

Christophel v New York-Presbyterian Hosp.
2013 NY Slip Op 33076(U)
December 6, 2013
Sup Ct, New York County
Docket Number: 154413/13
Judge: Alice Schlesinger
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.
This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: ALICE SCHLESINGER
Justice

IA PART 16
PART _____

Index Number : 154413/2013
CRISTOPHEL, THOMAS H
vs
NEW YORK PRESBYTERIAN
Sequence Number : 001
DISMISS ACTION

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. _____

The following papers, numbered 1 to _____, were read on this motion to/for _____

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ | No(s) _____

Answering Affidavits — Exhibits _____ | No(s) _____

Replying Affidavits _____ | No(s) _____

Upon the foregoing papers, it is ordered that this motion is *granted to the extent provided in the accompanying memorandum decision.*

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Dated: DEC 06 2013

Alice Schlesinger

ALICE SCHLESINGER, J.S.C.

- 1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
- 2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
- 3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER
- DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
THOMAS H. CHRISTOPHEL, Individually and as
Administrator of the ESTATE OF JANET Y.
CHRISTOPHEL, Deceased,

Plaintiffs,

Index No. 154413/13
Mot. Seq. Nos. 001& 002

-against-

NEW YORK-PRESBYTERIAN HOSPITAL/WEILL
MEDICAL COLLEGE OF CORNELL UNIVERSITY
ANESTHESIOLOGY RESIDENCY TRAINING
PROGRAM, WORKFORCE HEALTH & SAFETY
CLINIC, BRIDGE BACK TO LIFE, and MEDICAL
SOCIETY OF THE STATE OF NEW YORK
COMMITTEE FOR PHYSICIAN HEALTH,

Defendants.

-----X
SCHLESINGER, J.:

Before this Court are several pre-answer motions to dismiss the complaint. The complaint concerns the terrible circumstances surrounding the life and death of Janet Y. Christophel.¹ Janet Christophel should rightfully be referred to as Dr. Janet Christophel because at the time of the relevant events in question she was a resident in anesthesiology at the New York-Presbyterian Hospital/Weill Medical College of Cornell University.

Most unfortunately, Dr. Christophel while in the program became addicted to the drug Propofol, an anesthesia medication. In early September 2010, she went to Dr. Maria Bustillo, the Program Director of the residency program, and told Dr. Bustillo that she had been abusing this drug. Dr. Bustillo then referred Dr. Christophel to the Workforce Health and Safety Clinic ("Workforce") where she completed an intensive six-week rehabilitation program. Part of that program involved intensive outpatient

group sessions at Bridge Back to Life ("Bridge"). On October 27, 2010, Dr. Cristophel was cleared to return to work, and she did so on November 8, 2010.

Dr. Christophel continued the group sessions at Bridge until May 2011. During this time she also sought help from the Committee for Physicians Health ("CFP"). Part of the evaluation for CFP involved Dr. Christophel being referred to a psychiatrist for a thorough analysis and an evaluation of what could be anticipated for the future. The person who performed this evaluation on March 6, 2011 was Dr. Joseph S. Weiner. Dr. Weiner then issued his detailed report on April 13, 2011 to CFP.

In early March 2011, Dr. Christophel, as part of her rotation, was assigned to operating room responsibilities at Memorial Sloan Kettering Hospital. Unfortunately, her responsibilities allowed easy access to various anesthesia medications, including Propofol.

It then became apparent from what happened two months later that Dr. Christophel had again begun using this drug. On May 14, 2011, Dr. Christophel telephoned and e-mailed Dr. Bustillo and announced that she had decided to resign from the residency program. The following day, May 15, 2011, Dr. Christophel's body was found in her apartment where she had taken her own life by means of an IV overdose of Propofol.

It is on these very sad facts that this action was commenced. The plaintiff Thomas H. Christophel, Administrator of Dr. Christophel's Estate, is claiming that these various defendants were individually and/or collectively negligent in allowing this terrible thing to happen. One other item that is significant and noted in the complaint was Dr. Weiner's opinion as reported to CFP. In his report (Exh C to Motion 2), Dr. Weiner stated the following (at p 10):

The concerning aspect of this situation is that while Dr. Christophel will no doubt “perform well” on her road to reintegration as a resident, in my opinion, she is still at much risk for either relapse into substance abuse or other behaviors that could affect her ability to care for patients.

The first motion by New York Presbyterian Hospital is to dismiss the complaint pursuant to CPLR §3211(a)(1) and §3211(a)(5). These sections speak to a defense based on documentary evidence, which specifically here is a release allegedly signed by the decedent. This release, attached as Exhibit B to the Hospital's motion, is a document entitled “Confidential Re-Entry Agreement Between Janet Christophel, M.D. and The New York and Presbyterian Hospital”; it is dated October 27, 2010, presumably the day that Dr. Christophel signed it. The “whereas” clauses state that Dr. Christophel was being given an opportunity to return to the Department of Anesthesiology Resident Program. Also stated was that Dr. Christophel was then enrolled and participated in the Bridge Back to Life program as part of her recovery from substance abuse. The final clause, before the document sets down all of the things that the decedent agreed to do or not do, was that the agreement, in “consideration of health and safety reasons” would be confidential.

Dr. Christophel then agreed to eight different provisions which included abiding by the treatment plan, not using any inappropriate medications, submitting to additional examinations if necessary, providing relevant documentation requested by the Hospital, and finally being financially responsible for any expenses related to this Re-entry Agreement. The document then goes on to state that the Agreement will be in effect throughout the duration of the residency.

The document continues by stating various circumstances that could provide a reason to terminate Dr. Christophel's residency at the Hospital. These are three in number and include using proscribed medication, refusing to comply with the terms of the Agreement or her treatment, and finally refusing to submit to required drug testing. The next paragraph records that the Hospital has not waived any of its rights under its Bylaws, Rules and Regulations or Code of Conduct.

It is the final paragraphs that are the basis for the motion. The penultimate paragraph states the following:

I further agree to release and discharge the Hospital, its trustees, agents, employees, and the Hospital's medical staff [and] residency program leadership from any claims, demands, obligations, costs, incurred, expenditures, damages or causes of actions of any nature whatsoever arising out of, or related to or in any way connected with any disclosure, release, act or omission in connection with this agreement and acknowledge receipt of a copy of this agreement. No amendment or variation of the terms [of the] agreement shall be valid unless made in writing and signed by both parties.

The final statement, which appears before the signature, says that Dr. Christophel had "carefully read, [and does] understand and was agree to the terms described above.

It is on this broad, comprehensive release that moving counsel for the Hospital argues that the release is a complete bar to the action brought on behalf of Dr. Christophel's Estate. Counsel points out that the release was a necessary precondition that the decedent was required to accept so as to be allowed to reenter the residency program. Counsel urges further that by Dr. Christophel's signature, she accepted all of

its terms, which terms. That included the possibility of termination from the residency program. The terms also included indemnification of the Hospital and all of its personnel from any claims by Dr. Christophel connected with the Agreement. Finally counsel argues that this "Re-Entry Agreement is complete, clear, and unambiguous on its face [and] should be enforced according to the plain meaning of its terms." (§15 of Affirmation).

Counsel for the Estate opposes the motion by arguing a variety of points that go to why the document should not be given the force and effect that the Hospital urges. These arguments include, first, the lack of formalities in and surrounding the document. Here it is noted, along with various minor errors, that the document does not contain any signature on the part of anyone from the Hospital and that there were no witnesses to the decedent's signature.

Secondly, counsel suggests that Dr. Christophel's signature is "indistinct and illegible" (§18 of Aff in Opp). He includes tax returns purportedly signed by Dr. Christophel and suggests that the document in question might not contain an authentic signature by Dr. Christophel. However, missing from this argument, as pointed out in Reply, is any statement from an expert in handwriting to opine that the signatures are in fact different. So I find that counsel's suggestions here are no more than that and have no probative value.

The opposition also points out that the agreement is somewhat ambiguous in that it is unclear as to who is really being protected. Finally, counsel argues that it would be against public policy to accept this document and release the Hospital.

The Hospital's position here is the much more persuasive one. In Reply, counsel first points out that there was no need for the agreement to be signed by anyone other

than Dr. Christophel because it was she who was being allowed to come back to the program on certain stated conditions. That being the case, it was sufficient that the Hospital prepared the document and presented it to Dr. Christophel, but there was no need for any one from the Hospital to actually sign it.

In Reply, counsel also strongly takes issue with the opposition assertion that the terms of the agreement lack clarity and are ambiguous. Specifically, with regard to the release clause earlier quoted in its entirety, the language used makes it absolutely clear that the Hospital was being released from "causes of action of any nature whatsoever".

Another argument made by the Estate's counsel is that the document should not be given effect because of the general condition Dr. Christophel found herself in at the time. In other words, because of her drug abuse problem and because of her desire to return to her earlier professional life, she may well have been under duress when she signed the document. Further, an argument made on behalf of the Estate is that the document is problematic because there is no showing that Dr. Christophel was given an opportunity to consult with an attorney before signing it.

I do not find these arguments in any way convincing. The fact is that Dr. Christophel, a highly educated woman, was being given the opportunity to rejoin the residency program and get on with her professional life. There is nothing in these circumstances to suggest that Dr. Christophel did not fully understand what she was signing and/or that she felt forced into signing it. To the extent that she was agreeing to certain mandated conditions as a prerequisite to coming back, she was receiving in exchange a significant benefit in being allowed to resume her residency position. On the attorney issue, no authority is presented that such a requirement exists.

Finally, I reject as lacking in merit the argument that the enforcement of this release would be against public policy. A case cited by plaintiff's counsel, *Ash v New York Univ. Dental Ctr.*, 164 AD2d 366 (1st Dep't 1990), does involve a situation where an agreement was in fact set aside as being in violation of public policy. However, that case is easily distinguishable and concerns patients who had limited means and who needed dental care. They were required to sign a paper that exculpated the defendants from any liability for negligent treatment, despite the fact that the treatment would often be given by students and post-graduate students. This agreement was held by the appellate court to be unenforceable and contrary to public policy because patients in need of treatment with limited funds to pay for that treatment would not be considered to have freely bargained to excuse possibly substandard care. Therefore, the Court found that it was illusory to assume that consent to release the Center had been freely given. The Court also found that such an agreement was not only against the interest of the individual patients who had sought treatment, but also of the public at large.

But the instant case has none of those features. While Dr. Christophel was required to sign this document, it was clearly in her interest to do so. The release did not in any way put her in a disadvantageous position. It merely said, but important to the comfort level of the Hospital, that no lawsuit could be brought that had anything to do with the decedent's re-entry to the residency program.

Therefore, I find that the release should be given full force and effect and that dismissal of the action against the Hospital with prejudice is warranted under CPLR §3211(a), subd. (1) and (5).

Without actually moving or cross-moving for relief in its own right, Bridge Back to Life submits papers entitled “Joinder and Affirmation In Support of the Defendants’ Motion to Dismiss.” In these papers, counsel argues that Bridge should also be protected from a lawsuit under the umbrella of the before-mentioned release.

Here, counsel for the plaintiff correctly argues that there is no reason why this release should include Bridge. First, he says that certain so-called facts asserted by counsel in his affirmation on behalf of Bridge have no probative force. These include certain decisions allegedly made and knowledge by Bridge with regard to Dr. Christophel returning to work. However, as pointed out by counsel, there is no affidavit from anyone at Bridge to attest to these allegations.

More significantly, I find that the release simply does not include Bridge. Bridge is referred to once in the Agreement, in the first whereas clause, by stating that Dr. Christophel was enrolled and was participating in Bridge’s out-patient addiction and counseling service. But that is the only time Bridge is referred to. Further, there is nothing to suggest that Bridge had any legal connection with the Hospital.

In other words, the release clause protects the Hospital, its trustees, agents, employees and medical staff. There is nothing presented by Bridge in its papers to indicate it or any of its employees fall into any of these categories. Therefore, while I am sure the Hospital appreciates the support of Bridge, that is the only advantage that this defendant will obtain from its joinder “motion”. A release from legal action clearly has significant consequences, as shown by this Court’s decision vis-a-vis the Hospital. Bridge has no entitlement to this significant benefit. Therefore, to the extent that their joinder affirmation requests dismissal of the complaint against it, that request is denied.

There is also another motion, a separate one, brought by defendant CFP pursuant to several sections of the Public Health Law. Those sections, specifically 230, subd. 11(a),(b) and (c) and (g)(v), concern reporting obligations of a committee of the Medical Society of the State of New York, which CFP is. CFP was founded in 1974. The first relevant section, 230(11)(a), directs that a Committee such as CFP does have an obligation to report to the New York State Department of Health any information which suggests that a medical licensee is guilty of professional misconduct. Section 11(b) says that by reporting such information, the Committee shall not be subject "to an action for civil damages or other relief as a result of such report." The next arguably relevant section is (11)(c) which states that by mere participation in CFP's program, a report solely as to this participation is not required.

However, it is subdivision 11(g)(i-iv) which is the basis for this motion, wherein CFP is asking for immunity vis-a-vis this lawsuit. Section 230, subd. 11(g)(i-iv) sets down conditions wherein the Committee shall disclose certain appropriate information to the Department. Counsel focuses upon subsection (ii) wherein the Committee "shall immediately report to the Director the name, all information obtained and the results of any contact or investigation regarding any physician who is believed to be an imminent danger to the public." Counsel then points out that the subsection (v) says that when the Committee makes such a report, no member "shall be liable for damages to any person for any action taken by such member"

It is CFP's position that nothing that Dr. Weiner opined about, as noted earlier in this decision, would fall into the category that Dr. Christophel was believed to be an imminent danger to the public. Therefore, CFP had no obligation to report this information, and it thereby acted appropriately in not doing so.

However, the opposition argument makes more sense. What plaintiff's counsel points to in Dr. Weiner's evaluation is his cautionary language about the decedent, which he argues should have been shared with the other named defendants. In ¶21 of the opposition, counsel points out that at this early stage of these proceedings, he has no means of knowing whether this medical evaluation written by Dr. Weiner at the request of CFP was published or shared with any of the other defendants. It appears that the gravamen of the complaint against CFP is its assumed failure to communicate these findings to the other defendants. By failing to do this, it is urged, the other defendants "are lacking important information to adequately gauge Janet Christophel's substance abuse and continued fitness to work." In this regard, counsel questioned the wisdom of the decision to place Dr. Cristophel where she had easy access to Propofol.

The plaintiff thus argues that none of the cited sections of the Public Health Law apply in these circumstances. He points out that there was no professional misconduct here, or any other conduct that falls under the provisions of the cited sections. The plaintiff here is not complaining of the improper reporting of anything connected with Dr. Christophel; rather, the complaint is that CFP failed to share this relevant information with the other parties.

In Reply, counsel for the moving defendant focuses again on subsection (g)(ii) and its obligation to report a doctor who presents an imminent danger, which was not the situation described by Dr. Weiner. Counsel argues that "Dr. Weiner's IME report does not contain, indicate or even imply any statement which would alert CFP that the decedent was believed to be an imminent danger to herself or the public." (¶8 of Reply).

CFP insists, without any citation to the Public Health Law or to any other law, that it had no duty or obligation towards Dr. Christophel "to either affirmatively report her as an imminent danger or publish the IME report" (§21 of Reply). Interestingly, while counsel points out that various individuals were contacted by CFP to serve in various capacities as an aid to the decedent, there is nothing from any member of CFP to indicate whether or not this report by Dr. Weiner was in fact shared with any of the defendants or with anyone else.

Further, whether or not CFP had a duty or obligation to do that has yet to be explored and certainly is not ready to be resolved. Therefore, I do agree with counsel for the plaintiff that the cited Public Health Sections do not really apply to these tragic circumstances.

That being the case, the motion by CFP to dismiss the complaint is denied.

Accordingly, it is hereby

ORDERED that the motion of defendant New York-Presbyterian Hospital/Weill Medical College of Cornell University Anesthesiology Residency Training Program to dismiss the complaint herein (motion seq. 001) is granted and the complaint is dismissed in its entirety as against said defendant, and the Clerk is directed to enter judgment accordingly in favor of said defendant; and it is further


ORDERED that the request by defendant Bridge Back to Life for dismissal is denied; and it is further

ORDERED that the motion by defendant Medical Society of the State of New York Committee for Physician Health to dismiss the complaint herein (motion seq. 002) is denied; and it is further

ORDERED that the action is severed and continued against the remaining defendants who are directed to appear in Room 222 for a preliminary conference on Wednesday, January 29, 2014 at 9:30 a.m.

Dated: December 6, 2013

DEC 06 2013



J.S.C.

ALICE SCHLESINGER