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

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CA 17-02032

PRESENT: CENTRA, J.P., PERADOTTO, LINDLEY, AND DEJOSEPH, JJ.

THOMAS GILEWICZ, PLAINTIFF-APPELLANT,

V MEMORANDUM AND ORDER

BRYLIN HOSPITAL, ALSO KNOWN AS BRYLIN HOSPITALS, DR. KANG BALVINDER, BUFFALO GENERAL PSYCHIATRIC UNIT AND BUFFALO GENERAL HOSPITAL, DEFENDANTS-RESPONDENTS.

LAW OFFICE OF JOSEPH G. MAKOWSKI, LLC, BUFFALO (JOSEPH MAKOWSKI OF COUNSEL), FOR PLAINTIFF-APPELLANT.

FELDMAN KIEFFER, LLP, BUFFALO (ADELA APRODU OF COUNSEL), FOR DEFENDANT-RESPONDENT BRYLIN HOSPITAL, ALSO KNOWN AS BRYLIN HOSPITALS.

RICOTTA & VISCO, BUFFALO (TOMAS J. CALLOCCHIA OF COUNSEL), FOR DEFENDANT-RESPONDENT DR. KANG BALVINDER.

ROACH, BROWN, MCCARTHY & GRUBER, P.C., BUFFALO (ADAM P. DEISINGER OF COUNSEL), FOR DEFENDANTS-RESPONDENTS BUFFALO GENERAL PSYCHIATRIC UNIT AND BUFFALO GENERAL HOSPITAL.

Appeal from an order of the Supreme Court, Erie County (Paula L. Feroleto, J.), entered August 7, 2017. The order denied plaintiff's motion for leave to renew and leave to reague.

It is hereby ORDERED that said appeal from the order insofar as it denied leave to reargue is unanimously dismissed and the order is affirmed without costs.

Memorandum: In this medical malpractice action, defendants moved for, inter alia, summary judgment dismissing the second amended complaints against them. Supreme Court granted the motions, and plaintiff moved for leave to renew and reargue. Plaintiff now appeals from an order denying his motion. We dismiss the appeal from that part of the order denying that part of plaintiff's motion seeking leave to reargue inasmuch as no appeal lies therefrom (*see Kirchner v County of Niagara*, 153 AD3d 1572, 1574 [4th Dept 2017]). Contrary to plaintiff's contention, the court properly denied that part of the motion seeking leave to renew. Plaintiff failed to submit "new facts not offered on the prior motion[s] that would change the prior determination" (CPLR 2221 [e] [2]; *see Matter of Kairis v Graham*, 118 AD3d 1494, 1494-1495 [4th Dept 2014]). The alleged new facts were known to plaintiff and presented to the court at oral argument of

defendants' motions.

Entered: June 8, 2018

Mark W. Bennett
Clerk of the Court