to vacate the disqualification so that CPLR § 2221 required that the application, which was essentially one for reargument, be made before the same justice who had decided the original motion, where the instant motion violated a directive of an administrative judge that any further applications to reargue or renew the motion to vacate the disqualification be brought only by order to show cause and signed by the justice who had rendered the original determination, and where, although discontinuance of a third-party action by defendant appeared to have eliminated the original basis of the conflict of interest leading to the disqualification of the attorney, equitable considerations barred the relief sought in view of the fact that more than three years had elapsed between the time of the original disqualification and the discontinuance of the third-party action, the unnecessary burden imposed upon the court by the repeated motions for the same relief, defendant's failure to adhere to the appropriate procedure, and plaintiff's right to have an immediate termination of the damage issue. Barr v Raffe, 111 A.D.2d 31, 488 N.Y.S.2d 708, 1985 N.Y. App. Div. LEXIS 51181 (N.Y. App. Div. 1st Dep't 1985).

Court did not abuse discretion by failing to transfer plaintiff's motion to reargue or renew to former Justice who had issued order of dismissal, since CLS CPLR § 2221 provides that such motion be made to judge who signed order "unless he is for any reason unable to hear it," and motion was before second Justice because of implementation of individual assignment system, whose purpose satisfies exception to statute as confirmed by 1986 amendment thereto. Billings v Berkshire Mut. Ins., Co., 133 A.D.2d 919, 520 N.Y.S.2d 463, 1987 N.Y. App. Div. LEXIS 51968 (N.Y. App. Div. 3d Dep't 1987), app. dismissed, 70 N.Y.2d 1002, 526 N.Y.S.2d 438, 521 N.E.2d 445, 1988 N.Y. LEXIS 113 (N.Y. 1988).

Motion to recover deficiency judgment after foreclosure should have been transferred to judge who decided all prior matters in action since defendants raised issues that had been previously raised in foreclosure action. Farmers' Prod. Credit Ass'n v Feinen Bros., 144 A.D.2d 955, 534 N.Y.S.2d 264, 1988 N.Y. App. Div. LEXIS 14436 (N.Y. App. Div. 4th Dep't 1988).

In divorce action, court properly denied defendant's motion to vacate note of issue to allow him to conduct discovery, where prior order entered by different judge certified matter ready for trial and directed parties to file note of issue on basis that they waived discovery by their failure to comply with that court's earlier order; challenge to prior order had to have been brought before issuing judge. McKiernan v McKiernan, 223 A.D.2d 917, 636 N.Y.S.2d 477, 1996 N.Y. App. Div. LEXIS 394 (N.Y. App. Div. 3d Dep't 1996).

In action for judgment declaring parties' rights and liabilities under contract for sale of real property, Supreme Court lacked authority to entertain reargument of merits or to confirm referee's amended decision where reference was one to hear and determine, rather than to hear and report, and thus referee possessed all powers of court performing like function, his amended decision stood as decision of court, and application to reargue substantive issues decided by referee had to be directed to him for resolution. Muir v Cuneo, 251 A.D.2d 638, 676 N.Y.S.2d 486, 1998 N.Y. App. Div. LEXIS 7861 (N.Y. App. Div. 2d Dep't 1998).

Preferred remedy to correct inaccuracy in judgment of divorce is motion to trial court for resettlement or vacatur, not appeal. Simonson-Carlson v Carlson, 266 A.D.2d 871, 698 N.Y.S.2d 206, 1999 N.Y. App. Div. LEXIS 11775 (N.Y. App. Div. 4th Dep't 1999).

Since a plaintiff filed a motion to reargue a prior motion, the trial court erred in arrogating to itself the authority to determine the motion for leave to reargue and then determining an issue not presented to it by the parties; pursuant to N.Y. C.P.L.R. 2221(a), the matter should have been submitted to the referee who made the original determination. Guaman v Tran, 52 A.D.3d 656, 860 N.Y.S.2d 197, 2008 N.Y. App. Div. LEXIS 5547 (N.Y. App. Div. 2d Dep't 2008).

Motion to vacate or modify an order of commitment made by one justice, based on refusal of movant to answer questions of Committee of Investigation, because such Committee is functioning illegally, and therefore there is no basis for the commitment, must be referred to the justice who made the order. In re Calise, 40 Misc. 2d 921, 244 N.Y.S.2d 131, 1963 N.Y. Misc. LEXIS 1539 (N.Y. Sup. Ct. 1963).

A judge of the Civil Court had jurisdiction, after the end of his temporary assignment to the Supreme Court, to entertain renewal or reargument of a motion he heard during his temporary term where, although his prior order was affirmed by the Appellate Division, the affirmation merely indicated that the judge was not in error in his earlier decision and, thus, to the extent that there was jurisdiction in anyone to hear a reargument or renewal, the judge had that jurisdiction to the exclusion of other members of the Supreme Court. Prudential Lines, Inc. v Firemen's Ins. Co., 109 Misc. 2d 281, 440 N.Y.S.2d 155, 1981 N.Y. Misc. LEXIS 2390 (N.Y. Sup. Ct. 1981).

Court of Claims judge who had heard defendant’s suppression motion in District Court while he was District Court judge, prior to his assignment to Court of Claims, could not hear People’s reargument motion as required by CLS CPLR § 2221 since he was not on temporary assignment within purview of CLS NY Const Art VI § 26 at time he ruled on initial suppression motion; constitution does not otherwise give Court of Claims judge jurisdiction over matters

pending in District Court. People v Schneiderman, 136 Misc. 2d 396, 518 N.Y.S.2d 300, 1987 N.Y. Misc. LEXIS 2464 (N.Y. Dist. Ct. 1987).

In action against insurance company by insured whose vehicle was stolen and recovered 2 days later in “stripped condition,” wherein complaint was dismissed by one judge on ground that plaintiff failed to obtain photo inspection pursuant to 11 NYCRR § 67.2 and default judgment in plaintiff’s favor was inexplicably granted by another judge, third judge to preside over case correctly vacated both orders, although sua sponte vacatur of dismissal of complaint is not specific enumerated exception to CLS CPLR § 2221, because confusion which existed in first 2 courts presented exceptional circumstance which warranted affirmance. Halsey v Progressive Cas. & Specialty Ins. Co., 174 Misc. 2d 330, 666 N.Y.S.2d 370, 1997 N.Y. Misc. LEXIS 566 (N.Y. App. Term 1997).

Motion to vacate default judgment entered by small claims clerk on filing of plaintiff’s affidavit of noncompliance, alleging that defendant failed to comply with stipulation of settlement entered into between parties before small claims mediator, was not required by CLS CPLR § 2221 to be referred by motion judge to small claims calendar judge who sat at session of court in which settlement took place; furthermore, motion should have been made returnable to small claims part, not regular civil motion part. Ware v Grossman, 177 Misc. 2d 320, 676 N.Y.S.2d 844, 1998 N.Y. Misc. LEXIS 290 (N.Y. Dist. Ct. 1998).

In mother’s personal injury and wrongful death suit against a city, involving their police, inter alia: (1) a trial court’s (a different judge than the original judge was permissible under N.Y. C.P.L.R. § 2221(a)(2)) discretion was not abused in vacating her note of issue; she did not file a readiness certificate or an affidavit of evidence from a person with first hand knowledge showing she had a meritorious suit, and (2) the vacation of the note of issue was not, under N.Y. C.P.L.R. § 5701(a)(2) or N.Y. Comp. Codes R. & Regs. tit. 22, § 202.21(f) an appeal as of right (since it was not from an order which decided a motion made on notice) and leave to appeal had not been granted. O'Ferral v City of New York, 8 A.D.3d 457, 779 N.Y.S.2d 90, 2004 N.Y. App. Div. LEXIS 8402 (N.Y. App. Div. 2d Dep't 2004).

27. —Co-ordinate jurisdiction rule

An order of one judge cannot be set aside or materially modified by another judge of co-ordinate jurisdiction. Carlos v Motor Vehicle Accident Indemnification Corp., 22 A.D.2d 866, 254 N.Y.S.2d 619, 1964 N.Y. App. Div. LEXIS 2625 (N.Y. App. Div. 1st Dep't 1964).

It is not proper practice to seek a review of the order of one special term justice by another special term justice. Empire Mut. Ins. Co. v West, 22 A.D.2d 938, 256 N.Y.S.2d 108, 1964 N.Y. App. Div. LEXIS 2370 (N.Y. App. Div. 2d Dep't 1964).

Where a trial term justice denied a motion to consolidate several causes of action for trial, and the motion was renewed before a calendar term justice, it must be referred for decision to the justice who made the original ruling, and the calendar term justice should not rule upon the motion himself. George W. Collins, Inc. v Olsker-McLain Industries, Inc., 22 A.D.2d 485, 257 N.Y.S.2d 201, 1965 N.Y. App. Div. LEXIS 4773 (N.Y. App. Div. 4th Dep't 1965).

One judge should not reconsider, disturb, or overrule an order in the same action of another judge of co-ordinate jurisdiction. Parker v Rogerson, 33 A.D.2d 284, 307 N.Y.S.2d 986, 1970 N.Y. App. Div. LEXIS 5728 (N.Y. App. Div. 4th Dep't), app. dismissed, 26 N.Y.2d 964, 311 N.Y.S.2d 7, 259 N.E.2d 479, 1970 N.Y. LEXIS 1429 (N.Y. 1970).

Where one trial judge takes proof and determines damages, it is not appropriate in the administration of justice for another co-ordinate trial judge to disturb, overrule, or vacate the order in the same action, so long as first judge remains in office. Buffalo Downtown Garage, Inc. v Winfield Associates, Inc., 42 A.D.2d 820, 345 N.Y.S.2d 788, 1973 N.Y. App. Div. LEXIS 3868 (N.Y. App. Div. 4th Dep't 1973).

It was irregular and improper for special term justice, other than the one who had heard evidence and awarded damages, to grant motion to reopen default judgment. Buffalo Downtown Garage, Inc. v Winfield Associates, Inc., 42 A.D.2d 820, 345 N.Y.S.2d 788, 1973 N.Y. App. Div. LEXIS 3868 (N.Y. App. Div. 4th Dep't 1973).

Where husband merely alleged that issue of his earning capacity was not fully litigated due to inadequacy of counsel, it was a clear violation of CPLR 2221 for judge, on husband's motion, to vacate 3 prior orders of different judges of courts of co-ordinate jurisdiction which granted wife's motion for temporary alimony, child support, and counsel fees, adjudged husband in contempt for failure to comply with such order, and committed husband to jail for contempt. Kaminsky v Kaminsky, 44 A.D.2d 583, 353 N.Y.S.2d 242, 1974 N.Y. App. Div. LEXIS 5459 (N.Y. App. Div. 2d Dep't 1974).

Judge may not review or overrule an order of another judge of coordinate jurisdiction in same action or proceeding. Wright v County of Monroe, 45 A.D.2d 932, 357 N.Y.S.2d 330, 1974 N.Y. App. Div. LEXIS 4504 (N.Y. App. Div. 4th Dep't 1974).

Even if dismissal by one Justice of Supreme Court of motion for leave to take deposition was based on insufficiency of the moving papers and even if papers presented in subsequent motion before another justice of same court alleged additional grounds, the latter application, at most, constituted a motion to renew rather than to reargue and, as such, came within scope of rule barring a party from appealing from one judge to another of coordinate jurisdiction; absent showing of some sufficient reason why the original judge was unable to entertain the motion it was incumbent on the second judge to transfer the motion to the former. Riggle v Buffalo General Hospital, 52 A.D.2d 751, 382 N.Y.S.2d 204, 1976 N.Y. App. Div. LEXIS 12455 (N.Y. App. Div. 4th Dep't 1976).

In a prosecution for the manufacture, transport, disposition and defacement of weapons and dangerous instruments and applicances, it was proper for a judge of coordinate jurisdiction to entertain the prosecution's application for reargument in the place of the original judge in the matter where the original judge was rendered unable to hear the reargument following his disqualification of himself from presiding at trial. People v Petgen, 81 A.D.2d 951, 439 N.Y.S.2d 692, 1981 N.Y. App. Div. LEXIS 11687 (N.Y. App. Div. 3d Dep't 1981), aff'd, 55 N.Y.2d 529, 450 N.Y.S.2d 299, 435 N.E.2d 669, 1982 N.Y. LEXIS 3260 (N.Y. 1982).

In an action in which a motion seeking the release of medical records was granted but never reduced to writing, an order on a second motion seeking the identical relief, heard before a different Judge, would be vacated, since one judge may not review or overrule an order of another judge of coordinate jurisdiction in the same proceeding regardless of whether a formal order was entered, and any motion effecting a prior order should be made only to the Judge who issued that order, unless he is unable to hear it, pursuant to CPLR § 2221. Spahn v Griffith, 101 A.D.2d 1011, 476 N.Y.S.2d 676, 1984 N.Y. App. Div. LEXIS 18741 (N.Y. App. Div. 4th Dep't 1984).

Supreme Court had no authority to grant ex parte order vacating validly issued temporary order of custody under CLS Family Ct Act § 651. Guidroz v Bochenski, 170 A.D.2d 1042 (N.Y. App. Div. 4th Dep't 1991).

Justice of coordinate jurisdiction could not review order of another justice of the same court authorizing particular manner of service. Overmyer v Eliot Realty, 83 Misc. 2d 694, 371 N.Y.S.2d 246, 1975 N.Y. Misc. LEXIS 2965 (N.Y. Sup. Ct. 1975).

Judges should not pass or review a matter already passed upon by another Judge of equal authority or co-ordinate jurisdiction except where the prior order is an ex parte order “made without notice” (CPLR 2221, subd 2) and, accordingly, a prior ex parte order directing resubmission of the previously dismissed charges to a Grand Jury pursuant to CPL 190.75 (subd 3) may be reviewed to determine if new evidence or additional facts constituting “good cause” for resubmission was shown; it is sufficient to constitute “good cause” if the prosecutor in his supporting affirmation states that the charge is well founded and if resubmitted to the Grand Jury, sufficient evidence would be adduced to warrant the finding of an indictment and it is not required that the new evidence or additional facts be disclosed in the affirmation. People v Martin, 97 Misc. 2d 441, 411 N.Y.S.2d 822, 1978 N.Y. Misc. LEXIS 2818 (N.Y. Sup. Ct. 1978), rev'd, 71 A.D.2d 928, 419 N.Y.S.2d 724, 1979 N.Y. App. Div. LEXIS 13180 (N.Y. App. Div. 2d Dep't 1979).

Second judge would grant People's motion to consolidate one count of earlier indictment with later indictment, even though another judge of coordinate jurisdiction had previously severed counts of earlier indictment, since first judge's severance order was fully complied with because various counts of that indictment would not be tried together, and prohibitions of CLS CPLR § 2221 did not affect second judge's ability to consolidate count of earlier indictment with new case which first judge had not considered. People v Collins, 134 Misc. 2d 520, 511 N.Y.S.2d 512, 1987 N.Y. Misc. LEXIS 2055 (N.Y. Sup. Ct. 1987).

It would be abuse of discretion to grant People's motion to reargue suppression order (on ground that suppression court failed to consider certain legal issues) where judge who rendered initial decision was unable to hear reargument motion, since it would be tantamount to collateral appellate review of decision of coordinate judge if different judge were to hear motion, and suppression order could be challenged by way of appellate review. People v Schneiderman, 136 Misc. 2d 396, 518 N.Y.S.2d 300, 1987 N.Y. Misc. LEXIS 2464 (N.Y. Dist. Ct. 1987).

28. —Applications to other judges

Although under CLS CPLR § 2221 second Superior Court justice should not have dismissed indictments which first justice had already sustained (unless first justice was unavailable for referral), People presented no ground for reversal on appeal where they had failed to timely protest second justice's actions and where record on appeal was barren of facts from which Court of Appeals could consider merits of matter. People v Jennings, 69 N.Y.2d 103, 512 N.Y.S.2d 652, 504 N.E.2d 1079, 1986 N.Y. LEXIS 21645 (N.Y. 1986).

CPLR 2221 does not mandate that the motion to vacate a conditional order must be referred to the justice who made the order, where the motion is returnable on the day of trial. Blasi v Boucher, 30 A.D.2d 674, 291 N.Y.S.2d 960, 1968 N.Y. App. Div. LEXIS 3793 (N.Y. App. Div. 2d Dep't 1968).

Under CPLR § 2221 and § 2217, subd a, city seeking additional extension of time in which to file report of appraisal in tax assessment review proceeding should have applied to same judge who

granted original extension, but the original extension was allowed to stand where it was based on an application for modification on a showing of a change in circumstances, i.e. Lansingburgh Realties, Inc. v Commissioner of Assessments & Taxation, 42 A.D.2d 646, 345 N.Y.S.2d 152, 1973 N.Y. App. Div. LEXIS 4113 (N.Y. App. Div. 3d Dep't 1973).

Where motion to open default judgment was granted by trial judge other than one who heard evidence and first judge was still in office, appellate division would reverse on the ground but for fact that amount awarded for punitive damages included in judgment was excessive and thus in the interest of justice defendants should have an opportunity to be present and defend on that issue. Buffalo Downtown Garage, Inc. v Winfield Associates, Inc., 42 A.D.2d 820, 345 N.Y.S.2d 788, 1973 N.Y. App. Div. LEXIS 3868 (N.Y. App. Div. 4th Dep't 1973).

Approval of application for modification of temporary alimony was proper where there was a true change of circumstances, even though judge to whom said application was made was not the judge who issued the original order. Watras v Watras, 43 A.D.2d 520, 349 N.Y.S.2d 79, 1973 N.Y. App. Div. LEXIS 3173 (N.Y. App. Div. 1st Dep't 1973).

Where order dismissing personal injury complaint was not final one on merits and, in addition, granted leave to renew application upon conditions set forth therein, application could be made to different judge to vacate such order. Poland v B. & N. Cab Corp., 51 A.D.2d 692, 379 N.Y.S.2d 95, 1976 N.Y. App. Div. LEXIS 11121 (N.Y. App. Div. 1st Dep't 1976).

Where one judge denied motion for joint trial of negligence action and of declaratory judgment action with respect to insurance coverage, and no appeal was taken from that determination, another judge of the same court should not have directed joint trial of the actions. Public Service Mut. Ins. Co. v McGrath, 56 A.D.2d 812, 392 N.Y.S.2d 659, 1977 N.Y. App. Div. LEXIS 11108 (N.Y. App. Div. 1st Dep't 1977).

In an action seeking judgment on a note, the second motion for summary judgment was erroneously brought before a different justice than who decided the first motion in violation of CPLR 2221, and should have been transferred to the justice who heard the initial motion to be

considered as a motion to reargue or renew. Marine Midland Bank v Fisher, 85 A.D.2d 905, 447 N.Y.S.2d 186, 1981 N.Y. App. Div. LEXIS 16751 (N.Y. App. Div. 4th Dep't 1981).

Making second summary judgment motion before different Supreme Court justice runs afoul of prescription of CPLR 2221; second summary judgment motion should have been considered as motion to reargue or renew and transfered to justice who heard first motion. G. R. Lewis Constr., Inc. v Gush, 110 A.D.2d 1017, 488 N.Y.S.2d 309, 1985 N.Y. App. Div. LEXIS 48897 (N.Y. App. Div. 3d Dep't 1985).

Defendant’s motion to strike case from inquest calendar, open default, and vacate order striking its answer for noncompliance with discovery order did not have to be made to judge who issued order striking answer because order striking answer was entered on defendant’s default. Patron v Mutual of Omaha Ins. Co., 129 A.D.2d 572, 514 N.Y.S.2d 70, 1987 N.Y. App. Div. LEXIS 45237 (N.Y. App. Div. 2d Dep't 1987).

Transferral of case to Albany County, and assignment of case to Justice individually, enabled Justice to grant relief from conditional order of dismissal which had been entered in Oneida County, without referral to Oneida County Justice who had granted such order. Capoccia v Brognano, 132 A.D.2d 834, 517 N.Y.S.2d 622, 517 N.Y.S.2d 837, 1987 N.Y. App. Div. LEXIS 49323 (N.Y. App. Div. 3d Dep't 1987).

Defendant’s reargument motion, seeking dismissal of one count of 3-count indictment on grounds of legal insufficiency, was properly heard by second County Court judge after original judge recused himself from case; case having been properly assigned to second judge, that judge was charged with reviewing application to determine if relevant facts were overlooked, or if any controlling principle of law was misapplied. People v Acevedo, 140 A.D.2d 846, 528 N.Y.S.2d 234, 1988 N.Y. App. Div. LEXIS 5029 (N.Y. App. Div. 3d Dep't 1988).

Trial court did not abuse its discretion, nor was court precluded by CLS CPLR § 2221 (governing reargument and renewal motions) from exercising its discretion granted to court by CLS CPLR § 603 to bifurcate trial of underlying personal injury action, despite fact that administrative judge

had previously denied bifurcation motion. O'Connor v C.T.G.N.Y., 159 A.D.2d 249, 552 N.Y.S.2d 242, 1990 N.Y. App. Div. LEXIS 2367 (N.Y. App. Div. 1st Dep't 1990).

Denial of its previous motion for summary judgment precluded plaintiff from obtaining summary judgment on same facts since grant of such relief would have effect of frustrating earlier disposition and might, if granted by judge other than one to whom first motion was made, be in violation of statute. Mobil Oil Corp. v Huntington, 85 Misc. 2d 800, 380 N.Y.S.2d 466, 1975 N.Y. Misc. LEXIS 3331 (N.Y. Sup. Ct. 1975).

In paternity proceeding brought by Department of Social Services on behalf of mother, Family Court could not reconsider propriety of prior Family Court order, which dismissed “with prejudice” a paternity proceeding brought by mother against same respondent, since court had no authority to act in appellate capacity over different judge’s order and, in any event, prior dismissal was nearly 3 years old. Dutchess County Dep't of Social Services on behalf of Marylou M. v Gaetano C., 139 Misc. 2d 1064, 529 N.Y.S.2d 424, 1988 N.Y. Misc. LEXIS 311 (N.Y. Fam. Ct. 1988).

In action transferred to Civil Court under CLS CPLR § 325(d), Civil Court judge had authority under CLS CPLR § 2221(a)(1) to vacate prior order issued by Supreme Court justice, where prior order was issued on default. Zhai v Chemical Bank, 180 Misc. 2d 442, 689 N.Y.S.2d 366, 1999 N.Y. Misc. LEXIS 148 (N.Y. Civ. Ct. 1999).

Where trial judge properly granted discontinuance under CLS CPLR § 3217 without prejudice to either side, including respondents’ rights to move for attorneys’ fees, there was no legal basis for another judge to entertain second § 3217 motion because that motion had already been decided; rather than assessing attorneys’ fees, second judge should have referred matter to trial judge pursuant to CLS CPLR § 2221. Chris Mac Co. v Johnson-Ono, 186 Misc. 2d 524, 719 N.Y.S.2d 796, 2000 N.Y. Misc. LEXIS 528 (N.Y. App. Term 2000).

In a personal injury action involuntarily removed from the Supreme Court to the District Court, under N.Y. C.P.L.R. § 325(d), when a District Court judge “so-ordered” the parties’ discovery

stipulation and the case was subsequently assigned to a different District Court judge, and the injured party moved to strike defendants' answer due to a failure to comply with the discovery stipulation, the currently presiding District Court judge was obligated to rule on that motion, despite the provision in N.Y. C.P.L.R. 2221(a) that a motion to reargue, renew, appeal from, stay, vacate, or modify a prior order "shall" be made to the judge who signed the order, because (1) the injured party's motion was not clearly among the motions listed in C.P.L.R. 2221(a), (2) the previous order did not involve the prior judge's independent analysis, but merely "so-ordered" a discovery stipulation, and (3) the current court was not reviewing a court of coordinate jurisdiction. Sedano v Campos, 764 N.Y.S.2d 603, 1 Misc. 3d 388, 2003 N.Y. Misc. LEXIS 1166 (N.Y. Dist. Ct. 2003).

Second judge properly considered a motion for leave to reargue because a first judge was out of the country and "unable to hear" the motion, N.Y. C.P.L.R. 2221(a). Sparks v Essex Homes of WNY, Inc., 20 A.D.3d 905, 798 N.Y.S.2d 293, 2005 N.Y. App. Div. LEXIS 7453 (N.Y. App. Div. 4th Dep't 2005), app. denied, 21 A.D.3d 1442, 801 N.Y.S.2d 556, 2005 N.Y. App. Div. LEXIS 9976 (N.Y. App. Div. 4th Dep't 2005), app. denied in part, app. dismissed, 6 N.Y.3d 766, 811 N.Y.S.2d 329, 844 N.E.2d 783, 2006 N.Y. LEXIS 37 (N.Y. 2006).

29. — —Transfer to proper judge

An order granting a motion made during July of 1965 to in effect vacate a reference with respect to the ownership of personalty must be reversed, where that motion sought to accomplish the same result as prior motions made and denied during 1964, and the motion should have been transferred in accordance with settled practice to the Justice of coordinate jurisdiction whose reference order was sought to be vacated. Rosenstiel v Rosenstiel, 24 A.D.2d 952, 265 N.Y.S.2d 387, 1965 N.Y. App. Div. LEXIS 2694 (N.Y. App. Div. 1st Dep't 1965).

The defendant's motion to dismiss a complaint to rescind a separation agreement and declare the nullity of a Mexican divorce, subsequent to an earlier motion to dismiss the identical complaint on the same grounds should have been transferred to the justice of coordinate

jurisdiction whose order was sought to be changed, although the error would not warrant reversal of an order denying the second motion. Baron v Baron, 27 A.D.2d 723, 277 N.Y.S.2d 466, 1967 N.Y. App. Div. LEXIS 4803 (N.Y. App. Div. 1st Dep't 1967).

Where a justice of co-ordinate jurisdiction had previously denied a motion to punish the defendant for contempt in failure to appear for an examination, and the order was neither reargued nor appealed by plaintiff, any subsequent motion relating thereto should have been heard or transferred to the Justice who made the order. James v Powell, 32 A.D.2d 517, 298 N.Y.S.2d 840, 1969 N.Y. App. Div. LEXIS 4259 (N.Y. App. Div. 1st Dep't 1969).

Even if dismissal by one Justice of Supreme Court of motion for leave to take deposition was based on insufficiency of the moving papers and even if papers presented in subsequent motion before another justice of same court alleged additional grounds, the latter application, at most, constituted a motion to renew rather than to reargue and, as such, came within scope of rule barring a party from appealing from one judge to another of coordinate jurisdiction; absent showing of some sufficient reason why the original judge was unable to entertain the motion it was incumbent on the second judge to transfer the motion to the former. Riggle v Buffalo General Hospital, 52 A.D.2d 751, 382 N.Y.S.2d 204, 1976 N.Y. App. Div. LEXIS 12455 (N.Y. App. Div. 4th Dep't 1976).

Appeal from order denying motion to add derivative cause of action is not properly before court where denial was based on law of case stemming from denial by original judge 4 years earlier of similar motion; thus, motion is in effect one for reargument, despite fact that transfer pursuant to CPLR § 2221 is no longer possible due to elevation of original justice to federal branch, and order denying motion for reargument is not appealable. Cherchio v Alley, 111 A.D.2d 541, 489 N.Y.S.2d 413, 1985 N.Y. App. Div. LEXIS 51592 (N.Y. App. Div. 3d Dep't 1985).

On defendant’s motion to dismiss amended complaint, Special Term properly denied plaintiff’s cross motion to transfer matter to justice who had denied earlier motion to dismiss original complaint since sufficiency of amended complaint had not been issue decided on earlier motion.

O'Connor v West, 124 A.D.2d 1050, 508 N.Y.S.2d 744, 1986 N.Y. App. Div. LEXIS 62408 (N.Y. App. Div. 4th Dep't 1986).

In matrimonial action in which husband was granted divorce, sole custody of children, and exclusive possession and occupancy of marital residence upon wife's apparently willful default, Special Term should have referred wife's motion to vacate default to original judge, who was thoroughly acquainted with case and circumstances surrounding default. D'Alleva v D'Alleva, 127 A.D.2d 732, 511 N.Y.S.2d 927, 1987 N.Y. App. Div. LEXIS 43220 (N.Y. App. Div. 2d Dep't 1987).

Husband's motion to modify Family Court visitation order should have been transferred, as requested in wife's cross-motion under CLS CPLR § 2221, from Supreme Court to Family Court Judge who had entered prior order since both courts had equal power to entertain motion given that divorce decree was silent regarding future enforcement or modification of its provisions. Metzger v Metzger, 133 A.D.2d 524, 519 N.Y.S.2d 897, 1987 N.Y. App. Div. LEXIS 50003 (N.Y. App. Div. 4th Dep't 1987).

Order denying the lender's motion to, inter alia, vacate an order dismissing the first foreclosure action, restore that action to the calendar, consolidate the first and second actions, and grant the lender summary judgment was reversed where, instead of denying the first motion with leave to renew before the justice who directed dismissal, the supreme court should have transferred the first motion to that justice per CPLR 2221(c). Citimortgage, Inc. v Dedalto, 210 A.D.3d 628, 178 N.Y.S.3d 102, 2022 N.Y. App. Div. LEXIS 6018 (N.Y. App. Div. 2d Dep't 2022).

Motion to vacate or modify an order of commitment made by one justice, based on refusal of movant to answer questions of Committee of Investigation, because such Committee is functioning illegally, and therefore there is no basis for the commitment, must be referred to the justice who made the order. In re Calise, 40 Misc. 2d 921, 244 N.Y.S.2d 131, 1963 N.Y. Misc. LEXIS 1539 (N.Y. Sup. Ct. 1963).

In matrimonial proceeding, litigant's motion to correct, clarify and modify portions of decision of judicial hearing officer would be construed as motion to reargue, and Supreme Court would refer such motion to judicial hearing officer involved, since (1) consideration of reargument motion by Supreme Court would be in nature of review of judicial hearing officer's determination, which may only be undertaken by Appellate Division, and (2) under CLS CPLR § 2221, reargument must be made to judge who signed order. Colodner v Colodner, 138 Misc. 2d 66, 523 N.Y.S.2d 939, 1987 N.Y. Misc. LEXIS 2776 (N.Y. Sup. Ct. 1987).

30. —Appellate issues

Where a justice of co-ordinate jurisdiction had previously denied a motion to punish the defendant for contempt in failure to appear for an examination, and the order was neither reargued nor appealed by plaintiff, any subsequent motion relating thereto should have been heard or transferred to the Justice who made the order. James v Powell, 32 A.D.2d 517, 298 N.Y.S.2d 840, 1969 N.Y. App. Div. LEXIS 4259 (N.Y. App. Div. 1st Dep't 1969).

It was improper for a judge of coordinate jurisdiction to sever action which had been consolidated by order of a Supreme Court justice where no appeal had been taken from the consolidation order. Carel Almo Service Inc. v Weisskopf, 42 A.D.2d 953, 348 N.Y.S.2d 557, 1973 N.Y. App. Div. LEXIS 3342 (N.Y. App. Div. 1st Dep't 1973).

Trial court properly denied the owners' motion for leave to reargue their prior motion to restore the action to the trial calendar and granted the designers' motion for summary judgment dismissing the owners' complaint for breach of contract because the denial of a motion to reargue was not appealable, the designers demonstrated their prima facie entitlement to judgment as a matter of law by submitting evidence that the owners could not establish a prima facie case at trial since they were precluded from offering any evidence on the issue of damages, and the owners failed to raise a triable issue of fact in opposition. Ciampa Org., LLC v Vergara, 171 A.D.3d 695, 97 N.Y.S.3d 700, 2019 N.Y. App. Div. LEXIS 2493 (N.Y. App. Div. 2d Dep't 2019).

An order granting leave to reargue (CPLR 2221) may be made ex parte upon a showing of some controlling decision or principle of law which has been overlooked. Leave to reargue should not be granted where the party seeking rehearing has not appealed in timely fashion, otherwise litigants might be inclined to use the reargument device as a means to circumvent the time limits for appeal. Hill v Edelman, 92 Misc. 2d 485, 399 N.Y.S.2d 565, 401 N.Y.S.2d 697, 1977 N.Y. Misc. LEXIS 2573 (N.Y. Sup. Ct. 1977).

Lower court did not abuse its discretion when it granted defendant's motion to reargue a motion to vacate a default judgment because the lower court acknowledged the preference to have matters decided on the merits and also acknowledged that it had been too strict on defendant in the earlier motions. Loris v S & W Realty Corp., 16 A.D.3d 729, 790 N.Y.S.2d 579, 2005 N.Y. App. Div. LEXIS 2172 (N.Y. App. Div. 3d Dep't 2005).

II. Under Former Civil Practice Laws

A. In General

31. Generally

Where action is pending before supreme court, it has power for sufficient cause to modify or vacate order made in course of action. Baker v MacFadden Publications, Inc., 300 N.Y. 325, 90 N.E.2d 876, 300 N.Y. (N.Y.S.) 325, 1950 N.Y. LEXIS 849 (N.Y. 1950).

32. Application to another judge

Order authorizing the receiver of a railroad company to take possession with other property, of money earned before his appointment, are not void ab initio and can be corrected only by appeal or by motion and are not subject to collateral attack, and the receiver cannot be compelled by order of the special term to pay over such money to a receiver appointed in a sequestration action. The practice of moving before one judge at special term to declare void the

order or judgment of another judge at special term is not sanctioned by any provision of the Code or by any controlling authority. It virtually amounts to an appeal from one special term to another special term for a review of the first order. Platt v New York & S. B. R. Co., 170 N.Y. 451, 63 N.E. 532, 170 N.Y. (N.Y.S.) 451, 1902 N.Y. LEXIS 1080 (N.Y. 1902).

One judge should not vacate an order made by a court held by another judge, except in cases expressly provided for in this section. Willard v Willard, 194 A.D. 123, 185 N.Y.S. 569, 1920 N.Y. App. Div. LEXIS 6613 (N.Y. App. Div. 1920).

Special Term's denial of motion to change venue on ground of nonresidence was law of case, and absent any showing of perjury or fraud, Trial Term acted improperly in reconsidering venue on its own motion and granting a change thereof. Rickles v Johnson, 14 A.D.2d 844, 220 N.Y.S.2d 901, 1961 N.Y. App. Div. LEXIS 8044 (N.Y. App. Div. 1st Dep't 1961).

Where action was brought in Kings county and examination before trial was directed to be held before justice in another county, the justice in such other county had no power to vacate or modify the order. Palmer v Rotary Realty Co., 178 N.Y.S. 461, 109 Misc. 243, 1919 N.Y. Misc. LEXIS 1182 (N.Y. Sup. Ct. 1919).

Notwithstanding CPA § 131 on motion under CPA § 844 (§ 6118 herein), to vacate an order of arrest, based on the original moving papers, did not need to be made before the judge who signed the order. Todd-Buick, Inc. v Smith, 192 N.Y.S. 459, 118 Misc. 102, 1922 N.Y. Misc. LEXIS 990 (N.Y. Sup. Ct.), aff'd, 202 A.D. 774, 194 N.Y.S. 985, 1922 N.Y. App. Div. LEXIS 5458 (N.Y. App. Div. 1922).

Ex parte order for substituted service of summons was vacated for statutory noncompliance by justice other than one who granted order. Allen v Forman, 51 N.Y.S.2d 511, 183 Misc. 901, 1944 N.Y. Misc. LEXIS 2564 (N.Y. Mun. Ct. 1944).

Where judge denied motion for change of venue and later signed order to show cause for same relief, his signing order to show cause and inserting date of return day did not avoid provisions of CPA § 118, and second motion was properly referred to judge who denied original motion.

Cullom v R. Hoe & Co., 135 N.Y.S.2d 264, 206 Misc. 836, 1954 N.Y. Misc. LEXIS 2920 (N.Y. Sup. Ct. 1954).

Special Term has power to vacate on notice ex parte order granting attorney-general leave to sue made by another judge. People v B. C. Associates, Inc., 22 Misc. 2d 43, 194 N.Y.S.2d 353, 1959 N.Y. Misc. LEXIS 2812 (N.Y. Sup. Ct. 1959).

An order made by one judge may be modified by an order made at a term held by another judge in respect to matters inserted under mistake of counsel. Price v Price, 2 N.Y.S. 796, 50 Hun 603, 1888 N.Y. Misc. LEXIS 851 (N.Y. Sup. Ct. 1888).

Supreme Court has no power to supersede orders of other justices heretofore entered. O'Shea v Hanse, 147 N.Y.S.2d 791, 1954 N.Y. Misc. LEXIS 3666 (N.Y. Sup. Ct. 1954).

A justice cannot review the action of another justice of the same court. People v National Trust Co., 31 Hun 20 (N.Y.).

33. Municipal court

Construed with former RCP 155, CPA § 131 authorized the Municipal Court to disregard a stay order from a judge of the first district and proceed to trial with the case. Irving Weinberg Dress Co. v Goldsticker, 214 N.Y.S. 444, 126 Misc. 685, 1926 N.Y. Misc. LEXIS 641 (N.Y. App. Term 1926).

B. Matters Affecting Motion Affecting Order

34. Generally; prior motion as bar

A conclusion of a court is not res adjudicata when it is not a decision on the merits. Spelman v Terry, 74 N.Y. 448, 74 N.Y. (N.Y.S.) 448, 1878 N.Y. LEXIS 764 (N.Y. 1878).

A new motion cannot be reheard without leave of the judge before whom it was originally made, even though the new application is made upon proof of additional facts, where the ground of the second application was the same as the first. Worman v Frankish, 11 N.Y.S. 351, 1890 N.Y. Misc. LEXIS 740 (N.Y. City Ct. 1890).

The doctrine of res adjudicata does not apply with the same strictness to decisions on motions as to judgments. First Nat'l Bank v Clark, 42 Hun 90, 3 N.Y. St. 438 (N.Y.).

Motion to have complaint made more definite was denied and afterwards a motion was made for a bill of particulars in reference to one of the causes of action and refused on the ground that the prior motion was a bar. Klumpp v Gardner, 44 Hun 515, 9 N.Y. St. 355 (N.Y.).

An order denying a motion to dismiss a complaint for failure to serve the other defendant is a bar to a new motion for the same reason made a year afterwards and so as to setting aside an execution issued without leave of court after the lapse of five years. National Bank of Port Jarvis v Hansee, 2 How. Pr. (n.s.) 200.

35. Affirmance of order

The affirmance of an order, by the court of appeals, does not add to its effect, or preclude a renewal of the motion in the discretion of the court below, upon different or additional facts. Riggs v Pursell, 74 N.Y. 370, 74 N.Y. (N.Y.S.) 370, 1878 N.Y. LEXIS 752 (N.Y. 1878).

36. Reversal of order

The reversal of an order directing the payment of funds to plaintiff by the appellate division is not conclusive on the right of defendant to that fund, for plaintiff might obtain leave to renew the motion, and the fact that the appellate division certified a subsequent motion directing payment of the same fund to the defendant to the court of appeals on its merits is equivalent to such leave. Rutherfurd Realty Co. v Cook, 198 N.Y. 29, 90 N.E. 1112, 198 N.Y. (N.Y.S.) 29, 1910 N.Y. LEXIS 766 (N.Y. 1910).

37. Correction of record

A court of record may reform its order inadvertently made, although such reformation may affect the rights which strangers had gained from the first order. American Hosiery Co. v Riley, 92 N.Y. 650, 92 N.Y. (N.Y.S.) 650, 1883 N.Y. LEXIS 229 (N.Y. 1883).

Special Term judge may make his order as to a motion for judgment on the pleadings conform to the decision intended. Traub v Arrow Mfg. Corp., 207 A.D. 292, 202 N.Y.S. 121, 1923 N.Y. App. Div. LEXIS 5950 (N.Y. App. Div. 1923).

If error is made in an order by a court, the right to appeal to the general term to have the order corrected is not to be regarded as exclusive, but the party entitled to complain may still move to vacate or obtain its reconsideration. Re National Trust Co..

38. Fraud or mistake

An order confirming a report of commissioners of assessment in New York City may be set aside upon motion for irregularity, mistake or fraud, although the act says their report shall be final and conclusive. In re Application of Mayor of N.Y., 49 N.Y. 150, 49 N.Y. (N.Y.S.) 150, 1872 N.Y. LEXIS 147 (N.Y. 1872).

39. Waiver of right to vacate

Motion to vacate order appointing commissioners in condemnation proceedings, where excess land had been taken for widening a highway, denied on the ground that the point was not taken in time and was waived. Yonkers v M. E. D. Corp., 240 N.Y.S. 574, 136 Misc. 696, 1930 N.Y. Misc. LEXIS 1098 (N.Y. Sup. Ct. 1930).

40. Notice

Order granting extension of time to answer on application without notice could be vacated or modified by the judge who made it without notice, or by the court upon notice. Landmesser v Hayward, 157 A.D. 74, 141 N.Y.S. 730, 1913 N.Y. App. Div. LEXIS 5860 (N.Y. App. Div. 1913).

The judge who makes an ex parte order has the right to vacate it ex parte. Dixon v Dixon, 8 NYSR 816; Marks v King, 13 Abb NC 374.

Motion to vacate order of arrest will not be heard on the part of one who is a fugitive from the state. In re Byrne, 8 N.Y.S. 676, 55 Hun 438, 1890 N.Y. Misc. LEXIS 1713 (N.Y. App. Term), aff'd, 121 N.Y. 675, 24 N.E. 1095, 121 N.Y. (N.Y.S.) 675, 1890 N.Y. LEXIS 1502 (N.Y. 1890).

Where an order had been made to show cause why a judgment should not be vacated for irregularity, and staying the plaintiff’s proceedings until the hearing of the motion, and the plaintiff’s attorney, in violation of the stay, obtained an ex parte order allowing him to correct the irregularity nunc pro tunc, held, that the latter order was properly vacated ex parte by the judge who granted it. Ward v Sands, 10 Abb NC 60.

41. Entry of final order

Where an order in supplementary proceedings requiring the defendant to appear and be examined as to his property is made by a justice of the supreme court, and is subsequently altered by another justice, by changing the date upon which the defendant is required to appear and be examined and the justice making the change writes his initials, in the margin opposite the alteration, the order is a nullity; and the judgment debtor cannot be punished for his failure to obey. Vogel v Nimark, 116 N.Y.S. 825, 62 Misc. 591, 1909 N.Y. Misc. LEXIS 605 (N.Y. Sup. Ct. 1909).

The entry of a final order granting a new trial on the minutes does not prevent the judge upon the same papers from rehearing the motion, vacating the former order and refusing a new trial. Herzig v Metzger, 62 How. Pr. 355, 1881 N.Y. Misc. LEXIS 277 (N.Y. Town Ct. Nov. 1, 1881).

C. Procedure on Motion Affecting Order

42. Generally; additional affidavits and papers

An affidavit once filed in an action may by reference be used on a subsequent motion, and where the trial justice should have considered affidavits filed on prior motions, while such affidavits were conclusory and not adequate, had they been considered by the justice, he might have given leave to renew, such leave granted in the interests of justice on appeal. Towey v State, 12 Misc. 2d 95, 175 N.Y.S.2d 969, 1958 N.Y. Misc. LEXIS 3021 (N.Y. Ct. Cl. 1958).

Where application for “reargument” is based upon new situation and is not restricted to original papers, such motion is not one for reargument but rather motion to renew and rehear upon additional facts and new papers. Voit v Walsh, 125 N.Y.S.2d 720, 1953 N.Y. Misc. LEXIS 2358 (N.Y. County Ct. 1953).

A motion to set aside a judgment taken by default on the ground that the summons was never served, having been denied by the court, defendant was permitted to renew his motion on presenting additional affidavits of new facts—not presented under first motion. Apsley v Wood.

43. Necessity for new facts

The rule that a motion once denied cannot be renewed as a matter of right and without leave of court, except upon facts arising after the first decision, does not apply to a case where the party proceeds in the second motion upon a distinct property interest and right from that involved in the first motion. Steuben County Bank v Alberger, 83 N.Y. 274, 83 N.Y. (N.Y.S.) 274, 1880 N.Y. LEXIS 484 (N.Y. 1880).

A new motion may be made as a matter of right where it is made on facts which have occurred since the making of the former motion. Vim Electric Co. v Zaratzky, 270 N.Y.S. 79, 150 Misc. 246, 1934 N.Y. Misc. LEXIS 1139 (N.Y. Mun. Ct. 1934).

Where motion is reviewed on facts that occurred after the prior motion was made and passed upon, it may be presented as of right and considered de novo, and prior determination has no binding authoritative force. Sorin v Shahmoon Indus., 30 Misc. 2d 408, 220 N.Y.S.2d 760, 1961 N.Y. Misc. LEXIS 3080 (N.Y. Sup. Ct.), dismissed in part, 30 Misc. 2d 429, 220 N.Y.S.2d 760, 1961 N.Y. Misc. LEXIS 2366 (N.Y. Sup. Ct. 1961).

A motion should not be denied merely on the ground that a motion of the same nature has already been made and denied, if new facts are proven on the second motion, such as would be ground for giving leave to renew. Butts v Burnett, 6 Abb. Pr. (n.s.) 302, 1869 N.Y. Misc. LEXIS 34 (N.Y. Super. Ct. July 1, 1869).

44. Reargument and renewal

Reargruments of motion are only to be allowed where it appears that the justice in disposing of the motion has overlooked, mistaken or misapprehended some material fact; or has decided upon some question of law not presented by counsel. They are not to be allowed merely for the purpose of presenting facts not in existence when the motion was decided. Mount v Mitchell, 32 N.Y. 702, 32 N.Y. (N.Y.S.) 702, 1865 N.Y. LEXIS 198 (N.Y. 1865).

Court in granting reargument must determine motion or original papers, and not consider new facts occurring thereafter. Parmett v Concord Hotel, Inc., 9 A.D.2d 767, 192 N.Y.S.2d 521, 1959 N.Y. App. Div. LEXIS 6373 (N.Y. App. Div. 2d Dep't 1959).

Where motion has previously been heard by one judge, any subsequent application on the same facts either by way of reargument or renewal, must be heard by same judge. Subin v Thaw, 16 A.D.2d 750, 227 N.Y.S.2d 275, 1962 N.Y. App. Div. LEXIS 10022 (N.Y. App. Div. 1st Dep't 1962).

Reargument is permitted only if it be shown that the court overlooked controlling legal principles, or misapprehended the facts and thereby mistakenly arrived at its decision. Grossman v State, 25 Misc. 2d 47, 207 N.Y.S.2d 292, 1960 N.Y. Misc. LEXIS 2184 (N.Y. Ct. Cl. 1960).

The purpose of reargument is to point out to court error in point of law or fact of such a nature as to be decisive of matter involved. New York Cent. R. Co. v Banton Corp, 110 N.Y.S.2d 64, 1952 N.Y. Misc. LEXIS 2379 (N.Y. App. Term 1952).

Though motion is denominated as motion for leave to reargue, it will be considered as one for leave to renew on additional papers. Application of Baron, 140 N.Y.S.2d 279, 1955 N.Y. Misc. LEXIS 3108 (N.Y. Sup. Ct. 1955).

Where new matter and additional affidavits have been submitted upon application for leave to reargue cross motion of defendant to dismiss complaint, insofar as it seeks to vacate injunction order, it will be regarded not only as one for reargument, but for rehearing and renewal upon new and additional facts. Shenker Displays, Inc. v Goldman, 144 N.Y.S.2d 7, 1955 N.Y. Misc. LEXIS 2930 (N.Y. Sup. Ct. 1955).

Deficiencies in proof on former motion may not be corrected or supplied on reargument. Franklin Nat'l Bank v Briskman, 202 N.Y.S.2d 584 (N.Y. Sup. Ct. 1960).

A motion once denied cannot be renewed upon same facts without leave of same judge who denied it, and grant of leave to reargue or reconsider rests in sole discretion of that judge. De Windt v O'Leary, 118 F. Supp. 915, 1954 U.S. Dist. LEXIS 4562 (D.N.Y. 1954).

45. —Time to move for reargument

Motion to reargue must be made within the time limited for the taking of an appeal; where no order was ever entered on denial of original motion, motion to reargue made more than ten days after original decision was timely. Friedman v Mealy, 20 Misc. 2d 919, 195 N.Y.S.2d 439, 1960 N.Y. Misc. LEXIS 3852 (N.Y. Sup. Ct. 1960).

D. Particular Orders

46. Attachment

An application to vacate a warrant of attachment is not violative of CPA § 118 since it is not a renewal of a previously decided motion without authority of the justice signing the previous order where the first motion was made to dismiss the complaint under RCP 107 (Rule 3211 herein) and the court in denying the motion impliedly gave permission to bring a motion to vacate the warrant of attachment since it made such suggestion. Favta Societe Anonyme (S. A.) v United Kingdom Machinery Corp., 10 Misc. 2d 326, 167 N.Y.S.2d 287, 1957 N.Y. Misc. LEXIS 2791 (N.Y. Sup. Ct. 1957).

47. Bail exoneration

Motion to exonerate bail cannot be renewed without leave. Bode v Maiberger.

48. Execution

Renewal of motion for leave to issue execution. Bullen v Murphy.

49. Leave to appeal

CPA § 589 (§ 5602 herein) did not authorize a reapplication for leave to appeal to the court of appeals after a denial of the first application by one of the judges. Carlisle v Barnes, 183 N.Y. 272, 76 N.E. 27, 183 N.Y. (N.Y.S.) 272, 1905 N.Y. LEXIS 625 (N.Y. 1905), reh'g denied, 183 N.Y. 567, 76 N.E. 1091, 183 N.Y. (N.Y.S.) 567, 1906 N.Y. LEXIS 837 (N.Y. 1906).

50. Referee appointment

Proper practice was by motion to vacate an ex parte order appointing a referee. People ex rel. New York v Every, 231 A.D. 576, 248 N.Y.S. 92, 1931 N.Y. App. Div. LEXIS 16105 (N.Y. App. Div. 1931).

Research References & Practice Aids

Cross References:

See also notes under CPLR §§ 2211., 2212.

Affidavit on ex parte motion, CPLR Rule 2217(b).

Jurisprudences:

4 NY Jur 2d Appellate Review § 290.

28 NY Jur 2d Courts and Judges § 2370.

67A NY Jur 2d Injunctions § 180.

Treatises

Matthew Bender's New York Civil Practice:

Weinstein, Korn & Miller, New York Civil Practice: CPLR Ch. 2221, Motion Affecting Prior Order.

3 Lansner, Reichler, New York Civil Practice: Matrimonial Actions § 47.03.

Matthew Bender's New York CPLR Manual:

CPLR Manual § 15.01. Motions and orders — in general.

CPLR Manual § 15.06. Conversion of motions and applications.

CPLR Manual § 15.07. Determination of motion; form of order; filing and entry; resettlement.

CPLR Manual § 15.08. Reargument and renewal of motions.

Matthew Bender's New York Practice Guides:

1 New York Practice Guide: Domestic Relations § 11.22.

Matthew Bender's New York AnswerGuides:

LexisNexis AnswerGuide New York Civil Litigation § 7.17. Moving for Leave to Reargue or Renew.

LexisNexis AnswerGuide New York Civil Litigation § 13.09. Appealing to Appellate Division.

LexisNexis AnswerGuide New York Civil Litigation § 14.20. Vacating or Modifying Preliminary Injunction or Temporary Restraining Order (TRO).

Annotations:

Consent as ground of vacating judgment, or granting new trial, in civil case, after expiration of term or time prescribed by statute or rules of court. 3 ALR3d 1191.

Right to a jury trial on motion to vacate judgment. 75 ALR3d 894.

Matthew Bender's New York Checklists:

Checklist for Motion for Leave to Reargue or Renew LexisNexis AnswerGuide New York Civil Litigation § 7.16.

Checklist for Determining Where and When to File Appeal LexisNexis AnswerGuide New York Civil Litigation § 13.06.

Checklist for Obtaining, Vacating, or Modifying Temporary Restraining Order (TRO) or Preliminary Injunction LexisNexis AnswerGuide New York Civil Litigation § 14.16.

Forms:

Bender's Forms for the Civil Practice Form No. CPLR 2221:1 et seq.

LexisNexis Forms FORM 75-CPLR 2221:1.— Notice of Motion for Reargument.

LexisNexis Forms FORM 75-CPLR 2221:10.— Order Denying Motion for Renewal and Reargument.

LexisNexis Forms FORM 75-CPLR 2221:11.— Order Denying Motion to Renew.

LexisNexis Forms FORM 75-CPLR 2221:12.— Order Granting Motion to Reargue.

LexisNexis Forms FORM 75-CPLR 2221:13.— Notice of Motion for Order Allowing Renewal of Motion to Strike Jury Demand.

LexisNexis Forms FORM 75-CPLR 2221:14.— Attorney's Affidavit in Support of Motion for Order Allowing Renewal of Motion to Strike Jury Demand.

LexisNexis Forms FORM 75-CPLR 2221:15.— Affidavit of Officer of Plaintiff-Corporation in Support of Motion for Order Allowing Renewal of Motion to Strike Jury Demand.

LexisNexis Forms FORM 75-CPLR 2221:16.— Affidavit in Opposition to Motion for Renewal and Reargument and in Support of Cross-Motion for Sanctions.

LexisNexis Forms FORM 75-CPLR 2221:17.— Notice of Motion for Leave to Reargue Motion to Change Venue.

LexisNexis Forms FORM 75-CPLR 2221:18.— Affirmation in Support of Motion for Leave to Reargue Motion to Change Venue.

LexisNexis Forms FORM 75-CPLR 2221:19.— Affirmation in Opposition to Motion for Leave to Renew Where No Reasonable Excuse Given Why New Evidence Was Not Previously Submitted.

LexisNexis Forms FORM 75-CPLR 2221:2.— Notice of Motion for Leave to Reargue Pursuant to CPLR 2221(d).

LexisNexis Forms FORM 75-CPLR 2221:20.— Notice of Motion to Vacate Ex Parte Order Extending Time to Effect Service of Process.

LexisNexis Forms FORM 75-CPLR 2221:21.— Affirmation in Support of Motion to Vacate Ex Parte Order Extending Time to Effect Service of Process.

LexisNexis Forms FORM 75-CPLR 2221:3.— Order to Show Cause Seeking Leave to Reargue a Motion To Vacate Judgment With a Request for a Stay of Execution.

LexisNexis Forms FORM 75-CPLR 2221:3A.— Notice of Motion for Leave to Renew.

LexisNexis Forms FORM 75-CPLR 2221:3B.— Notice of Combined Motion for Leave to Reargue and Renew.

LexisNexis Forms FORM 75-CPLR 2221:4.— Affidavit in Support of Motion for Reargument.

LexisNexis Forms FORM 75-CPLR 2221:5.— Affidavit in Support of Motion for Leave to Renew.

LexisNexis Forms FORM 75-CPLR 2221:6.— Affirmation in Support of Plaintiff's Motion to Renew or Reargue .

LexisNexis Forms FORM 75-CPLR 2221:7.— Affidavit in Opposition to Motion for Reargument or Renewal.

LexisNexis Forms FORM 75-CPLR 2221:8.— Affidavit in Opposition to Motion for Leave to Reargue.

LexisNexis Forms FORM 75-CPLR 2221:8A.— Affidavit in Opposition to Motion for Leave to Renew.

LexisNexis Forms FORM 75-CPLR 2221:9.— Order Granting Motion for Reargument and Upon Reargument Granting Motion Originally Sought.

LexisNexis Forms FORM 380-11:401.— Notice of Settlement of Order.

LexisNexis Forms FORM 380-11:402.— Notice of Motion to Resettle Order.

LexisNexis Forms FORM 380-11:403.— Notice of Motion to Resettle Short Form Order.

LexisNexis Forms FORM 380-11:404.— Affidavit in Support of Motion to Resettle Short Form Order.

LexisNexis Forms FORM 461-33:19.— Order to Show Cause to Reargue Motion for Writ of Assistance Pursuant to R.P.A.P.L. Section 221.

LexisNexis Forms FORM 461-33:21.— Order Granting Writ of Assistance Upon Reargument.

LexisNexis Forms FORM 461-34:13.— Notice of Motion for Renewal and Reargument for Leave to Enter Deficiency Judgment.

1 Medina's Bostwick Practice Manual (Matthew Bender), Forms 11:101 et seq .(stays, motions, orders and mandates).

Texts:

3 Bergman on New York Mortgage Foreclosures (Matthew Bender) § 33.08.

Hierarchy Notes:

NY CLS CPLR, Art. 22

Forms

Forms

Form 1

Order To Show Cause Why An Order Should Not Be Made Granting Reargument of Defendant's Motion To Dismiss For Lack of Personal Jurisdiction

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF _____,

Plaintiff,

-against-

et al.,

Defendants

ORDER TO SHOW CAUSE

Index No. _____

Upon the annexed affirmation of _____, dated _____, 20_____, and upon the exhibits annexed thereto, and upon all the papers and proceedings heretofore and herein;

LET _____, assignee of Plaintiff _____, or its attorneys, show cause at I.A.S. Part _____ of this Court, to be held at the Courthouse thereof, room _____, located at _____ Avenue, _____, New York, on the _____ day of _____, 20_____, at _____ a.m./p.m. or as soon thereafter as counsel may be heard;

WHY an order should not be made and entered, pursuant to CPLR 2221, granting defendant _____ reargument of his motion to dismiss this action for lack of in personam jurisdiction upon the basis that no valid jurisdiction was effected over _____ pursuant to CPLR 308 within the time limit prescribed by CPLR 306-b, which motion was denied by this Court orally from the Bench on _____, 20_____, and upon the granting of reargument, granting said motion and dismissing this action and vacating the order appointing a receiver, and for an order staying all proceedings in this action until the file of this case is found as an order was entered in this action dated _____, 20_____ and it is unknown to movant what the order mandates since the file is missing and ordering such other and further relief as this court deems just, proper and equitable.

ORDERED, that sufficient reason appearing therefore, let a copy of this Order to Show Cause, together with the papers upon which it is based, upon the Attorney for the Plaintiff, _____, _____, _____, & _____, P.C., at _____ Avenue, _____, New York, and upon personal delivery on or before the _____ day of _____, 20_____ be deemed good and sufficient service thereof.

_____

Hon. _____

Form 2

Affirmation in Support of Defendant's Motion For Leave To Reargue His Motion To Dismiss For Lack of Personal Jurisdiction

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF _____,

Plaintiff,	AFFIRMATION IN
	SUPPORT OF
-against-	MOTION FOR
	LEAVE TO REARGUE
et al.,	Index No. _____
Defendants	

_____, Esq., an attorney admitted to practice law before the Courts of the State of New York, affirms the following under the penalty of perjury and pursuant to CPLR § 2106:

1. I make this affirmation in Support of the instant motion to reargue this court's denial of defendant _____'s special appearance to contest in personam jurisdiction over him and to dismiss this action on that basis. As defendant _____'s attorney for this reargument of his special appearance, I am fully familiar with the facts and circumstances involving this motion.

2. Previously, defendant _____ brought on by order to show cause, dated _____, 20_____ and noticed for hearing and oral argument on _____, 20_____, a copy of which is annexed hereto as Exhibit _____, a motion to dismiss this action for lack of in personam jurisdiction. At oral argument of the motion on _____, 20_____, this court denied, as moot, defendant's motion to dismiss the action.

3. The court concluded that the motion to dismiss was moot because the plaintiff claimed that service of process was effected over defendant _____ in

_____ 20_____ and not in _____ of 20_____ as the plaintiff's affidavit of service filed with the court had indicated. Therefore, plaintiff claimed that whether or not service of process was effected over defendant_____ in _____ of 20_____, it did not matter because service of process was effected in _____ of 20_____. Plaintiff stated the following: "It is my position that I only need the _____ service for everything. " (See Page _____ of transcript of hearing held on _____, 20_____, reproduced herein as Exhibit _____).

This position by plaintiff was apparently accepted by this court is in error. The court misapprehended a controlling point of law in arriving at this decision. Therefore, the defendant _____ now moves this court for reargument of its motion to dismiss the action for lack of jurisdiction.

4. This action was originally commenced in _____ of 20_____. However, the plaintiff was, admittedly, unable to effectuate service of process over the defendant _____. A second action was commenced and the plaintiff filed an affidavit of service alleging that service of process was effected over defendant _____ in _____ of 20_____. See Affidavit of _____, an attorney associated with _____, _____, _____, & _____, P.C., and the prior attorney for the plaintiff, in support of plaintiff's motion to consolidate actions and annexed as Exhibit _____ in the order to show cause which is annexed hereto as Exhibit _____.

5. CPLR 306-b requires that if process of service is not validly effected over a defendant within one hundred and twenty days from the filing of the summons and complaint for that action then the action is dismissed as a matter of law. Such a dismissal is without prejudice, allowing a plaintiff to file a new summons and complaint, buy a new index number, and properly serve the unserved defendant.

6. Assuming arguendo that the purported _____ service on _____ was served in conformity with CPLR 308, such service would not be relevant in determining whether the court had jurisdiction over _____ in this action. The _____ service was not effected within one hundred and twenty days of the filing of the summons and complaint in this action. See CPLR 306-b. The plaintiff filed the summons and complaint prior to the alleged _____ 20_____ service on _____. By simple computation it is clear that the purported service on _____ in _____ 20_____ is void because it was not effected within one hundred and twenty days from the filing of the summons and complaint. See CPLR 306-b.

7. It is, therefore, respectfully submitted that when this court denied, as moot, the motion of defendant _____ to dismiss based on the plaintiff's allegation of service over defendant _____ in _____ of 20_____, the court was in error. Any service effected over _____ in _____ 20_____ was void and jurisdictionally defective as a matter of law. See CPLR 306-b.

8. In the oral argument of defendant's motion to dismiss held before IAS Part _____ on _____, 20_____, plaintiff stated: "It is my position that I only need the November service for everything."_____ (See p _____, line _____, of transcript of hearing held on _____, 20_____, reproduced herein as Exhibit _____)

9. Based upon plaintiff's position there is no question of fact to resolve whether defendant was served in _____ 20_____. No opposing papers were submitted by plaintiff at the _____, 20_____ hearing to support the allegation of service _____ in _____ of 20_____.

10. As the court should dismiss the action for lack of jurisdiction of the fee owner of the property, a necessary and indispensable party in this action, the ex-parte order appointing the receiver must also be vacated as the action is no longer in existence. See RPAPL Section 1311(1).

11. On _____, 20_____, this office received a copy of an order dated _____, 20_____ and served with notice of entry. The order reads as follows: “motion is disposed of per decision on record this date.”

12. However, the file on this case in the courthouse has been removed and I have no basis to know whether or not the record accurately reflects what occurred in this court on that date. Therefore, I request that this court stay the time to appeal said order until such time as the file is returned to the file room. My representative requested that the file room put a search on the file but we have heard nothing to date.

WHEREFORE, it is respectfully submitted that this court grant the defendant’s motion for reargument, modify its prior order denying the defendant’s motion to dismiss and grant said motion to dismiss, vacate the appointment of the receiver in this action, stay the time to appeal the order of _____, 20_____, and for such other and further relief as this court deems just, proper and equitable.

Dated: _____, 20_____

_____ _____ _____, New York

Respectfully Submitted,

_____, Esq.

Attorney for defendant _____

in a Special Appearance

[Office address and

phone]

Form 3

Affirmation in Opposition To Defendant's Motion For Leave To Reargue His Motion To Dismiss Due To Lack of Personal Jurisdiction

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF _____,

Plaintiff,	AFFIRMATION IN OPPOSITION TO MOTION FOR
against -	LEAVE TO REARGUE
	Index No. _____
et al.,	
Defendants	

1. I am an attorney at law duly admitted to practice before this Court and a member of the law firm of _____, _____, _____, & _____, P.C., attorneys for plaintiff _____ Associates. I respectfully submit this affidavit in opposition to the motion of defendant _____, brought on by order to show cause, for leave to reargue his motion to dismiss. I respectfully submit that _____ has offered no basis for reargument because the argument raised here was raised before the Court and rejected and that, in any event, _____s reargument is completely without merit.

2. In order not to further burden the Court, I respectfully incorporate by reference all materials that were submitted to the Court in connection with _____ original motion to dismiss which was heard on _____, 20_____. Unless otherwise indicated, references below are to those papers.

3. There is clearly no basis for reargument. The standard for the granting of reargument is a "showing that the court overlooked or misapprehended relevant facts or misapplied controlling law in the prior decision." (See Accompanying Memorandum of Law). A motion for leave to reargue pursuant to CPLR 2221 is "addressed to the sound discretion of the court and may be granted only upon a showing 'that the court overlooked or misapprehended the facts or the law

or for some reason mistakenly arrived at its earlier decision.' Reargument is not designed to afford the unsuccessful party successive opportunities to reargue issues previously decided or to present arguments different from those originally asserted." (See Accompanying Memorandum of Law). Since defendant _____'s counsel raised the instant argument previously before the Court, and the court expressed its understanding of the argument, defendant _____ has advanced no basis for reargument.

4. If the Court were to grant reargument, it should adhere to its original decision that re-service of the summons and complaint on _____, 20_____ renders moot _____'s attack on the service which _____ Savings Bank, (the original plaintiff from whom _____ Associates purchased the mortgage) had previously made on him in _____, 20_____.

5. As the Court will recall from the previous motion, _____ commenced this action on _____, 20_____. The Court appointed _____ as receiver of the rents and profits on _____, 20_____. On 18 occasions, _____ attempted to serve _____ at _____ Avenue, _____, New York, the address listed for him in the mortgage documents. Because _____ succeeded in evading _____s attempts at service of process, _____ commenced a new action on _____, 20_____, under the index number _____ Service was effected in that action and proof of service was filed on _____, 20_____ (Exhibit _____), within the 120-day period set forth in CPLR 306-b(a). Both cases were consolidated under the Index No. _____ by court order on _____, 20_____.

6. From _____, 20_____, this action was subject to an automatic stay under 11 U.S.C. § 362. Bankruptcy Judge _____ lifted the automatic stay by order dated _____, 20_____. See Exhibit

_____ Because defendant _____'s bankruptcy counsel had suggested that _____ might raise service issues, _____ was re-served with the summons and complaint personally at a creditors' meeting before the United States Trustee on _____, 20_____. _____ does not deny that he was personally re-served on _____, 20_____.

7. Because of this re-service, the Court denied _____'s motion to dismiss, which was heard on _____, 20_____. At the Court's suggestion, _____ Associates withdrew, without prejudice, that portion of its previously granted motion which sought a reference to compute based on the _____ service.

8. It is important to bear in mind that _____ Associates does not concede that the _____ service by _____ was invalid. Although _____ claims to have had moved from the apartment located at _____ Avenue, _____, New York where _____ had effected leave and mail service, information available to _____ Associates indicates that _____ still uses that address, receives his American Express bills there, and during the Fall of 20_____ applied for health insurance from Blue Cross Blue Shield using that address." Moreover, that address is listed as the address for communications to _____ in the underlying mortgage documents. _____ has never, to my knowledge, given a formal notice of a change of address. Moreover, _____'s counsel initially admitted to me that _____ Avenue, _____, New York, was a good address for _____ _____ Associates effected re-service to moot any argument as to whether the _____ service was good or not and to cut-off an attempt by _____ to delay these proceedings by seeking a traverse hearing on the

_____ service and to ensure that any judgment entered herein was made on service that is not being disputed. Since _____, 20_____ re-service was reflected on a transcript (Exhibit _____), and made before a variety of witnesses, including personnel from the office of the United States Trustee, it is not subject to reasonable dispute.

9. _____'s counsel argues that "[assuming arguendo that the purported _____ service on _____ was served in conformity with CPLR 308, such service would not be relevant in determining whether the Court had jurisdiction over _____ in this action. The _____ service was not effected within one hundred and twenty days of the filing of the summons and complaint in this action. See CPLR 306-b." This argument is meritless.

10. First, it is clear that the _____, 20_____ re-service does comply with CPLR 308 since the papers were handed to _____ personally. See CPLR 308(1) ("Personal service upon a natural person shall be made by any of the following methods: (1) by delivering the summons within the state to the person to be served").

11. Second, CPLR 306-b does not preclude re-service of a summons and complaint to moot, as is the case here, a defendant's attempt to delay proceedings by seeking a traverse hearing. It is well settled that re-service of a summons and complaint during the pendency of an action obviates any jurisdictional objection.(See Accompanying Memorandum of Law). In enacting Chapter 216 of the Laws of 1992, of which CPLR 306-b is a part, the legislature did not intend to overrule that doctrine, but to the contrary, the legislature sought to avoid the use of service of process fights as a tool by defendants to avoid the merits of litigation. (See Accompanying Memorandum of Law).

12. The plain language of CPLR 306-b defeats _____'s argument. CPLR 306-b(a) provides that:

(a) Proof of service of the summons and complaint, summons with notice, or of the third-party summons and complaint shall be filed with the clerk of the court within one hundred twenty days after the date of filing of the summons and complaint, summons with notice or third-party summons and complaint, provided that in an action or proceeding where the applicable statute of limitations is four months or less, such proof of service must be filed not later than fifteen days after the date on which the applicable statute of limitations expires. If proof of service is not filed and there has been no appearance by the defendant within the time provided in this section for filing proof of service, the action or third-party action shall be deemed dismissed as to the non-appearing party with respect to whom no proof of service has been filed, without prejudice and without costs.

Under the statute, the action is only deemed dismissed if two things occur within the 120 day period: (a) there is no proof of service filed and (b) there is no appearance by the defendant. Here, proof of service was filed on _____, 20_____, twenty-three days after the action bearing Index No. _____ was commenced on _____, 20_____. Clearly, the dictates of CPLR 306-b(a) have been satisfied.

13. The legislative intent was that so long as an affidavit of service was filed within the 120 days, the action would not be automatically dismissed. This was discussed by the legislative task force of the counsel for the Assembly and Senate Codes and Rules Committee, at which I participated, and it was concluded that unless the affidavit was outrightly fraudulent, the filing of the affidavit was all that the plaintiff needed to do. Indeed, an earlier version of the legislation would have provided that service could not be made outside the 120 day period, and that proposal was not passed. (See Exhibit _____)

14. Indeed, if the reading were otherwise, one of the fundamental purposes behind the statute would be undermined. (See Accompanying Memorandum of Law)

15. CPLR 306-b(b) permits an action to be re-commenced, notwithstanding the interim expiration of the statute of limitations, “[i]f an action is dismissed for failure to file proof of service

pursuant to this section or for failure to effect proper service". The second prong of CPLR 306-b(b) envisions a situation where an affidavit of service has been timely filed, but thereafter, on traverse, the service is not sustained. Obviously, merely because the service is later not sustained does not mean that the action was "deemed dismissed" on the 120th day, otherwise, the clause in CPLR 306-b(b) would be rendered nugatory. Moreover, if the deemed dismissal did occur on the 120th day after the filing of the complaint where the service is subsequently not sustained, there would be a real possibility that the second 120 period would have run by the time the results of the traverse hearing were denied, thus leaving plaintiff without the opportunity to re-file and the statutory purpose undermined.

16. In short, neither the plain language of CPLR 306-b nor its legislative history even remotely supports the premise of defendant _____'s argument that the legislature overruled the myriad cases holding that re-service of a summons and complaint can moot a jurisdictional challenge. _____ timely commenced this action against defendant _____, and _____ was served with process not once but twice. As this Court properly held, re-service of the summons and complaint on _____, 20_____ renders moot _____'s claim that the _____ service was made at an address from which he claims to have moved.

17. Even if _____'s argument were correct, however, and plainly it is not, the Court could avoid the delay simply by permitting the filing of a new affidavit nunc pro tunc. On the _____, 20_____ motion, the _____ Affidavit attested to the re-service. The original action (Index No. _____), was commenced on _____, 20_____, and service was effected on all defendants other than _____ during _____, 20_____ and _____, 20_____ (Exhibit _____). This was the "window" period (_____, 20_____ to _____, 20_____) during which an action

could be commenced either under the new filing regime or the old service regime. It has been held that nunc pro tunc orders are available for actions commenced within this window period. (See Accompanying Memorandum of Law)

18. Finally, _____'s motion seeks a discharge of the receiver. It is clear, however, that the service was not required in order to obtain the appointment of a receiver.

19. _____'s motion is without merit and, like his previous tactics, is merely an attempt to avoid dealing with the merits of this suit. _____ brought on this motion on the tenth day after he was served with a copy of the court's order dated _____, 20_____ with notice of its entry, which ten day period was the last conceivable basis during which _____ could have answered without being in default. See CPLR 3211(f). It should further be noted that _____ sought, but the court struck from his order to show cause, a stay of this action.

20. It is respectfully submitted that reargument should be denied, or alternatively, the Court should adhere to its original determination.

_____

Form 4

Affirmation In Support of Defendant's Motion to Renew and Reargue and for a Modification of Court's Prior Decision

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF _____,

_____, _____,

	AFFIRMATION
Plaintiff,	IN SUPPORT OF
	MOTION TO REARGUE
-against-	Index No. _____

_____ and
_____

Defendant.

_____, pursuant to CPLR 2106, as an attorney duly admitted to practice law before the Courts of the State of New York, hereby affirms the following under the penalties of perjury:

1. I am the attorney for the defendant herein and am fully familiar with the facts and circumstances of this action. I make this Affirmation in support of defendant's Motion to Renew and Reargue and for a Modification of the Court's Decision dated _____, 20_____.

2. Defendant in its original motion filed a memorandum of law with this Court. A Copy of that memorandum is attached hereto as Exhibit 3.

3. The case law decided by the Appellate Division has placed a duty upon a process server where the pleadings clearly divulge the nature of the defendant's business to inquire and possibly to serve the defendant at his place of business. (See Accompanying Memorandum of Law).

4. As stated in the defendant's affidavit, _____, New York is indeed a small town and finding someone in the small area of that town is not a difficult task for anyone who shows any diligence at all, much less the standard set for process servers as "due diligence". The process server had available to him, not only the name and address, but also the defendant's phone number for his business and service of process could have been effected easily at defendant's address and, if so, this issue would never have come before the Court in the first place.

5. The Court will note plaintiffs have let three years pass, almost to the day, before bringing this action. CPLR 304 provides an action is commenced by filing the summons and complaint with the appropriate county clerk. CPLR 306-b provides that the action and filing must be recommenced de novo if service of process is not completed with 120 days because the action

is automatically dismissed. CPLR 205 does not permit an extension of time for a plaintiff to bring a new action if jurisdiction over the defendant was never obtained, which is defendant's contention here. If the Court never had jurisdiction, the Court cannot act in respect to the defendant. That is the specific language of CPLR 205. If service is not made within the 120 day period, CPLR 306-b(a) creates an automatic dismissal. Moreover, any extension of time flies in the face of CPLR 201 which provides that no Court shall extend the time limited by law for the commencement of an action. (See Accompanying Memorandum of Law).

6. The Court is correct in that some of the legal commentators indicate that CPLR 306-b(b) has the effect of extending the statute of limitations. The Court is also correct in that there is no decision directly on point. However, it is respectfully submitted that section 306-b(b) is overly broad in extending a statute of limitations. (See Accompanying Memorandum of Law).

7. Notwithstanding the comments of commentators, it is respectfully submitted, there can be no extension of time granted under CPLR 306-b(b) because it is in conflict with sections CPLR 201 and 205.

8. It would appear from the case law that for an action to be properly commenced, both parts of the process must be completed, that is to say service must be made within 120 days after the filing or the action is not commenced.

9. By analogy, the Federal Rules of Civil Procedure, FRCP 3, provides an action is commenced upon the filing of the complaint with the Court. However, where the federal statute provides, as in a diversity case, that the filing of the complaint must also be accompanied by a timely service of process, then service is not complete and the statute tolled, until such service is made and filed. FRCP 4(j) requires proof of service to be filed within 120 days of filing otherwise the action will be dismissed. Under CPLR 308, substituted service is not complete and jurisdiction not obtained until both steps have been properly completed.

10. To paraphrase a statement of Judge Learned Hand, there must be a final end to litigation. It seems dubious there was an intention by the legislature to extend the time in which an action may be commenced to infinity which is the general effect of CPLR 306-b(b), according to the legal commentators. The plaintiffs had three years to commence their action and took the risk of

not doing so and waited until only two days remained before the statute ran. Their tardiness should not be an excuse to extend the statute of limitations if in fact jurisdiction was never obtained over the defendant because of improper service.

11. As to the question of privity between the plaintiffs and defendant, the Court will remember the _____, 20_____ financial statement included a cover letter which stated categorically that the information contained in the financial statement was not audited and should not be relied upon. Having received the instruction from the defendant, how can the plaintiffs now plead they relied upon something which they were told should not be relied upon? The plaintiffs, all of whom are sophisticated investors, should have read the cover letter. If the plaintiffs relied upon statements which they were fully warned were not audited, then the plaintiffs did so at their peril.

WHEREFORE, it is respectfully requested that the Court modify its decision in respect to the facts indicated in the affidavit; hold that the process server did not in fact use due diligence or is a question to be determined at the traverse hearing; that the filing of a summons and complaint, and the purchase of an index number does not effectively commence an action unless and until jurisdiction is obtained by the Court; and that the plaintiff's second cause of action for negligence be stricken as not having demonstrated sufficient privity to maintain a cause of action.

Dated: _____, New York

_____, 20_____

_____

_____, Esq.

Attorney for Defendant

[Office address

and phone number]

Form 5

Notice of Plaintiff's Motion for an Order Granting Leave to Reargue Defendant Corporation's Motion to Dismiss Pursuant to § 11 of the Workers' Compensation Law

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF _____ and _____,

Plaintiffs,

-against-

Corporation,

Systems Corporation,

et al.,

Defendants.

NOTICE OF MOTION

Index No. _____

S I R S :

PLEASE TAKE NOTICE, that upon the annexed affirmation of _____, dated _____, 20_____, the exhibits annexed hereto and upon all of the pleadings and proceedings heretofore had herein, the undersigned will move this Court at a Special Term, before HONORABLE _____, at the Court House located at _____ Avenue, _____, New York, _____, 20_____ at _____ a.m./p.m. in the forenoon of that day or as soon thereafter as counsel can be heard for an order permitting the reargument of the Motion heretofore made on behalf of _____ Research Systems, Inc., _____ Research Systems, Corporation and _____ Corporation incorrectly s/h/a _____ Corp., which order directed the dismissal of plaintiff's complaint as to the three (3) _____ entities denominated in the said Order as _____ Corporation and for such other and further relief as to this Court may seem just and proper.

PLEASE TAKE FURTHER NOTICE, that sufficient time having been provided herein, that any and all affidavits must be served upon the undersigned, at least seven (7) days prior to the return date of this Motion pursuant to the Rules of the CPLR

Dated: _____, New York

_____, 20_____

Yours, etc.,

_____ & _____

Attorneys for Plaintiff

[Office address

and phone number]

TO: _____

& _____, P.C.

Attorneys for Defendants

_____ Research Systems, Inc.,

_____ Research Systems, Corporation

[Office address and phone number]

Form 6

Affirmation In Support of Plaintiff's Motion for an Order Granting Leave to Reargue Defendant Corporation's Motion to Dismiss Pursuant to § 11 of the Workers' Compensation Law

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF _____ and _____,

Plaintiffs,

-against-

Corporation, AFFIRMATION

Systems Corporation, Index No. _____

et al.,

Defendants.

_____, an attorney duly admitted to the practice of law before the Courts of the State of New York, hereby affirms the following under the penalties of perjury:

1. That I am associated with the firm of _____, _____, _____, & _____, P.C., attorneys for the plaintiffs in the within action and as such am fully familiar with all of the facts and circumstances surrounding the within action.

2. That a Motion had heretofore been brought before this Court on _____, 20_____ and a Decision rendered thereon by HONORABLE _____ dated _____, 20_____ and a formal Order was submitted to the Court and entered therein on, or about, _____, 20_____.

3. Copies of the _____, 20_____ Decision and Order annexed hereto as Exhibit “A” and copy of the formal Order submitted for settlement, together with Notice of Settlement dated _____, 20_____ annexed hereto as Exhibit “B”.

4. That the Order of _____, 20_____ granted the Motion brought on behalf of the _____ Corporation which Motion sought dismissal of plaintiffs’ complaint against _____ Corporation pursuant to § 11 of the Workers’ Compensation Law.

5. On _____, 20_____, Notice of Appeal and Pre-Argument Statement were served upon counsel for defendants-appellants and the balance of the named defendants and said Notice of Appeal and Pre-Argument Statement were filed with the Clerk of the Supreme Court in _____ County and the appropriate fee paid.

6. This Motion for Re-Argument is made in an effort to present certain facts and law to the Court which were not presented to the Court at the time of the prior Motion and therefore were not

considered by the Court when its determination was made, which determination basically held that:

Whichever _____ entity owns the property where the accident occurred, they all fall under the umbrella of the _____ Corporation which has secured Workers' Compensation benefits that have been paid to the injured plaintiff.

7. That plaintiffs acknowledge that no valid cause of action exists against the employer of the injured plaintiff due to the restrictions imposed by Section 11 of the New York State Workers' Compensation Law.

8. However, the Motion brought for the three (3) named _____ defendants, although not specified as such, was effectively a Motion for Summary Judgment against said defendants. Under the well established rules pertaining to Summary Judgment Motions, the relief sought by the seeker of a Summary Judgment may only be granted by the Court where there are no issues of fact yet to be determined.

9. It is respectfully submitted that there remains a factual issue as to the identity of the title owner of the property known as _____ Avenue, _____, New York on the date of the accident, the identity of the Corporation or individual functioning as the managing agent or having maintenance or control of the property on the day of the accident, as well as the specific identity of the employer.

10. In support of the Motion on behalf of the _____ entities, they rely upon the affidavit of _____. Despite Mr. _____'s sensitive position as Vice President of Finance and Chief Financial Officer, this affidavit does not resolve the factual issues pertaining to ownership, management, maintenance and control of the property in question and the issue of the affinity and/or distinction between these entities.

11. Notwithstanding that plaintiffs named three (3) separate _____ entities, _____ Research, Inc., _____ Systems, Corporation and _____ Corporation", the Motion on behalf of the _____ entities was accompanied by no evidence in support the allegation

that the property owner and/or manager of the site of the accident were precisely the same as the injured plaintiff's employer.

12. _____. has stated that "_____ Systems, Corporation" underwent a name change to "_____ Corporation" in _____, 20_____ but no documentation accompanied this contention.

13. _____.'s affidavit further states that the _____ Avenue, _____, New York site was ".owned by _____ Corporation" but again no documentation.

14. _____. acknowledges that:

There are, however, other entities that have had the name "_____" as part of their identity at this address which are all under complete and common control of _____ Corporation and its principals.

15. Again, there is no inclusion of documentation of what these entities are, whether they, or any one of them, might be the owner or manager of the property when the accident occurred.

16. Rather, and apparently in lieu of said documentation, _____ conclusively states that:

They are all one and the same as defendant _____ Corporation and may collectively be referred to as the "Company."

17. Admittedly, _____'s affidavit was submitted in support of the Motion to Dismiss and it may not have been deemed by counsel to the moving defendants necessary to document the conclusions interposed by _____ at that stage.

18. However, despite factual issues as to the relationship between the _____ entity which owned the property and which employed the injured plaintiff, as raised in plaintiffs' opposition papers, no reply thereto was forthcoming.

19. None of the data that has been required by the Courts in these type of cases (see accompanying Memorandum of Law) has been provided by the defendants with the exception of

the very conclusory statements made by _____ in his affidavit of _____, 20_____ in support of the original Motion to Dismiss.

20. Of particular note is the fact that counsel for the _____ entities completely failed to address the factual issues raised by plaintiffs' opposition to the Motion in _____, 20_____.

21. A copy of the Affirmation dated _____, 20_____ of your affirmant is annexed hereto as Exhibit "C". Also annexed hereto are eight (8) of the documents which had been annexed to plaintiffs' opposition to the _____ Motion for Dismissal. These documents are now denominated as Exhibits "D" thru "K".

22. These exhibits document the confusion which exists concerning the _____ entities. Exhibit "D" is identified at the top by the single word _____ while at the bottom it is identified as _____ Systems, Corporation. This is so as of _____, 20_____ despite _____'s affidavit that _____ Systems, Corporation had changed its name name to _____ Corporation in _____, 20_____.

23. Exhibit "E" identifies the employer as "_____ Corporation." This may very well may be some sort of a typographical error or inadvertent shortening of the name but certainly adds to the confusion and should be cleared up.

24. Exhibit "F" calls the compensation insured _____ Research Systems.

25. Exhibit "G" names the insured as _____ Research Systems Corp. This, again, being a letter dated _____, 20_____, is some four (4) years after the name change mentioned by _____

26. Exhibit "H" shows _____ Research, Inc. with the Inc. having been crossed out and Corporation inserted manually.

27. Exhibit “I”, a portion of another deed pertaining to what appears to be the property upon which the accident occurred indicates conveyance of property to _____ Systems, Corporation.

28. Exhibit “J” a copy of transactions recorded in the office of the County Register shows transactions pertaining to property of “_____ Corporation” and Exhibit “K” shows copies of transactions pertaining to “_____ Research Systems Corporation.”

29. All of the aforementioned documents certainly raise an issue of fact as to the proper owner of the property where the accident happened and as to the true identity of the plaintiff’s employer.

30. It it acknowledged that perhaps the property owner and the employer are, in fact, the same. It is also acknowledged that perhaps _____’s conclusions as set forth in his affidavit in support of the Motion to Dismiss are correct.

31. It is, however, equally possible that there is a differentiation between the two which would not permit the shielding of one of the _____ entities from suit by plaintiff _____.

32. What the plaintiffs are entitled to is a full documentation as to the identities of the _____ entities.

33. The old aphorism “you can’t tell the players without a scorecard” is complicated under the circumstances before us by the fact that neither names nor numbers have been properly affixed to the accouterments of the various _____ team members.

WHEREFORE, it is respectfully requested that this Court order a re-argument of the defendant _____’s Motion for Dismissal of the Complaint as to the _____ defendants and, upon re-argument, order that the Dismissal be vacated, at least to the extent of directing a hearing on the identities of the owner of the property in question and employer of _____ at the time of the accident in question and for such other and further relief as to this Court may seem just and proper.

Dated: _____, New York

_____, 20_____

_____

Form 7

Affirmation In Opposition to Plaintiff's Motion for an Order Granting Leave to Reargue Defendant Corporation's Motion to Dismiss Pursuant to § 11 of the Workers' Compensation Law

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF _____ and _____,

Plaintiffs,

-against-

Corporation,
Systems Corporation,
et al.,
Defendants.

AFFIRMATION
Index No. _____

_____, an attorney duly licensed to practice law before the Courts of New York State respectfully affirms the truth of the following subject to the penalties of perjury:

1. I am associated with _____, _____, _____, & _____, P.C., attorneys of record in this action for _____ Corporation incorrectly s/h/a "_____ Research, Inc., _____ Systems, Corporation, _____ Corporation" ("_____"). By virtue of conversations with my client, I am fully familiar with the facts and circumstances of this action.

2. As the Court is aware, this action seeks damages for personal injuries allegedly sustained by plaintiff _____ when he fell on property located _____ Avenue, _____, New York on _____, 20_____. Defendant _____ successfully moved for

dismissal of plaintiff's action on the grounds that it was plaintiff's employer at the time of plaintiff's accident. (A copy of the Court's decision and order are annexed as "A").

3. I most respectfully submit this affirmation in opposition to plaintiffs' motion for reargument and reconsideration of _____'s motion to dismiss which was granted by this Court.

4. It is respectfully submitted that plaintiffs' motion must be denied because, as this Court properly held, _____ Corporation was the employer of plaintiff as well as the sole owner of _____ Avenue, _____, New York on the day of plaintiff's accident at that location. Furthermore, as the annexed Affidavit of _____ Corporation's Chief Financial Officer _____ unequivocally states, neither "_____ Research, Inc." nor "_____ Systems, Corporation" (two purported entities named in plaintiff's complaint) existed at the time of the incident, much less had any responsibility for the property.

5. Plaintiffs' counsel contends that the action against _____ should not be dismissed because _____'s original affidavit "_____does not resolve the factual issues pertaining to ownership, management, maintenance and control of the property in question and the issue of the affinity and/or distinction between these entities." Plaintiffs' counsel also states issues of fact existed "_____ as to the proper owner of the property where the accident happened and as to the true identity of plaintiff's employer."

6. However, _____'s affidavit submitted with this affirmation in fact resolves each of these purported issues. _____ reiterates his prior statement that _____ Corporation employed plaintiff at the time of his accident and owned the property at _____ Avenue, _____, New York. He also explains that although _____ Systems, Corporation (one of the entities named in plaintiffs' complaint) was the predecessor name of _____ Corporation, it has not existed as an entity since _____, 20_____, two and

one half years before the plaintiff's accident (a copy of the Certificate of Amendment filed with the secretary of State relating to this corporate name change is annexed as "A"). Clearly, if the Corporation did not exist, it could not employ plaintiff or own/manage the property where plaintiff's accident occurred. _____'s affidavit establishes the same regarding _____ Research Systems, Inc. (the other purported entity named in plaintiff's complaint). It simply does not and has not existed.

7. It is crystal clear that of the three "entities" named in plaintiffs complaint bearing "_____", the only one that existed at the time of plaintiff's accident is "_____ Corporation." It is equally clear from _____'s affidavit that _____ Corporation was the sole owner of the property at _____ Avenue, _____, New York at the time of plaintiff's accident as well as the employer of plaintiff at the time. Accordingly, this Court properly held that plaintiff is barred from bringing a direct action against _____ Corporation based on Section 11 of the Worker's Compensation Law.

WHEREFORE, it is respectfully requested based upon the foregoing, the affidavit of _____ and the exhibits, that this Court deny in its entirety plaintiffs' motion for reargument and vacatur of the prior motion which resulted in this Court's dismissal of plaintiff's action against _____ Corporation.

DATED: _____New York.

_____, 20_____

_____

Form 8

Affidavit by Chief Financial Officer of Defendant Corporation In Opposition to Plaintiff's Motion for an Order Granting Leave to Reargue Defendant Corporation's Motion to Dismiss Pursuant to § 11 of the Workers' Compensation Law

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF _____ and _____,

Plaintiffs,

-against-

Corporation,

Systems Corporation,

et al.,

Defendants.

AFFIDAVIT

Index No. _____

STATE OF NEW YORK)

COUNTY OF _____)

I, _____, being duly sworn, deposes and says:

1. I am Vice-President of Finance and Chief Financial Officer of _____ Corporation and have been since _____, 20_____. As such, as part of my responsibilities, I manage and supervise the routine payroll and personnel records maintained by the Company. I am fully familiar with the Corporate history and holdings of _____ Corporation.

2. I submit this affirmation to further clarify and establish that as of _____, 20_____, _____ Corporation was the employer of plaintiff _____ as well as the sole owner of the property located at _____ Avenue, _____, New York.

3. The entity named in plaintiff's lawsuit as "_____ Systems, Corporation" has not existed since _____, 20_____. The entity named in plaintiff's lawsuit as "_____ Research, Inc." has never existed.

4. In fact, as of _____, 20_____, _____ Corporation was the only corporate entity that had offices or employees at _____ Avenue, _____, New York. And as of

_____, 20_____ Corporation was the sole owner of the property at _____ Avenue, _____, New York.

5. When I stated in my _____, 20_____ affidavit that “There are, however, other entities that have had the name _____ as part of their identity at this address_____”, I was merely referring to three operating divisions of _____ Corporation (i.e., _____ Research Systems Division, _____ Signal Sources Division and _____ Automatic Test Systems Division). These are not distinct Corporations, subsidiaries, partnerships or business entities. There are not and have not been any distinct operating entities apart from _____ Corporation at _____ Avenue, _____, New York since well prior to _____, 20_____.

6. The name “_____ Corporation” has been the official legal corporate name since _____, 20_____ when a Certificate of Amendment was filed with the New York Secretary of State (copies of the Certificate of Amendment and corporate meeting minutes related to the name change are attached). Any use of the letterhead or the name “_____ Systems, Corporation” following the name change was done in error; perhaps out of habit. It does not change the fact that following _____, 20_____, “_____ Systems, Corporation” did not exist.

7. The property at _____ Avenue, _____, New York was purchased as parcels prior to the name change. This explains why the deeds found by plaintiff’s attorney name “_____ Systems, Corporation”. To the extent that the name “_____ Research Systems,” is listed on one of the deeds, this is a typographical error (in fact, close reading of the deed reveals that “Inc.” is obliterated and “Corporation” is printed above). As I stated in my _____, 20_____ affidavit, “_____ Research, Inc.” has never existed as a corporate name or entity.

8. Following the corporate name change, "_____ Corporation" assumed ownership of the assets of "_____ Systems, Corporation". Therefore, on _____, 20_____ the property at _____ Avenue, _____, New York was owned solely by "_____ Corporation". And, no other entity acted as managing agent of the property.

9. On _____, 20_____, the owner of _____ Avenue, _____, New York and the employer of plaintiff _____ were one and the same _____ Corporation.

10. Our attorneys have advised me that on the basis of these facts, plaintiff _____ is legally barred from bringing this lawsuit against _____ Corporation. I respectfully request the Court to uphold its dismissal of Mr. _____'s suit against _____. Corporation.

DATED: _____, New York

_____, 20_____

_____

[Verification]

Form 9

Reply Affirmation In Support of Plaintiff's Motion for an Order Granting Leave to Reargue Defendant Corporation's Motion to Dismiss Pursuant to § 11 of the Workers' Compensation Law

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF _____ and _____,

Plaintiffs,	REPLY
-against-	AFFIRMATION

R 2221. Motion affecting prior order.

Corporation,

Systems Corporation,

et al.,

Defendants

Index No. _____

_____, an attorney duly admitted to the practice of law before the Courts of the State of New York, hereby affirms the following under the penalties of perjury:

1. That I am associated with the firm of _____, _____, _____, & _____, P.C. attorneys for the plaintiffs in the within action and as such am fully familiar with all of the facts and circumstances pertaining thereto.

2. That I make this Affirmation in Reply to the Affirmation in Opposition dated _____, 20_____, by _____, Esq., which affirmation was served by hand on this office, at approximately _____a.m./p.m. on _____, 20_____ .

3. Despite the fact that notice requiring answering papers to be served at least seven (7) days prior to the return date of the Motion and despite there having been at least two (2) adjournments at the request of the responding defendant, which effectively adjourned the original return date from _____, 20_____ to _____, 20_____, the opposition papers were not served upon this office until one (1) day prior to said return date.

4. It is respectfully requested that, the opposition papers being so blatantly untimely, they be given no consideration by this Court in determining this Motion.

5. However, in the event that this Court chooses to consider said papers it is requested that the merits of the within affirmation be considered, even at this late date.

6. The only basic difference between the Motion for Reargument presently before the Court and defendant, _____'s original Motion for Dismissal is the inclusion in the opposition papers of a Certificate of Amendment of Name from _____ Research Systems Corporation to _____ Corporation, which filing was

made on _____, 20_____, the certification having been made by the Secretary of State on _____, 20_____. Also enclosed as Exhibit “A” was copy of the Board Minutes of _____ Systems, Corporation wherein a resolution to change the name as set forth above was executed. From these two (2) documents, the only evidence produced by the moving defendants, counsel for said defendants would have the Court believe that the allegations set forth by _____, in his affidavit dated _____, 20_____, are incontrovertible fact, not subject to, at the very least, discovery by way of deposition.

7. The only item contained in _____’s contentions, of which there is some form of verification, is that the name of _____ Systems, Corporation appears to have been changed to _____ Corporation on _____, 20_____. Thereafter reliance by this defendant is solely based upon _____’s unsupported assertions that _____ Corporation “. was the only corporate entity that had offices or employees at _____ Avenue, _____, New York. ” As of _____, 20_____, _____ Corporation was the sole owner of the property at _____ Avenue, _____, New York.“

8. In all of these answers to inquiries concerning ownership of the property and specific information regarding plaintiff’s employment with “_____” no documentation has been produced and that the only documentation set forth is by the statements of _____ which are, at best, self serving on behalf of the moving defendants.

9. In view of the fact that these defendants have not brought forth documentation which would lay this issue to rest once and for all, it is humbly requested that this Court order a hearing or a deposition of, or on behalf of, the _____ entities with a concomitant production of all documentation pertaining to these entities, their real estate holdings at _____ Avenue, _____, New York, subsidiaries and

divisions of the Corporation and the employment records of plaintiff _____ for the limited purpose of determining whether or not plaintiff _____ was, in fact, an employee of one or all of the _____ defendants.

10. _____, somewhat cavalierly dismisses the issue of the use of a letterhead or other documents bearing the name of "_____ Systems, Corporation" as being "done in error; perhaps out of habit."

11. It is respectfully requested that the Court note Exhibit "D" of plaintiff's moving papers wherein the word "_____" at the top of the page and then again at the bottom is shown the words "_____ Systems, Corporation". This is on a memorandum dated _____, 20_____ from _____, Personnel Manager who, in the body of the letter states that, "_____ [plaintiff] is employed by _____ Research Systems Corporation."

12. It would appear that this memorandum was written by a person of significant status to know something of the internal workings of the _____ group.

13. The Court is again requested to note the minutes of the special joint meeting of directors and shareholders dated _____, 20_____, being part of defendant's Exhibit "A", which exhibit specifically stated the reason for the name change from _____ Systems, Corporation to _____ Corporation was ". so as to identify that the Corporation does not solely engage in research systems in its business operations."

14. Error and mistake, as _____ suggests, in the use of the name _____ Systems, Corporation certainly contradict the asserted purpose as set forth in Exhibit "A" of defendant's responsive papers which, on _____, 20_____ was, at least, two (2) years after the Motion to change the name was made and passed.

15. Your affirmant acknowledges that there is a possibility that the position taken by the moving defendants is correct. However, it is respectfully submitted that proper proofs be presented before such a final determination be made, which determination would effectively remove a right of action on behalf of plaintiffs which the moving defendants have not proved with reasonable certainty should not continue to exist.

WHEREFORE, it is respectfully requested that plaintiffs Motion for Reargument be granted and that upon Reargument that the order directing dismissal of the plaintiffs' complaint be vacated and for such other and further relief as to this Court may seem just and proper.

Dated: _____, New York

_____, 20_____

_____

Form 10

Notice of Motion to Reargue Defendant's Motion to Dismiss Complaint Pursuant to CPLR 2221 *

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF _____ : IAS PART _____

CORPORATION and

_____,

Plaintiffs,

Index No. _____

Assigned to_____

-against-

_____ & _____
OF NEW YORK

INC., and _____, in his

capacity as Public Administrator

for _____ County,

Defendants.

_____

* This form was provided courtesy of Susan M. Karten, Esq., Castro & Karten, New York, New York.

R 2221. Motion affecting prior order.

_____ INSURANCE COMPANY,	NOTICE OF NOTION
_____ INSURANCE COMPANY,	TO REARGUE PURSUANT
_____ INSURANCE COMPANY,	TO CPLR 2221
_____ INSURANCE COMPANY,	

PLEASE TAKE NOTICE, that upon the pleadings in this action, and upon defendants _____ Insurance Company and Federal Insurance Company's motion for an Order dismissing the complaint, and upon the Amended Order of Justice _____ dated _____, 20_____, and upon all of the papers and proceedings heretofore had herein, a motion will be made by defendant _____, in his capacity as Public Administrator for _____ County, returnable at IAS Part _____ of this Court, at the Courthouse located at _____ Avenue, _____, New York, on _____, 20_____, at 9:30 o'clock in the forenoon of that day, or as soon thereafter as counsel may be heard, for an order granting defendant _____ leave to reargue defendants' motion, inter alia, to dismiss the complaint against _____ as Public Administrator, on the grounds that he was improperly joined as a party; and in the event that such leave is granted, and upon such reargument, deny the motion to dismiss the complaint against _____, Public Administrator of _____ County and for such other and further relief as the Court may deem just and proper.

PLEASE TAKE FURTHER NOTICE, that pursuant to CPLR 2214(b), answering papers, if any, are to be served upon the undersigned at least seven (7) days prior to the return date of this motion.

Dated: _____, New York

_____, 20_____

_____,_____,_____

& _____, P.C.

Attorneys for Defendant

[Office address and phone

number]

TO: _____, _____, _____

& _____, P.C.

Attorneys for _____ Insurance Co

[Office address and phone

number]

_____, _____, _____

& _____, P.C.

Attorneys for _____ Properties

and _____ Corp.

[Office address and phone

number]

_____, _____, _____

& _____, P.C.

Attorneys for _____ Insurance Co.

[Office address and phone

number]

Form 11

Affirmation in Support of Motion to Reargue Defendant's Motion to Dismiss Complaint Pursuant to CPLR 2221 *

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF _____ : IAS PART _____

CORPORATION and Plaintiffs, -against- _____ & _____ OF NEW YORK INC., and _____, in his capacity as Public Administrator	AFFIRMATION IN SUPPORT Index No. _____ Assigned to _____
_____ INSURANCE COMPANY, _____ INSURANCE COMPANY, _____ INSURANCE COMPANY, _____ INSURANCE COMPANY,	OF NOTION TO REARGUE PURSUANT TO CPLR 2221

for _____ County,

Defendants.

_____

_____, an attorney duly admitted to practice before the Courts of the State of New York, affirms under penalties of perjury that:

1. I am a member of _____, _____, _____ & _____, P.C., one of the attorneys for defendant _____, in his capacity as Public Administrator for _____ County, and as such, I am personally familiar with the facts and circumstances in the within matter. I make this affirmation in support of an application by defendant _____ in his capacity as Public Administrator for

_____

* This form was provided courtesy of Susan M. Karten, Esq., Castro & Karten, New York, New York.

_____ County for reconsideration and reargument of the Order of Justice _____ dated _____, 20_____A copy of said order is annexed hereto as Exhibit “A”. A copy of the underlying decision is annexed hereto as Exhibit “B”. Notice of Entry of the foregoing order was not served until _____, 20_____.

2. This order arose from a motion made by certain insurance company defendants to, inter alia, dismiss the complaint against defendant _____, Public Administrator of _____ County, and _____ This relief was granted by the Court.

ON _____, 20_____, THE COURT GRANTED DEFENDANT _____ LEAVE TO REARGUE THE COURT’S ORDER OF _____, 20_____

3. At a conference on _____, 20_____ with counsel for all parties present, attorneys for defendant _____, we redirected by Justice _____ to bring on this motion for reconsideration and reargument in light of legal precedent which was brought to the Court’s attention. Said legal precedent indicated that the order of _____, 20_____ dismissing _____ from this suit might adversely impact on both the rights of 87 plaintiffs who lost loved ones in the _____ Club fire and the six additional persons who suffered severe personal injuries on _____, 20_____. Furthermore, at the conference, this affirmant argued that any determination in the pending declaratory judgment action might be construed to collaterally estop all the _____ CLUB victims in their pending tort actions from litigating the issue of coverage. The Court indicated it was never its intention to preclude or determine the rights of the _____ CLUB victims in its _____, 20_____ order in this action.

4. It is against this background that this application is being brought to permit the _____ plaintiffs to re-appear in this action and protect their interests.

5. As this Court is well aware. CPLR 1002 provides for permissive joinder of parties. It is basic that this statute is to be accorded broad liberality and interpreted in order to avoid multiplicity of suits and inconsistencies of determination. This is particularly applicable in an instance where a personal injury action is pending, together with a declaratory judgment action. Obviously, consistent determinations are most desirable and it would make no sense to obtain one ruling at this juncture which might be subject to attack at a later date by 93 people who are not parties to the action. In addition, it would be patently unjust for the _____ victims to be judicially bound to a determination which would directly affect or adversely impact their rights, without permitting the _____ victims to appear in such an action and protect their interests.

6. Case law suggests that it might very well be that a determination made in this action would be binding on the 93 plaintiffs in any event. That is the argument of the insurance carriers. See accompanying memorandum of law. Thus, the Court's ruling would have the harsh result of depriving these individuals of their basic due process rights of notice and an opportunity to be heard which was never the intention of the Court.

7. Indeed, at the _____, 20_____ conference, all counsel for the insurance defendants were of the opinion that under the Court's holding in the _____ case, all 93 plaintiffs in the _____ personal injury action would be bound by the Court's determination in the pending declaratory judgment action.

THE INTERESTS OF THE _____ VICTIMS ARE NOT ADEQUATELY REPRESENTED

8. This declaratory judgment action was instituted by _____. Mr. _____ is a main defendant in the pending _____ victims' tort action. Clearly, his interest in the wrongful death and personal injury actions now pending before the Court in the _____ County Courthouse is adverse to the interests and welfare of the _____ victims. Thus, unless the Happy land victims are permitted to appear in this declaratory judgment action and represent

themselves, they may find that their rights will be determined by Mr. _____. Clearly, such a result would be inequitable, unconscionable and be improper in all respects.

9. Alternatively, there would be no prejudice to any of the parties if counsel for _____ in his capacity as Public Administrator were permitted to re-appear and represent their clients. In addition, judicial economy would be served by having all disputes resolved in a single action where all interested parties were afforded an opportunity to appear and be heard by the Court.

10. In such circumstances, judicial economy and discretion would seem to require that the provisions underlying CPLR 1002 be unstintingly applied and that the Court modify its prior determination accordingly.

WHEREFORE, your affiant respectfully requests that the Court grant leave to reargue, and upon such reargument, deny the motion to dismiss the complaint against defendant _____, Public Administrator of Bronx County.

Dated: _____, New York

_____, 20_____

_____

Form 12

Notice of Defendant Petroleum Corporation's Motion For An Order Granting Renewal and Reargument of Petroleum Corporation's Motion For Summary Judgment Dismissing the Complaint where Plaintiff Brought Actions Alleging Negligence, Trespass and Nuisance Against Various Defendants for Property Damages Caused by A Gas Leak *

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF _____ and _____,

Plaintiffs,

_____

* This form was provided courtesy of Abrams & Martin, P.C., New York, New York.

R 2221. Motion affecting prior order.

-against- NOTICE OF MOTION

Defendants.

_____ Petroleum Corp.,

_____ Realty Corp., Index No. _____

_____ Auto Repairs, Inc. d/b/a

_____ Tire Company, Inc.,

and _____ Fuel Company, Inc.,

_____ Auto Repairs, Inc. d/b/a

_____ Tire Company, Inc.,

Defendant and Third-Party Plaintiff,

-against-

_____ and _____

Third-Party Defendants.

_____

PLEASE TAKE NOTICE, that upon the Affirmation of _____, dated _____, 20_____, and Exhibits A and B annexed thereto; the affidavit of _____, sworn to on _____, 20_____; the papers previously filed and served by defendant, _____ Petroleum Corp., in support of its motion for summary judgment, including the Affidavit of _____, dated _____, 20_____, the Affirmation of _____, dated _____, 20_____, _____ Petroleum Corp.'s Exhibits A through T in support of the motion, _____ Petroleum Corp.'s Memorandum of Law and _____ Petroleum Corp.'s Reply Memorandum of Law; and the pleadings and prior proceedings herein, _____ Petroleum Corp. will move this Court at IAS Part _____ in Room _____ before the Honorable _____, at the Supreme Court Building, at

_____ Avenue, _____, New York, on the _____ day of _____, 20_____, at _____ a.m./p.m. or as soon thereafter as counsel can be heard, for an order pursuant to CPLR 2221, for renewal and reargument of _____ Petroleum Corp.'s motion for summary judgment dismissing the complaint, which was denied by Justice _____ from the bench on _____, 20_____, on the ground that the plaintiffs and co-defendants, _____ Realty Corp. and _____ Auto Repairs, Inc. d/b/a _____ Tire Company, deliberately and intentionally misstated the facts on the record concerning _____ Petroleum Corp.'s ownership of the underground storage tanks on the gasoline station premises at _____ Avenue, _____, New York, on the basis of which Justice _____ denied _____ Petroleum Corp.'s motion; and for such other and further relief as to this Court seems just and proper.

PLEASE TAKE FURTHER NOTICE, that pursuant to CPLR 2214(b), answering papers, if any, must be served upon the undersigned at least seven (7) days before the return date of this motion.

Dated: _____, New York

_____, 20_____

_____,_____,_____

& _____, P.C.

Attorney for Defendant

_____ Petroleum Corp.

[Office address

and phone number]

To: _____, _____, _____,

& _____, P.C.

Attorneys for Plaintiffs

[Office address

and phone number]

_____, _____, _____,

& _____, P.C.

Attorneys for Defendant

_____ Realty Corp. and

Third Party Defendants

_____ and _____

[Office address

and phone number]

_____, _____, _____,

& _____, P.C.

Attorneys for Defendants and

Third Party Plaintiffs

_____ Auto Repair, Inc. d/b/a

_____ Tire Company

[Office address

and phone number]

_____, _____, _____,

& _____, P.C.

Attorney for Defendant

_____ Fuel Company, Inc.

[Office address

and phone number]

Form 13

Affidavit by General Counsel of Defendant Petroleum Corporation In Support of Motion For An Order Granting Renewal and Reargument of Petroleum Corporation's Motion For Summary Judgment Dismissing the Complaint where Plaintiff Brought Actions Alleging Negligence, Trespass and Nuisance Against Various Defendants for Property Damages Caused by A Gas Leak *

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF _____ and _____,

Plaintiffs,

AFFIDAVIT

-against-

Index No. _____

Defendants

_____ Petroleum Corp.,

_____ Realty Corp.,

_____ Auto Repairs, Inc. d/b/a

_____ Tire Company, Inc.,

and _____ Fuel Company, Inc.,

_____ Auto Repairs, Inc. d/b/a

_____

* This form was provided courtesy of Abrams & Martin, P.C., New York, New York.

_____ Tire Company, Inc.,

Defendant and Third-Party Plaintiff,

-against-

_____ and _____,

Third-Party Defendants.

_____

STATE OF NEW YORK)

COUNTY OF _____)ss:

_____, being duly sworn, deposes and says:

1. I am Vice President and General Counsel of defendant, _____ Petroleum Corp., and am fully familiar with the corporate status and history of _____ Petroleum Corp., as well as the transaction that occurred on _____, 20_____ between _____, Inc. and _____ Corp.

2. _____ Petroleum Corp. came into existence as a corporation by that name on _____, 20_____. From _____, 20_____ until _____, 20_____, _____ Petroleum Corp. was known as _____ Corp., a public company listed on the New York Stock Exchange. In _____, 20_____, _____, Inc. a separate and distinct corporation, purchased _____ Oil Company and all of its assets and subsidiary companies, including the subsidiary known as _____ _____ Refining and Marketing Company. In order for _____, Inc. to obtain approval for its acquisition of _____ Oil Company, the Federal Trade Commission required

_____, Inc. to sell off certain of the northeast marketing assets owned by the subsidiary _____ Refining and Marketing Company. Pursuant thereto, _____, Inc. sold those assets on _____, 20_____ to _____ Corp., for which _____ Corp. paid to _____, Inc. in excess of $90 million. As part of that transaction, _____ Corp. received an exclusive license to use the _____ trademark. The _____ trademark was transferred by _____, Inc. to _____ Corp. on _____, 20_____, whereupon _____ Corp. changed its name to _____ Petroleum Corp., the name by which it is presently known.

3. _____ Petroleum Corp. has no corporate affiliation with _____ Oil Company, _____ Refining and Marketing Company, _____, Inc. Refining and Marketing Company or _____, Inc. The transaction that _____ Corp. engaged in with _____, Inc. in _____, 20_____ was a purchase of certain assets, which included the eventual transfer of the _____ trademark. _____ Petroleum Corp. is not the successor corporation of _____ Refining and Marketing Company, _____ Oil Company, _____, Inc. or _____, Inc. Refining and Marketing Company.

4. Both _____ Petroleum Corp. and _____, Inc. are separate independent corporations whose shares of common stock are publicly traded on the New York Stock Exchange.

5. _____ Petroleum Corp. has never owned the underground storage tanks at what was formally a _____ Petroleum Corp. brand station at _____ Avenue, _____, New York, nor has it ever

owned the real estate upon which that property is located. A review of the corporate records reveals that _____ Refining and Marketing Company sold the underground gasoline storage tanks and the marketing equipment located at that property to _____ Repair, respectively, on _____, 20_____ and _____, 20_____, prior to the time that _____ Petroleum Corp., through its predecessor by name, _____ Corp., engaged in the _____, 20_____ transaction with _____, Inc. and _____ Oil Company. _____ Corp. did not purchase the underground storage tanks located at _____ Avenue, _____, New York, as a result of its transaction with _____, Inc. and _____ Oil Company on _____, 20_____.

6. The certified copy of _____ Refining and Marketing Company's certificate of authority to do business in New York State indicates the corporation known as _____ Refining and Marketing Company as it was known in _____, 20_____ is a separate and distinct corporation which changed its name on _____, 20_____ to _____ Refining and Marketing, Inc., and is now known as _____ Holdings, Inc. _____ Petroleum Corp. has no corporate affiliation or relationship with that corporation at the present time or any prior time.

WHEREFORE, it is respectfully requested that this Court grant _____ Petroleum Corp.'s motion for renewal and reargument of its motion for summary judgment, and for such other and further relief as to this Court seems just and proper.

Dated: _____, New York

_____, 20_____

_____

[Verification]

Form 14

Affirmation by Attorney of Defendant Petroleum Corporation In Support of Motion For An Order Granting Renewal and Reargument of Petroleum Corporation's Motion For Summary Judgment Dismissing the Complaint where Plaintiff Brought Actions Alleging Negligence, Trespass and Nuisance Against Various Defendants for Property Damages Caused by A Gas Leak *

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF _____ and _____,

Plaintiffs,

-against-

Defendants.

AFFIDAVIT

Index No. _____

_____ Petroleum Corp.,

_____ Realty Corp.,

_____ Auto Repairs, Inc. d/b/a

_____ Tire Company, Inc.,

and _____ Fuel Company, Inc.,

_____ Auto Repairs, Inc. d/b/a

_____ Tire Company, Inc.,

Defendant and Third-Party Plaintiff,

-against-

_____ and _____,

Third-Party Defendants.

_____

_____

* This form was provided courtesy of Abrams & Martin, P.C., New York, New York.

_____, an attorney duly admitted to practice law before the Courts of the State of New York, affirms the following to be true under penalty of perjury:

1. I represent defendant, _____ Petroleum Corp., and am familiar with the facts and circumstances of this action.

2. I submit this affirmation in support of _____ Petroleum Corp.'s motion for renewal and reargument of its motion for summary judgment, which Judge _____ denied from the bench on _____, 20_____, because plaintiffs and the co-defendants, _____ Auto Repairs, Inc. d/b/a Tire Company and _____ Realty Corp., deliberately misstated the facts on the record as to the ownership of the underground storage tanks on the gasoline station premises located at _____ Avenue, _____, New York (the "Station"). On the basis of the aforesaid, Judge _____ found there to be an issue of fact with respect to _____ Petroleum Corp.'s responsibility for contamination which allegedly emanated from those underground tanks, and denied _____ Petroleum Corp.'s motion for Summary judgment.

3. In their complaint in this action, the plaintiffs charge _____ Petroleum Corp. with negligence, inter alia, for the diminution in value and other damages sustained to their former residence located at _____ Avenue, _____, New York, as a result of contamination which allegedly emanated from the underground gasoline storage tanks at the Station, in _____ of 20_____. Plaintiffs also allege causes of action against _____ Petroleum Corp. for nuisance, trespass and violation of the New York State Navigation Law.

4. On or about _____, 20_____, _____ Petroleum Corp. moved for summary judgment dismissing plaintiffs' complaint on the grounds that (a) _____ Petroleum Corp. cannot be held liable in negligence because the record is devoid of any evidence to show that _____ Petroleum Corp. owed any legal duty to plaintiffs, the breach of which caused them to sustain

damage; (b) _____ Petroleum Corp. did not act willfully, intentionally or negligently, and thus cannot be held liable for having committed a nuisance or trespass against plaintiffs; and (c) no private right of action exists under the Navigation Law in favor of the plaintiffs.

5. In support of its motion, _____ Petroleum Corp. came forward with evidence to prove that it did not own or operate the station. Specifically, _____ Petroleum Corp. produced uncontested documentary evidence to establish that (a) _____ and _____ transferred ownership of the Station, by deed dated _____, 20_____ (Exhibit G), to _____ Auto Repair; (b) _____ Auto Repair owned and operated the Station premises from _____, 20_____ until _____, 20_____; (c) _____ Auto Repair transferred ownership of the Station premises by deed dated _____, 20_____ (Exhibit G), to third-party defendants, _____ and _____; and (d) _____ and _____ leased the station premises to defendant, _____ Auto Repairs, Inc., the operator of the Station during the relevant times herein.

6. _____ Petroleum Corp. also came forward with evidence to prove that it did not own the underground storage tanks at the station from which contamination is alleged to have emanated onto plaintiffs' adjacent property. Specifically, _____ Petroleum Corp. produced uncontested documentary evidence to demonstrate that the underground tanks on the station premises had previously been owned by _____ Refining and Marketing Company. _____ Refining and Marketing Company sold these tanks to _____ of _____ Auto Repair by Bill of Sale, dated _____, 20_____ (Exhibit E).

7. _____ Petroleum Corp. also established that its only relationship to the station was that it supplied gasoline to the station from _____, 20_____ through _____, 20_____. Under the relevant statutory and common law, _____ Petroleum Corp., as a mere gasoline supplier, was under no legal duty to (a) inventory or monitor the gasoline contained in the underground tanks at the Station; (b) periodically test the underground tanks at the Station; or (c) inspect, discover or correct any improper leaking, spillage or emanation of gasoline from the underground tanks at the station. (See accompanying Memorandum of Law).

8. The undisputed facts on the record and the relevant statutory and common law clearly establish that _____ Petroleum Corp. owed no legal duty to the the owner/operator of the Station or to adjacent landowners, with regard to the underground storage tanks at the Station. Thus, as a matter of law, _____ Petroleum Corp. cannot be held liable in negligence for its failure to monitor, inspect or repair the underground storage tanks at the Station or detect and correct contamination allegedly emanating therefrom.

9. In their papers in opposition to _____ Petroleum Corp.'s motion and at oral argument of this motion, plaintiffs were joined by the codefendants, _____ Auto Repairs, Inc. and _____ Realty Corp., in asserting that _____ Petroleum Corp. owned the underground storage tanks at the Station, and therefore, was responsible for the contamination which allegedly emanated from those tanks onto plaintiffs' adjacent property. The allegations by plaintiffs and the co-defendants as to _____ Petroleum Corp.'s ownership of the tanks at the Station, is patently incorrect because it rests on the erroneous presumption that the corporate entity known as _____ Refining and Marketing Company, the owner of the tanks until _____, 20_____, was the predecessor corporation of defendant, _____ Petroleum Corp.

10. The error of the presumption by plaintiffs and the co-defendants' that _____ Refining and Marketing Company is the predecessor corporation of defendant _____ Petroleum Corp., is clearly shown in

_____ Refining and Marketing Company's Certificate of Authority to do Business in the State of New York, which reveals that _____ Refining and Marketing Company was originally known as _____ Oil Corp., a Delaware corporation, authorized to do business in the State of New York since about _____, 20_____. A copy of this Certificate is annexed hereto as Exhibit A. During the next _____ years, _____ Oil Corp. underwent five name changes, including the name _____ Refining and Marketing Company, which it held from _____, 20_____ until _____, 20_____. Exhibit A is a summary of those name changes, which unequivocally demonstrates that _____ Petroleum Corp. is neither the predecessor nor successor of _____ Refining and Marketing Company.

11. _____ Refining and Marketing Company was never known by the name of _____ Petroleum Corp., nor can it be assumed that _____ Refining and Marketing Company is the predecessor corporation of _____ Petroleum Corp. merely because the trademark _____ appeared in its corporate name prior to _____, 20_____

12. Defendant, _____ Petroleum Corp. came into existence as a corporation by that name on _____, 20_____. From _____, 20_____ until _____, 20_____, _____ Petroleum Corp. was known as _____ Corp., a public company listed on the New York Stock Exchange. A copy of _____ Corp.'s Certificate of Good Standing with the State of Delaware evidencing this name change by _____ Corp. to _____ Petroleum Corp. is annexed hereto as Exhibit B.

13. In _____, 20_____, _____, Inc., a separate and distinct corporation, purchased a corporation known as

_____ Oil Company, including all of its assets and subsidiary companies, one of which was _____ Refining and Marketing Company. In order for _____, Inc. to obtain approval for its purchase of _____ _____ Oil Company, the Federal Trade Commission required _____, Inc. to sell off certain of _____ Oil Company's marketing assets in the Northeast owned by _____ Refining and Marketing Company. On _____, 20_____, _____, Inc. sold those assets to _____ Corp. for which _____ paid to _____, Inc. in excess of $90 million. As part of that transaction, _____ Inc. received an exclusive license to use the _____ trademark. _____, Inc. then transferred the _____ trademark to _____ Corp. on _____, 20_____, whereupon _____ Corp. changed its name to _____ Petroleum Corp., the name by which it is presently known.

14. _____ Petroleum Corp. is not the successor of, nor in any way affiliated with _____, Inc., _____ Oil Company, _____ Refining and Marketing Company, or _____, Inc. Refining and Marketing Company. The transaction that _____ Corp. engaged in with _____, Inc. in _____, 20_____ was a purchase of certain assets, which included the eventual transfer of the _____ trademark. _____ Petroleum Corp. and _____ Refining and Marketing Company are two entirely distinct and independent entities, as is shown in the side by side comparison of their corporate histories annexed as Exhibit B.

15. During oral argument of _____ Petroleum Corp.'s motion, counsel for plaintiffs and the co-defendants deliberately and repeatedly misstated to the Court that

_____ Refining and Marketing Company was the predecessor of _____ Petroleum Corp., and therefore, that _____ Petroleum Corp. was the prior owner of the tanks at the Station. My repeated efforts to advise them and the Court of this deliberate and erroneous misstatement of fact proved to no avail, and Judge _____ denied _____ Petroleum Corp.'s motion for summary judgment, finding there to be an issue of fact concerning _____ Petroleum Corp.'s ownership of the underground tanks at the Station, and therefore, as to _____ Petroleum Corp.'s responsibility for the contamination which allegedly emanated from those tanks onto plaintiffs' adjacent residence.

16. In the absence of the erroneous presumption and misstatement by plaintiffs and the co-defendants that _____ Refining and Marketing Company was the predecessor corporation of _____ Petroleum Corp. there is absolutely no evidence on the record to show that _____ Petroleum Corp. at any time owned the underground storage tanks at the Station. In the absence of any evidence to establish that it owned the underground storage tanks, _____ Petroleum Corp., as a mere supplier of gasoline to the Station, cannot be held liable in negligence for the contamination which allegedly emanated from those tanks onto plaintiffs' adjacent property.

17. On the basis of the annexed exhibits which demonstrate conclusively that _____ Refining and Marketing Company and _____ Petroleum Corp. are two distinct, unrelated corporations _____ Petroleum Corp.'s motion for renewal and reargument of its summary judgment motion should be granted.

WHEREFORE, it is respectfully requested that this Court grant _____ Petroleum Corp.'s motion for renewal and reargument of its motion for summary judgment, and for such other and further relief as to this Court seems just and proper.

Dated: _____, New York

_____, 20_____

_____

Form 15

Affirmation by Attorney of Plaintiffs In Opposition to Defendant Petroleum Corporation's Motion For An Order Granting Renewal and Reargument of Petroleum Corporation's Motion For Summary Judgment Dismissing the Complaint where Plaintiff Brought Actions Alleging Negligence, Trespass and Nuisance Against Various Defendants for Property Damages Caused by A Gas Leak *

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF _____ and _____,

Plaintiffs,

-against-

Defendants.

AFFIRMATION

Index No. _____

_____ Petroleum Corp.,

_____ Realty Corp.,

_____ Auto Repairs, Inc. d/b/a

_____ Tire Company, Inc.,

and _____ Fuel Company, Inc.,

_____ Auto Repairs, Inc. d/b/a

_____ Tire Company, Inc.,

Defendant and Third-Party Plaintiff,

-against-

_____ and _____,

Third-Party Defendants.

_____

_____

* This form was provided courtesy of Abrams & Martin, P.C., New York, New York.

_____, an attorney at law admitted to practice before the Courts of the State of New York affirms the truth of the following statements under penalty of perjury:

1. I am associated with the firm of _____, _____, _____, & _____, P.C. attorneys for plaintiffs, _____ and _____ As such, I am familiar with the facts and circumstances of this matter.

2. I submit this affirmation in opposition to defendant, _____ Petroleum Corp.'s Motion to Renew and Reargue.

3. _____ Petroleum Corp.'s Motion to Renew and Reargue is patently improper, in that no new evidence is submitted that was previously unavailable.

4. The Court has correctly denied ..... Petroleum Corp.'s Motion for Summary Judgment. Allegations were made in _____ Petroleum Corp.'s Motion to Renew and Reargue, that the opposition to the motion for summary judgment was based upon _____ Petroleum Corp.'s ownership of the underground gasoline tanks, however, plaintiffs based their opposition instead upon _____ Petroleum Corp.'s negligence in maintaining repairing and otherwise servicing the underground tanks. That is, _____ Petroleum Corp. had notice of the defects and actively engaged in the maintenance, repair or service of the tanks. Further, _____ Petroleum Corp. assumed the duty to perform the repairs in a reasonable manner when they actually engaged in the repair and maintenance of the tanks. However, _____ Petroleum Corp. negligently allowed the condition of the tanks to continually deteriorate and further allowed the situation to worsen by continually filling the tanks with more gasoline. _____ Petroleum Corp. had knowledge that the gasoline was merely leaking into the ground. This argument is fully set forth in the Affirmation in Opposition of _____, Esq. affirmed on _____, 20_____ See both the Affirmation in Opposition and Memorandum of Law previously submitted in opposition to _____ Petroleum Corp.'s Motion for Summary Judgment.

5. Furthermore, this argument was presented to the Court and the Court correctly based its denial of _____ Petroleum Corp.'s Motion for Summary judgment upon all of the papers submitted, as well as, the oral argument on or about _____, 20_____.

6. Even further, the instant motion is untimely. _____ Petroleum Corp. submitted a proposed order with Notice of settlement for _____, 20_____, however, on _____, 20_____ before this Order was signed and six (6) days before the date they requested the Court's signature _____ Petroleum Corp. served their Motion to Renew and Reargue.

7. _____ Petroleum Corp.'s motion is frivolous in addition to being untimely. They fail to submit any new evidence upon which to base their motion to renew and do not allege that the Court misapplied the relevant law. _____ Petroleum Corp. has not even submitted a memorandum of law to support their claim for renewal and reargument. By this motion plaintiff is doing nothing more than burdening this Court.

WHEREFORE, it is respectfully submitted that _____ Petroleum Corp.'s Motion to Renew and Reargue be dismissed and such further relief as maybe just and proper.

Dated: _____, New York

_____, 20_____

_____

Form 16

Affirmation by Attorney of Co-Defendant Realty Corporation and Third Party Defendants In Opposition to Defendant Petroleum Corporation's Motion For An Order Granting Renewal and Reargument of Petroleum Corporation's Motion For Summary Judgment Dismissing the Complaint where Plaintiff Brought Actions Alleging Negligence, Trespass and Nuisance Against Various Defendants for Property Damages Caused by A Gas Leak *

* This form was provided courtesy of Abrams & Martin, P.C., New York, New York.

R 2221. Motion affecting prior order.

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF _____ and _____,

Plaintiff,

-against-

Defendants.

AFFIRMATION

Index No. _____

_____ Petroleum Corp.,

_____ Realty Corp.,

_____ Auto Repairs, Inc. d/b/a

_____ Tire Company, Inc.,

and _____ Fuel Company, Inc.,

_____ Auto Repairs, Inc. d/b/a

_____ Tire Company, Inc.,

Defendant and Third-Party Plaintiff,

-against-

_____ and _____,

Third-Party Defendants.

_____

_____, an attorney admitted to practice in the Courts of this State, affirms the following under the penalties of perjury:

1. That I am a member of the firm of _____, _____, _____, & _____, P.C., attorneys for the defendants _____ Realty Corp., _____ and _____ and am fully familiar with the facts and circumstances herein.

2. That this affirmation is submitted in opposition to the defendant _____ Petroleum Corp.'s motion for renewal and reargument of its motion for summary judgment which was denied.

3. It is defendant _____ Petroleum Corp. who is misinforming this Court. It is inappropriate for the defendant _____ Petroleum Corp. to state that the plaintiffs and co-defendants deliberately misstated the facts as to the ownership of the underground storage tanks. The defendant _____ Petroleum Corp. made the very same argument as to the ownership of the underground storage tanks and Justice _____, after the recitation of the various entities and transfers involving _____ Petroleum Corp., stated that the various transfers and liability arising therefrom was an issue of fact requiring a trial of this action.

4. The defendant _____ Petroleum Corp. fails to mention that the plaintiffs and co-defendants in their opposing affidavits, presented a multitude of issues of fact requiring a trial of this action and your affiant, rather than repeating the issues of fact set forth in the affidavits in opposition, respectfully refers this Court to those opposing affidavits.

5. _____ Petroleum Corp. is the name appearing on the gasoline service station since 20_____ and _____ Petroleum Corp. gasoline was sold thereafter until the occurrence in question. Notwithstanding the numerous name changes and transfers, it is not, and cannot, be denied that each of these entities supplied _____ Petroleum Corp. gasoline to the premises through facilities bearing the _____ Petroleum Corp. identification logo, and to claim that the supplier of _____ Petroleum Corp. gasoline can absolve itself from liability for negligence because of a series of convoluted name changes and transfers is ludicrous.

6. If defendant _____ Petroleum Corp.'s contentions were correct, any major oil company could avoid any liability, environmental or otherwise, by simply changing names or transferring assets on an ongoing basis. Defendant _____ Petroleum Corp.'s argument is tantamount to _____ claiming that it has no liability for the Alaska oil spill because the tanker was owned by _____ before the name was changed to _____.

7. To allege that _____ Refining and Marketing Company and _____ Petroleum Corp. are distinct and totally unrelated entities is a fiction.

At the very least, the issue as to whether _____ Petroleum Corp. is a successor to _____ Refining and Marketing Company is certainly an issue of fact requiring a trial.

WHEREFORE, your affiant respectfully requests that this motion be denied in all respects, and for such other and further relief as this Court may deem just and proper in the premises.

Dated: _____, New York

_____, 20_____

_____

Form 17

Affidavit by Attorney of Co-Defendant Auto Service Station In Opposition to Defendant Petroleum Corporation's Motion For An Order Granting Renewal and Reargument of Petroleum Corporation's Motion For Summary Judgment Dismissing the Complaint where Plaintiff Brought Actions Alleging Negligence, Trespass and Nuisance Against Various Defendants for Property Damages Caused by A Gas Leak *

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF _____ and _____,

Plaintiff,

-against-

Defendants.

AFFIDAVIT

Index No. _____

_____ Petroleum Corp.,

_____ Realty Corp.,

_____ Auto Repairs, Inc. d/b/a

_____ Tire Company, Inc.,

and _____ Fuel Company, Inc.,

_____ Auto Repairs, Inc. d/b/a

_____

* This form was provided courtesy of Abrams & Martin, P.C., New York, New York.

R 2221. Motion affecting prior order.

_____ Tire Company, Inc.,

Defendant and Third-Party Plaintiff,

-against-

_____ and _____,

Third-Party Defendants.

_____

STATE OF NEW YORK

COUNTY OF _____

ss:

_____ being duly sworn deposes and says:

1. I am an attorney associated with _____, _____, _____, & _____, P.C. attorneys for defendant _____ Auto Repairs, Inc. d/b/a _____ Tire Company and as such am fully familiar with the facts and circumstances of this matter as revealed by a review of the file maintained by this office.

2. This affidavit is submitted in opposition to defendant _____ Petroleum Corp.'s application for an order to renew and reargue this Court's prior decision to deny _____ Petroleum Corp.'s motion for summary judgment dismissing the plaintiff's complaint.

3. _____ Petroleum Corp.'s motion for renewal and reargument should be denied for the following reasons, each one sufficient, in and of itself, to warrant denial of the

motion, because genuine issues of material fact regarding _____ Petroleum Corp.'s liability exist.

A. THE PARTIES

4. The plaintiffs _____ and _____ were the owners of a house located at _____ Avenue, _____, New York, which was allegedly contaminated by gasoline leaking from a _____ Petroleum Corp. Gasoline Station located adjacent to their house.

5. The _____ Petroleum Corp. station was operated pursuant to an agreement with defendant _____ Petroleum Corp. which supplied gasoline to the station.

6. Defendant _____ Realty Corp. has owned the _____ Petroleum Corp. Station since _____, 20_____.

7. _____ Auto Repairs, Inc. operated the _____ Petroleum Corp. Station from _____, 20_____ through _____, 20_____.

8. Third party defendants _____ and _____ owned the _____ Petroleum Corp. Station and underground tanks from _____, 20_____ through _____, 20_____

B. _____ PETROLEUM CORP.'S MOTION TO RENEW AND REARGUE SHOULD BE DENIED BECAUSE IT IS PREMATURE SINCE NO ORDER DENYING ITS PRIOR MOTION HAS BEEN ENTERED

9. _____ Petroleum Corp.’s application to renew and reargue this Court’s prior decision is premature since it was made prior to the entry of an order denying its motion for summary judgment.

10. Conspicuously absent from the moving papers is a copy of the order which _____ Petroleum Corp. seeks to renew and reargue.

11. Since an order has not been entered regarding _____ Petroleum Corp.’s motion for summary judgment there is no order for _____ Petroleum Corp. to renew or reargue.

12. Therefore, _____ Petroleum Corp.’s application to renew and reargue should be denied.

C. _____ PETROLEUM CORP.’S MOTION TO RENEW SHOULD BE DENIED BECAUSE _____ PETROLEUM CORP. HAS NOT OFFERED ANY EXCUSE FOR ITS FAILURE FOR NOT SUBMITTING ADDITIONAL FACTS UPON ITS ORIGINAL APPLICATION FOR SUMMARY JUDGMENT

13. In support of _____ Petroleum Corp.’s instant application, _____ Petroleum Corp. has attached various corporate filings with the New York Secretary of State.

14. These documents were not part of _____ Petroleum Corp.’s original application for an order granting summary judgment and _____ Petroleum Corp. has offered no excuse for failing to provide this documentation in its motion for summary judgment.

15. When a party was aware of the existence of additional facts at the time the original application was made and fails to provide a valid excuse for not submitting the additional facts upon the original application the motion to renew should be denied.

16. Therefore, since _____ Petroleum Corp. was undoubtedly aware of these additional facts at the time its original motion for summary judgment was made and _____ Petroleum Corp. has failed to offer any excuse for failing to disclose them previously, _____ Petroleum Corp.'s motion to renew should be denied.

D. _____ PETROLEUM CORP. PERFORMED MAINTENANCE ON THE TANKS DURING THE PERIOD OF TIME THE STATION WAS OPERATED BY _____ AUTO REPAIRS, INC.

17. Mr. _____, the President of _____ Auto Repairs, Inc. testified at his deposition, that he entered into an oral agreement with _____ Petroleum Corp. with regard to the maintenance of the underground tanks. (See page _____ of _____'s deposition transcript which is attached as exhibit "A".)

18. In addition, Mr. _____, testified that he first called _____ Petroleum Corp. in 20_____ regarding water in the underground tanks (See page _____ of _____'s deposition transcript which is attached as exhibit "B".)

19. In fact, Mr. _____ called _____ Petroleum Corp. approximately three times every two months regarding water in the tanks and cleaning of the tanks. (See page _____ of _____'s deposition transcript which is attached as exhibit "C".)

20. Therefore, _____ Petroleum Corp.'s contention that it had nothing to do with the service station, other than supplying gasoline is frivolous and misleading.

21. On the other hand Mr. _____'s testimony is quite clear that he called _____ Petroleum Corp. whenever he was aware of a problem with the

underground tanks and that _____ Petroleum Corp. sent someone to perform maintenance on the tanks.

22. Since _____ Petroleum Corp. did undertake to perform maintenance on the tanks and failed to properly rectify or detect the problems that existed, _____ Petroleum Corp.'s motion for summary judgment was properly denied and _____ Petroleum Corp.'s motion to renew and reargue should also be denied.

E. _____ PETROLEUM CORP. HAD NOTICE THAT THE TANKS WERE LEAKING AND THAT THERE WAS WATER, MUD AND RUST IN THE TANKS

23. _____, the president of _____ Auto Repairs, Inc. testified at his deposition that he first alerted _____ Petroleum Corp. of problems with the underground gasoline tanks at the station in 20_____. (See page _____ of _____'s deposition transcript which is attached as exhibit "D".)

24. After his initial call to _____ Petroleum Corp., Mr. _____ called _____ Petroleum Corp. approximately three times every two months regarding the existence of water, mud and rust in the underground tanks. (See page _____ of _____'s deposition transcript which is attached as exhibit "E".)

25. In addition, Mr. _____ notified _____ Petroleum Corp.'s regional sales representative that gasoline was missing from his tanks. (See page _____ of _____'s deposition transcript which is attached as exhibit "F".)

26. Mr. _____'s testimony clearly indicates that _____ Petroleum Corp. had notice of problems with the underground tanks

since _____, 20_____ and that _____ Petroleum Corp. nevertheless continued to deliver gasoline into those tanks.

27. Under these circumstances, _____ Petroleum Corp.'s motion for summary judgment should also be denied because a jury may properly determine whether _____ Petroleum Corp.'s conduct constituted negligence.

F. _____ PETROLEUM CORP. HAS FAILED TO ESTABLISH THAT IT DID NOT ASSUME LIABILITIES FOR THE UNDERGROUND TANKS

28. _____ Petroleum Corp. sets forth a lengthy and convoluted corporate history in support of its application to renew and reargue the prior denial of its motion for summary judgment.

29. During the deposition of _____ Petroleum Corp., the parties requested the documents regarding the sale and assignment of _____ Refining and Marketing Company's northeastern assets to _____ Petroleum Corp.

30. In response to this request _____ Petroleum Corp. produced an Assignment and Assumption Agreement dated _____, 20_____. (A copy of the agreement is attached as exhibit "I".)

31. Under the Assignment and Assumption on Agreement _____ Petroleum Corp. agrees to assume, discharge and perform pursuant to a separate Purchase Agreement.

32. _____ Petroleum Corp. has not provided a copy of the Purchase Agreement to which the Assignment and Assumption Agreement refers.

33. It is undisputed that _____ Refining and Marketing Company owned the tanks until _____, 20_____.

34. Since _____ Petroleum Corp. did not provide a copy of the Purchase Agreement it is impossible to determine whether _____ Petroleum Corp. assumed _____ Refining and Marketing Company's obligations regarding the tanks.

35. It is clear however, that _____ Petroleum Corp. Petroleum assumed extensive liabilities of Petroleum Corp. Refining and Marketing Company pursuant to the Assignment and Assumption Agreement.

36. The specifics of precisely what obligations were assumed by _____ Petroleum Corp. are known only to _____ Petroleum Corp. since _____ Petroleum Corp. failed to provide a copy of the Purchase Agreement.

37. It is well settled that where the facts, upon which the motion for summary judgment is predicated, are within the exclusive knowledge of the moving party, the motion should be denied. (See accompanying Memorandum of Law.)

38. Since _____ Petroleum Corp. has failed to provide the documentation indicating the full nature of the obligations it assumed from _____ Refining and Marketing Company, _____ Petroleum Corp.'s application should be denied.

39. It is also interesting that _____ Petroleum Corp. has failed to attach this documentation to its moving papers.

40. Therefore, regardless of the corporate history of _____ Petroleum Corp., material issues of triable fact regarding _____ Petroleum Corp.'s liability for the underground tanks exist.

G. COSTS AND SANCTIONS SHOULD BE IMPOSED AGAINST ..... PETROLEUM CORP. FOR BRINGING A FRIVOLOUS MOTION TO RENEW AND REARGUE

41. ..... Petroleum Corp. has not advanced any new arguments in support of its position that its motion for summary judgment was improperly denied.

42. In fact, _____ Petroleum Corp. did not even wait until an order was entered setting forth the reasons _____ Petroleum Corp.'s summary judgment motion was denied before it made this application.

43. It is significant that _____ Petroleum Corp. did not wait for the entry of an order prior to bringing this motion because several separate and independent reasons for the denial of _____ Petroleum Corp.'s motion for summary judgment were advanced in opposition to the motion and _____ Petroleum Corp.'s instant application deals with only one of those reasons.

44. _____ Petroleum Corp. has nevertheless seen fit to waste the time and resources of this Court by bringing this frivolous and meritless motion to renew and reargue.

45. _____ Petroleum Corp.'s conduct in this regard should not be condoned and costs and sanctions should be imposed.

CONCLUSION

46. The law is clear that summary judgment should not be granted when there is any doubt as to the existence of a triable issue of fact.

47. Furthermore CPLR 3212, which governs motions for summary judgment, provides that a motion for summary judgment shall be denied if any party shall show facts sufficient to require a trial of any issue of fact.

48. The following issues of fact exist which require the denial of _____ Petroleum Corp.'s motion:

(a) whether the tanks were leaking at the time _____ Petroleum Corp. still owned them;

(b) whether _____ Petroleum Corp. or its agents negligently performed maintenance on the tanks;

(c) whether _____ Petroleum Corp. had notice of problems with the tanks;

(d) whether _____ Petroleum Corp.'s conduct of delivering gasoline into the tanks with knowledge of the defective condition constituted negligence;

49. Under these circumstances, it is clear that _____ Petroleum Corp.'s motion to renew and reargue should be denied in its entirety because genuine issues of triable fact exist.

WHEREFORE, it is respectfully requested that defendant _____ Petroleum Corp.'s motion for summary judgment be denied in its entirety together with such other and further relief as this court deems just and proper.

Dated: _____, New York

_____, 20_____

_____

[Verification]