

Orell v Stableford

2018 NY Slip Op 30714(U)

April 23, 2018

Supreme Court, New York County

Docket Number: 451043/13

Judge: Joan A. Madden

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 11

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STACIE S. ORELL, as Executor of the Estate of
SANDIN ORELL, Deceased,

Plaintiff,

INDEX NO. 451043/13

-against-

JENNIFER A. STABLEFORD, M.D., and
PATRICK J. LAMPARELLO, M.D.,

Defendants.

-----X

JOAN A. MADDEN, J.:

In this action asserting claims for medical malpractice and lack of informed consent, plaintiff moves for an order pursuant to CPLR 305, 3004, 2001, 2005 and 3025, granting leave to amend the summons and complaint to add New York University Langone Medical Center (“NYU Langone”) as a new party defendant and to extend the Note of Issue so discovery can be conducted as to the new defendant. Defendants oppose the motion.

This action was commenced on November 15, 2012, in Bronx County Supreme Court. The complaint alleges that defendants Dr. Stableford and Dr. Lamparello negligently treated decedent Sandin Orell while performing surgery to treat an aneurysm in his left leg, damaging his left femoral nerve, resulting in a leg drop. The surgery was performed on March 14, 2011 and Dr. Lamparello last treated decedent on August 2, 2011. Defendants moved to change venue to New York County, and by a decision order dated February 26, 2013 and filed March 3, 2013, the

Hon. Stanley Green granted the motion and the case was transferred to this Court and assigned a new index number, Index No. 441043.13.

Plaintiff is now moving to amend the complaint to add NYU Langone as a party defendant. Plaintiff asserts that when the action was commenced in November 2012, “upon information and belief available to plaintiff and counsel at the time . . . it was believed that defendants Stableford and Lamparello . . . were independent physicians,” and not until the EBT of Dr. Lamparello on June 26, 2017, and the EBT of Dr. Stableford on October 18, 2017, did plaintiff learn that they were “actually employees of NYU Langone.” Acknowledging that the statute of limitations has run on the medical malpractice claims, plaintiff contends that the relation back doctrine applies to make the new claims against NYU Langone timely. Specifically, plaintiff asserts that NYU Langone is united in interest with Dr. Lamparello and Dr. Stableford, as they were acting in the course of their employment with NYU Langone, and as their employer NYU Langone is vicariously liable their negligence.

In opposition, defendants argue that the relation back doctrine is inapplicable, as plaintiff’s delay in making the instant motion is “unjustified and prejudicial.” Defendants assert that plaintiff has known that Dr. Stableford was employed by NYU Langone since 2013, when Dr. Stableford admitted to this fact in her affidavit in support of defendants’ motion to change venue filed in January 2013. As to Dr. Lamparello, defendants assert he was not employed by the proposed new defendant, NYU Langone, and submit an affidavit from Michael Browdy, Director of Insurance for NYU Langone, that Lamparello was employed by NYU School of Medicine. Defendants further argue that NYU Langone cannot be held vicariously liable for Dr. Lamparello’s alleged negligence since the decedent was his “private patient.”

“Leave to amend a pleading should be ‘freely given’ (CPLR 3025[b]) as a matter of discretion in the absence of prejudice or surprise.” Zaid Theatre Corp v. Sona Realty Co, 18 AD3d 352, 355-356 (1st Dept 2005) (internal citations and quotations omitted). The movant need not establish the merits of the proposed new allegations, but simply submit sufficient support to show that the proposed amendment is not “palpably insufficient or clearly devoid of merit.” MBIA Insurance Corp v. Greystone & Co, Inc, 74 AD3d 499 (1st Dept 2010); see Fairpoint Companies LLC v. Vella, 134 AD3d 645 (1st Dept 2015). In addition, “[o]nce a prima facie basis for the amendment has been established, that should end the inquiry, even in the face of a rebuttal that might provide the ground for a subsequent a motion for summary judgment” Pier 59 Studios, LP v. Chelsea Piers, LP, 40 AD3d 363, 365 (1st Dept 2007); see M.A. Angeliades, Inc v. Hill International, Inc, 150 AD3d 607 (1st Dept 2017).

Where as here the statute of limitations has run as to the proposed medical malpractice claim against the proposed additional defendant, plaintiff has the burden of demonstrating the applicability of the relation back doctrine so as to make the claim timely. See Garcia v. New York-Presbyterian Hospital, 114 AD3d 615 (1st Dept 2014). Specifically, plaintiff is required to make the following showing: 1) the claims arose out of the same conduct, transaction or occurrence; 2) the additional party, NYU Langone, is united in interest with the original defendants, Dr. Stableford and Dr. Lamparello, and by reason of that relationship can be charged with notice of the institution of the action such that it will not be prejudiced in maintaining a defense on the merits; and 3) the additional party, NYU Langone, knew or should have known that, but for a mistake by plaintiff as to the identity of the proper parties, the action would have been brought against it. See Buran v. Coupal, 87 NY2d 173 (1995).

Plaintiff has submitted sufficient support demonstrating a prima facie basis for the applicability of the relation back doctrine so as to permit the amendment adding NYU Langone as a defendant. See MBIA Insurance Corp v. Greystone & Co, Inc, supra; Fairpoint Companies LLC v. Vella, supra.

First, it is undisputed that the medical malpractice claims arise from Dr. Stableford's and Dr. Lamparello's treatment of the decedent at NYU Langone hospital.

Second, the sworn deposition testimony of both Dr. Stableford and Dr. Lamparello that they are employed by NYU Langone is sufficient to make a prima facie showing that NYU Langone is united in interest with both of them for the purpose of determining plaintiff's motion to amend. See Brown v. Midtown Medical Care Center, 96 AD3d 641 (1st Dept 2012). The conclusory affidavit from the hospital's director of insurance is insufficient to deny plaintiff's motion to amend. Moreover, defendants' assertions that Lamparello was employed by NYU Medical Center or that decedent was a "private patient" of Dr. Lamparello, go to the ultimate issue of NYU Langone's vicarious liability for Lamparello's negligence which need not be resolved at this juncture..

Finally, plaintiff has demonstrated that based on NYU Langone's employment relationship with defendants, NYU Langone should have know that, but for plaintiff's mistake in identifying NYU Langone as their employer, NYU Langone would have been timely named in the action. Contrary to defendants' contention, "New York law requires merely mistake – not excusable mistake – on the part of the litigant seeking the benefit of the [relation back] doctrine." Buran v. Coupal, supra at 176. Notably, there is no showing that plaintiff acted in bad faith

in failing to join NYU Langone earlier in this action, or that NYU Langone is prejudiced. See Brown v. Midtown Medical Care Center, supra; Schiavone v. Victory Memorial Hosiptal, 300 AD2d 294 (2nd Dept 2002).

Thus, given plaintiff's prima facie showing that the medical malpractice claims against NYU Langone relate back to the original complaint against Dr. Lamparello and Dr. Stableford, the proposed amendment is not "palpably insufficient or clearly devoid of merit," and plaintiff is granted leave to amend the complaint to add NYU Langone as a party defendant. See MBIA Insurance Corp v. Greystone & Co, Inc, supra; Fairpoint Companies LLC v. Vella, supra. The branch of plaintiff's motion to extend the time for filing the note of issue to permit discovery as to the new defendant, shall be resolved at the next status conference on May 24, 2018.

Accordingly, it is

ORDERED that plaintiff's motion for leave to amend the summons and complaint to add NewYork University Langone Medical Center as a party defendant is granted; and it is further

ORDERED that the Supplemental Summons and Amended Verified Complaint in the form annexed as Exhibit A to the motion papers and e-filed as Document 62, shall be deemed served on the previously appearing parties, upon service of a copy of this decision and order with notice of entry, and said parties shall respond within 10 days from said service; and it is further

ORDERED that plaintiff shall serve the Supplemental Summons and Amended Verified Complaint on the new defendant New York University Langone Medical Center within 15 days of the date of this order, and said defendant shall have 10 days from said service to answer; and it is further

ORDERED that the caption as amended shall read as follows:

STACIE S. ORELL, as Executrix of the Estate of
SANDIN ORELL, Deceased

Plaintiff,

-against-

NEW YORK UNIVERSITY LANGONE MEDICAL
CENTER, PATRICK J. LAMPARELLO, M.D., AND
JENNIFER A. STABLEFORD,

Defendants.

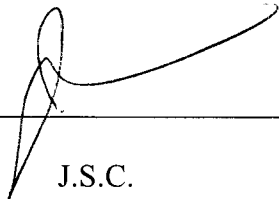
and it is further

ORDERED that plaintiff shall serve a copy of this order with notice of entry on the Clerk of the Trial Support Office (Room 158), and the County Clerk, so that the Court's records may be altered to reflect the change in the caption adding the new party-defendant New York University Langone Medical Center; and it is further

ORDERED that the branch of plaintiff's motion to extend the time for filing the note of issue to permit discovery as to the new defendant, shall be resolved the status conference previously scheduled for May 24, 2018, at which time the parties should be prepared for an expedited discovery schedule.

DATED: April 23, 2018

ENTER:



J.S.C.
HON. JOAN A. MADDEN
J.S.C.