

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

1040

CA 18-00334

PRESENT: CENTRA, J.P., CARNI, NEMOYER, TROUTMAN, AND WINSLOW, JJ.

SOUTH TOWNS SURGICAL ASSOCIATES, P.C., DANIEL J. PATTERSON, D.O., F.A.C.O.S., AND KENNETH H. ECKHERT, III, M.D., F.A.C.S.,
PLAINTIFFS-RESPONDENTS,

V

MEMORANDUM AND ORDER

JEFFREY P. STEINIG, M.D., F.A.C.S.,
DEFENDANT-APPELLANT.

LAW OFFICE OF RALPH C. LORIGO, WEST SENECA (FRANK J. JACOBSON OF COUNSEL), FOR DEFENDANT-APPELLANT.

HURWITZ & FINE, P.C., BUFFALO (AMBER E. STORR OF COUNSEL), FOR PLAINTIFFS-RESPONDENTS.

Appeal from an order of the Supreme Court, Erie County (Henry J. Nowak, Jr., J.), entered September 19, 2017. The order, among other things, granted plaintiffs' motion and defendant's cross motion for leave to reargue and, upon reargument, denied defendant's motion for partial summary judgment in its entirety.

It is hereby ORDERED that the order so appealed from is unanimously affirmed without costs.

Memorandum: On appeal from an order that, inter alia, granted plaintiffs' motion for leave to reargue their opposition to defendant's motion for partial summary judgment and, upon reargument, denied defendant's motion in its entirety, we reject defendant's contention that Supreme Court erred in granting the motion for leave to reargue. The court properly granted leave to reargue on the ground that it misapprehended the facts and law in determining defendant's motion for partial summary judgment (see *Smith v City of Buffalo*, 122 AD3d 1419, 1420 [4th Dept 2014]; *Luppino v Mosey*, 103 AD3d 1117, 1118 [4th Dept 2013]; see generally CPLR 2221 [d] [2]). With respect to the merits of defendant's motion, we affirm the order for reasons stated in the court's decision.

Entered: October 5, 2018

Mark W. Bennett
Clerk of the Court