

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

1492

CA 17-01106

PRESENT: WHALEN, P.J., SMITH, CARNI, TROUTMAN, AND WINSLOW, JJ.

NANCY LEWIS, PLAINTIFF-RESPONDENT,

V

MEMORANDUM AND ORDER

CITY OF ROCHESTER, ROCHESTER POLICE DEPARTMENT
AND DONALD T. MANFREDI, DEFENDANTS-APPELLANTS.

BRIAN F. CURRAN, CORPORATION COUNSEL, ROCHESTER (SPENCER L. ASH OF
COUNSEL), FOR DEFENDANTS-APPELLANTS.

WILLIAM MATTAR, P.C., WILLIAMSVILLE (MATTHEW J. KAISER OF COUNSEL),
FOR PLAINTIFF-RESPONDENT.

Appeal from an order of the Supreme Court, Monroe County (Debra A. Martin, A.J.), dated August 30, 2016. The order denied the purported "motion to renew" of defendants.

It is hereby ORDERED that said appeal is unanimously dismissed without costs.

Memorandum: Contrary to defendants' contention, Supreme Court properly determined that their purported "motion to renew" is a motion for leave to reargue (see *DiCienzo v Niagara Falls Urban Renewal Agency*, 63 AD3d 1663, 1664 [4th Dept 2009]; see generally CPLR 2221 [d], [e]). In support of their motion, defendants failed to offer new facts that were unavailable when the court initially denied their motion for summary judgment dismissing the complaint (see *Matter of Hamilton v Alley*, 143 AD3d 1235, 1236 [4th Dept 2016]; *Hill v Milan*, 89 AD3d 1458, 1458 [4th Dept 2011]). Thus, the motion was in effect a motion for leave to reargue, the denial of which is not appealable (see *MidFirst Bank v Storto*, 121 AD3d 1575, 1575 [4th Dept 2014]; *Britt v Buffalo Mun. Hous. Auth.*, 115 AD3d 1252, 1252 [4th Dept 2014]).

Entered: December 22, 2017

Mark W. Bennett
Clerk of the Court