

SCAN

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present:

HON. JOSEPH COVELLO

Justice

**DARLENE ALEXANDRA KROT, as the Administrator
of the Estate of ROGER N. KROT (deceased),**

Plaintiff,

-against-

MENDEL GRYSZTEJN,

Defendant.

**TRIAL/IAS, PART 28
NASSAU COUNTY**

Index #: 10134/02

Motion Seq. #: 003

Motion Date: 10/23/03

The following papers read on this motion:

Notice of Motion	1
Affirmation in Opposition	2
Reply Affirmation	3

Upon the foregoing papers, the motion by plaintiff, Darlene Alexandra Krot, as Administrator of the Estate of Roger N. Krot (deceased), for leave to renew and reargue, pursuant to CPLR §2221(d) & (e), plaintiff's motion for summary judgment and upon granting renewal and / or reargument granting plaintiff partial summary judgment, against defendant, Mendel Grynsztejn, pursuant to CPLR §3212 on the issue of liability, is denied.

A motion for leave to reargue "shall be based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion . . ." [CPLR 2221(d).] Its purpose is not to serve as a vehicle to permit the unsuccessful party to argue over again the very questions previously decided. (**Foley v Roche**, 68 AD2d 558, appeal after remand 86 AD2d 887, appeal denied 56 NY2d 507).

Plaintiff contends that the Court misapprehended the facts and law in denying plaintiff's motion for summary judgement and that the Court did not have the full facts regarding Mr. Krot's movements at the time of the accident. Plaintiff asserts that at the time of the accident Mr. Krot

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was on his bicycle in the southbound left-hand lane of Cuttermill Road waiting to make a left-hand turn as permitted by Vehicle and Traffic Law §1234.

Contrary to plaintiff's contentions, the Court was fully aware of the allegation that Mr. Krot was making a left turn at the time of the accident. In addition, the Court is aware that Mr. Krot testified at his deposition that he stopped his bicycle at the right-hand curb of the southbound lane of Cuttermill Road near its intersection with Ascott Ridge Road, he then walked his bicycle across the southbound lanes and was straddling his bicycle on the double yellow line, when the accident occurred. Mr. Krot also testified that he was waiting to cross the northbound lanes of Cuttermill Road in order to proceed northbound on Cuttermill Road.

Accordingly, no basis for reargument has been shown, as the Court was fully aware of the alleged movements of Mr. Krot prior to and at the time of the subject accident.

As to a motion for leave to renew, it "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 of law that would change the prior determination; and" CPLR §2221(e)(2). A motion for leave to renew should generally be based on newly discovered facts [CPLR 2221(e)]. However, it is within the Court's discretion to grant renewal even upon facts known to the movant at the time of the original motion. **Oestreich v Boyd**, 300 AD2d 375.

In support of the motion to renew plaintiff, now submits the affidavit of non-party witness Roger Tucker, who was present at the intersection at the time of the subject accident. The Affidavit of Mr. Tucker does nothing more than confirm that at the time of the accident the roadways were wet and slippery and there was poor visibility due to a heavy mist. He also states that although he did not actually see the accident he had seen Mr. Krot stopped on his bicycle in

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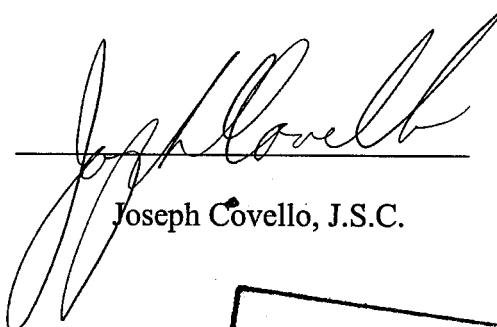
the middle of the road waiting to cross just prior to the accident.

Accordingly, the affidavit of Mr. Tucker does not offer any new facts, which would change this Courts prior determination of plaintiff's motion for summary judgment. In fact, the affidavit of Mr. Tucker, in and of itself, raises factual issues regarding the reasonableness of Mr. Krot's behavior that may have contributed to the accident given the weather conditions and visibility at the time of the accident.

Therefore, plaintiff's motion to renew and reargue the prior motion for summary judgment is denied in its entirety.

This constitutes the decision and order of the court.

Dated: December 10, 2003


Joseph Covello, J.S.C.

