

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

349

CA 13-01393

PRESENT: SCUDDER, P.J., PERADOTTO, CARNI, LINDLEY, AND VALENTINO, JJ.

---

CARMEN BRITT, AND CARMEN BRITT, AS EXECUTOR  
OF THE ESTATE OF LULA BAITY, DECEASED,  
PLAINTIFF-APPELLANT,

V

MEMORANDUM AND ORDER

BUFFALO MUNICIPAL HOUSING AUTHORITY, ELAINE  
GARBE, BISILOLA F. JACKSON, ADMINISTRATOR OF  
THE ESTATE OF JERELINE ELIZABETH GIWA, DECEASED,  
GRACE MANOR HEALTH CARE FACILITY, INC., DAVID J.  
GENTNER, MARY STEPHAN, KATHY RANDALL, TIFFANY  
MATTHEWS AND PHILLIP J. RADOS, M.D.,  
DEFENDANTS-RESPONDENTS.

---

LAW OFFICE OF FRANK S. FALZONE, BUFFALO (LOUIS ROSADO OF COUNSEL), FOR  
PLAINTIFF-APPELLANT.

COLUCCI & GALLAHER, P.C., BUFFALO (JOHN J. MARCHESE OF COUNSEL), FOR  
DEFENDANTS-RESPONDENTS BUFFALO MUNICIPAL HOUSING AUTHORITY, ELAINE  
GARBE AND BISILOLA F. JACKSON, ADMINISTRATOR OF THE ESTATE OF JERELINE  
ELIZABETH GIWA, DECEASED.

FELDMAN KIEFFER, LLP, BUFFALO (ADAM C. FERRANDINO OF COUNSEL), FOR  
DEFENDANTS-RESPONDENTS GRACE MANOR HEALTH CARE FACILITY, INC., DAVID  
J. GENTNER, MARY STEPHAN, KATHY RANDALL AND TIFFANY MATTHEWS.

ROACH, BROWN, MCCARTHY & GRUBER, P.C., BUFFALO (ELIZABETH G. ADYMY OF  
COUNSEL), FOR DEFENDANT-RESPONDENT PHILLIP J. RADOS, M.D.

---

Appeal from an order of the Supreme Court, Erie County (Diane Y. Devlin, J.), entered February 6, 2013. The order denied the motion of plaintiff seeking "to renew" and to vacate a prior order.

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

Memorandum: Plaintiff appeals from an order that denied her motion seeking "to renew" and to vacate a prior order in which Supreme Court granted the respective motion and cross motions (motions) of defendants seeking, inter alia, summary judgment dismissing the second amended complaint against them. We previously dismissed plaintiff's appeal from the prior order, determining that, because plaintiff failed to respond to defendants' motions or to appear on the return date for oral argument, the prior order was entered upon plaintiff's

default, and no appeal could be taken therefrom (*Britt v Buffalo Mun. Hous. Auth.*, 109 AD3d 1195, 1196). Although plaintiff characterized her motion herein as a motion "to renew," she does not raise a new question of law or fact (see CPLR 2221 [e] [2]), and thus we conclude that she sought only leave to reargue (see *Hilliard v Highland Hosp.*, 88 AD3d 1291, 1292-1293). Inasmuch as no appeal lies from the denial of a motion seeking leave to reargue, we dismiss the appeal (see *id.*; *Empire Ins. Co. v Food City*, 167 AD2d 983, 984).

Entered: March 21, 2014

Frances E. Cafarell  
Clerk of the Court