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

PRESENT: MANUEL J. MENDEZ PART 13
Justice

JANE DOE #3, JANE DOE #4, JANE DOE #5 and JANE DOE #6,

Plaintiffs,

-against-

THE NEW YORK AND PRESBYTERIAN HOSPITAL; COLUMBIA-PRESBYTERIAN MEDICAL CENTER; COLUMBIA UNIVERSITY MEDICAL CENTER; COLUMBIA-PRESBYTERIAN MEDICAL CENTER EAST SIDE ASSOCIATES; EAST SIDE ASSOCIATES; ROBERT HADDEN; THE TRUSTEES OF COLUMBIA UNIVERSITY IN THE CITY OF NEW YORK; COLUMBIA UNIVERSITY COLLEGE OF PHYSICIANS AND SURGEONS; PRESBYTERIAN HOSPITAL PHYSICIAN SERVICES ORGANIZATION, INC.; COLUMBIA-CORNELL CARE, LLC; COLUMBIA CORNELL NETWORK PHYSICIANS, INC.; SLOANE HOSPITAL FOR WOMEN,

Defendants.

INDEX NO.	152438/2017
MOTION DATE	02-21-2018
MOTION SEQ. NO.	004
MOTION CAL. NO.	

The following papers, numbered 1 to 6 were read on this motion pursuant to CPLR §2221 to reargue:

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	1 - 3
Answering Affidavits — Exhibits	4
Replying Affidavits	5 - 6

Cross-Motion: ☐ Yes X No

Upon a reading of the foregoing cited papers, it is Ordered that the motion by defendants: The New York and Presbyterian Hospital, Columbia Presbyterian Medical Center, Columbia University Medical Center, Columbia-Presbyterian Medical Center, Presbyterian Hospital Physician Services Organization, Inc. and Sloan Hospital for Women ("Hospital Defendants"), The Trustee of Columbia University in the City of New York, Columbia University College of Physicians and Surgeons, Columbia-Presbyterian Medical Center East Side Associates and East Side Associates ("University Defendants") (together collectively referred to as the "Hospital/University Defendants"), pursuant to CPLR §2221 to reargue the September 8, 2017 Decision and Order of this Court filed under Motion Sequence 002, and for other relief, is denied. The motion to strike "certain scurrilous entries in the court's electronic docket" and impose sanctions against plaintiff's counsel; to amend the caption permitting the "Hospital/University Defendants to proceed under pseudonyms; and to seal the Court's file pursuant to 22 N.Y.C.R.R. §216.1[a], is granted to the extent stated herein.

This matter arises from the alleged sexual assault of plaintiffs by Dr. Robert Hadden while they were patients in his gynecologic practice. On June 1, 2015 Robert Hadden was criminally indicted. On February 22, 2016 he pled guilty to one count of criminal sexual act in the third degree and one count of forcible touching. On March 29, 2016 he was sentenced to zero days time served and a one year conditional discharge. Robert Hadden gave up his medical license, is no longer allowed to practice medicine in any part of the United States, and was classified as a level one sex offender.

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

Plaintiff commenced this action on March 15, 2017 after Mr. Hadden was sentenced and convicted. The complaint asserted ten causes of action against both the Hospital/University Defendants and Robert Hadden for: (1) general negligence, (2) civil battery, (3) criminal battery, (4) negligence and professional negligence, (5) negligent infliction of emotional distress, (6) intentional infliction of emotional distress, (7) negligent hiring and negligent supervision, (8) failure to investigate criminally suspicious activities (9) defamation and (10) for punitive damages.

The Hospital/University Defendants' under Motion Sequence 002 sought an Order: pursuant to CPLR §3211[a][5] and CPLR §215[8] dismissing the first, second, third, fourth, fifth, sixth, seventh and eighth causes of action asserted against them as time-barred and pursuant to CPLR §3211[a][7] dismissing the ninth and tenth causes of action for failure to state a cause of action. This Court's September 8, 2017 Decision and Order filed under Motion Sequence 002, partially granted the Hospital/University Defendants' motion dismissing the ninth and tenth causes of action and joined this action for discovery with two other pending actions (Mot. Exh. A). Plaintiff amended the complaint on September 18, 2017. The Hospital/University Defendants Answered the Amended Complaint on November 1, 2017 (NYSCEF Dockets 77 and 79).

The Hospital/University Defendants seek an Order pursuant to CPLR §2221 granting leave to reargue the September 8, 2017 Decision and Order filed under Motion Sequence 002, and upon reargument dismissing the first through eighth causes of action asserted against them as barred by the statute of limitations, alternatively deleting or modifying the sentence on page 3 that states "These allegations provided potential notice of Robert Hadden's propensities to sustain the first eight causes of action under CPLR §215 [8]."

The Court has discretion to grant a motion to reargue upon a showing that it, "overlooked or misapprehended the relevant facts, or misapplied any controlling principle of law" (Foley v. Roche, 68 A.D. 2d 558, 418 N.Y.S. 2d 588 [1st Dept., 1979]). Reargument is not intended to afford an unsuccessful party successive opportunities to argue issues previously decided, or to present arguments different from those originally asserted (DeSoignies v. Cornasesk House Tenants' Corp., 21 A.D. 3d 715, 800 N.Y.S. 2d 679 [1st Dept., 2005] and Setters v. Al Properties and Developments (USA) Corp., 139 A.D. 3d 492, 32 N.Y.S. 3d 87 [1st Dept., 2016]).

Hospital/University Defendants failed to show they are entitled to reargument and are asserting arguments that were previously addressed and rejected by this Court. Their arguments raised in their pre-discovery and pre-answer motion that they are entitled to dismissal of the complaint asserted against them because they were not the "same defendant," is unavailing. The September 8, 2017 Decision and Order did not overlook or misinterpret the law and determined that sustainable causes of action were potentially stated. This Court did not misinterpret the Hospital/University Defendants' reliance on Second and Fourth Department precedent that was rejected by the First Department in Alford v. St. Nicholas Holding Corp., 218 A.D. 2d 622, 631 N.Y.S. 2d 30 [1st Dept., 1995]. Hospital/University Defendants' citations to Supreme Court cases (concurrent jurisdiction) in Kings County (Second Department) referring to CPLR §213-b, to establish that this Court overlooked or misinterpreted the application of CPLR §215[8], does not warrant reargument.

This Court did not misinterpret or overlook the liberal construction to be applied to the pleadings on a motion to dismiss (Scholastic Inc. v. Pace Plumbing Corp., 129 A.D. 3d 75, 8 N.Y.S. 3d 75 [1st Dept., 2015] and Bibo v. Arvanitakis, 145 A.D. 3d 657, 44 N.Y.S. 3d 448 [2nd Dept., 2016]. Hospital/University Defendants attempt to have the language in the body of the September 8, 2017 Decision and Order amended to suit their interpretation of the law, is unavailing.

The Hospital/University Defendants also seek an Order: (1) having this Court strike "certain scurrilous entries in the court's electronic docket" and impose sanctions against plaintiff's counsel Anthony T. DiPietro, Esq. pursuant to 22 N.Y.C.R.R. §130-1.1 [c][2],[3]; (2) amending the caption and permitting defendants to proceed under the pseudonyms "Anonymous 1-10; and (3) sealing the Court file pursuant to 22 N.Y.C.R.R. §216.1[a].

22 NYCRR 130-1.1 permits the Court in its discretion to award costs when conduct is continued after the lack of a legal or factual basis should have been apparent. The imposition of sanctions requires a pattern of frivolous behavior. Improper references and material should be struck and removed with plaintiff's counsel strongly admonished for a first-time offense (Maestraci v. Helly Nahmad Gallery, Inc., 155 A.D. 3d 401, 63 N.Y.S. 3d 376 [1st Dept., 2017]). Sanctions could be awarded if it is shown that plaintiff has made materially false accusations meant to harass and injure the defendants, or to gain leverage in the litigation, if the record reflects sanctionable behavior. Generally, in the early stages of the litigation, sanctions are not warranted because a record reflecting sanctionable behavior has not yet been established (Liapakis v. Sullivan, 290 A.D. 2d 393, 736 N.Y.S. 2d 675 [1st Dept., 2002]).

Hospital/University Defendants have not stated a basis to impose sanctions against plaintiff's counsel for the description of Motion Sequence 002 as "Order Denying NYPH, Columbia, and Corp Defendants Motion to Escape Accountability" under NYSCEF Docket #52. The language "to Escape Accountability" is an unnecessary description of the document and is stricken. Plaintiff's counsel, Anthony T. DiPietro, Esq., is strongly admonished to refrain from further postings with additional descriptive references to documents that are subject to his interpretation of "literally correct." His failure to abide by this admonishment may result in sanctions.

The Hospital/University Defendants have not shown they are entitled to have the caption amended so that they may proceed under the pseudonyms "Anonymous 1-10."The party seeking anonymity is required to provide evidence corroborating the allegations in support of the request (Deer Consumer Products, Inc. v. Little, 35 Misc. 3d 374, 938 N.Y.S. 2d 767 [Sup. Ct., NY County, 2012]). Hospital/University Defendants reliance on an allegedly "self-authored article" plaintiffs' attorney Mr. DiPietro posted on his Twitter and Facebook accounts in 2013, approximately four years before the commencement of this action, is not evidence to support the request for anonymity. There is no proof provided that Mr. DePietro has modified or added to the Twitter and Facebook posts since 2013.

Defendants reliance on the facts in Anonymous v. Anonymous, 191 Misc. 2d 659,744 N.Y.S. 2d 659 [Sup. Ct., NY County, 2002], is unavailing, the facts of that case are distinguishable from this action. The plaintiff's counsel in Anonymous v. Anonymous, 191 Misc. 2d 659, supra, continually released documents to the press, including the defendant's motion papers seeking anonymity, leading the Court to determine there would be a "trial by newspaper" without anonymity (See Anonymous v. Anonymous, 191 Misc. 2d 659, supra, pg. 660). There was no proof provided on this motion that plaintiffs' attorney is continually submitting information to the press or that he is posting new materials on the internet such that a fair and impartial trial is impossible. The Hospital/University Defendants have also not shown that defendant, Robert Hadden, after pleading guilty in the criminal action, is entitled to anonymity to protect their rights to a fair impartial trial or for the preservation of their reputation.

The sealing of records pursuant to 22 N.Y.C.R.R. §216.1[a], is generally not condoned by the courts. The right of the public to access court proceedings takes precedence. The confidentiality obtained by the sealing of records requires a narrowly tailored yet compelling objective that outweighs public interest (Danco Labs, Ltd. v. Chem. Works of Gedeon Richter, 274 A.D. 2d 1, 711 N.Y.S. 2d 419 [1st

Dept., 2000] and Matter of Hoffman, 284 A.D. 2d 92, 727 N.Y.S. 2d 84 [1st Dept., 2001]). There is no specific definition of "good cause" to seal the record, the determination is made by the Court in its discretion (Applehead Pictures, L.L.C. v. Perelman, 80 A.D. 3d 181, 913 N.Y.S. 2d 165 [1st Dept., 2010]). The party seeking to seal the records has the burden of demonstrating that there are compelling circumstances warranting that relief. Concern that the court records could be potentially humiliating and damaging to a business reputation requires specific allegations of the potential harm. The mere potential for embarrassment, damage to reputation, or the general desire for privacy does not constitute good cause to seal court records (Mosallem v. Berenson, 76 A.D. 3d 345, 905 N.Y.S. 2d 575 [1st Dept., 2010]).

Hospital/University Defendants provide no affidavits from an individual with personal knowledge in support of the relief sought. They rely on a "cease and desist" letter from 2013 (Mot. Exh. F), with no proof of attempts to have the information removed by Mr. DiPietro after the commencement of this action, or recent events other than the description of Motion Sequence 002 under NYSCEF Docket # 52. They are merely stating potential embarrassment, damage to reputation and a general desire for privacy. Hospital/University Defendants have not provided compelling circumstances for the sealing of records pursuant to 22 N.Y.C.R.R. §216.1[a].

Accordingly, it is ORDERED that the motion by defendants: The New York and Presbyterian Hospital, Columbia Presbyterian Medical Center, Columbia University Medical Center, Columbia-Presbyterian Medical Center, Presbyterian Hospital Physician Services Organization, Inc. and Sloan Hospital for Women, The Trustee of Columbia University in the City of New York, Columbia University College of Physicians and Surgeons, Columbia-Presbyterian Medical Center East Side Associates, and East Side Associates granting leave to reargue the September 8, 2017 Decision and Order filed under Motion Sequence 002, and for an Order: (1) having this Court strike "certain scurrilous entries in the court's electronic docket" and impose sanctions against plaintiff's counsel Anthony T. DiPietro, Esq. pursuant to 22 N.Y.C.R.R. §130-1.1 [c][2],[3]; (2) amending the caption and permitting defendants to proceed under the pseudonyms "Anonymous 1-10; and (3) sealing the Court file pursuant to 22 N.Y.C.R.R. §216.1[a], is granted solely to the extent of having the descriptive language in NYSCEF Docket # 52, "to Escape Accountability" stricken, and it is further,

ORDERED that movants are directed to serve a copy of this order with notice of entry pursuant to e-filing protocol on the County Clerk (Room 141B), and on the General Clerk's Office (Room 119), who are hereby directed to mark the court's records to reflect the correction of NYSCEF Docket #52, and it is further,

ORDERED, that the County Clerk is directed to strike the descriptive language in NYSCEF Docket # 52, "to Escape Accountability" in this action, and it is further,

ORDERED that the remainder of the relief sought in this motion is denied, and it is further,

ORDERED, that counsel are directed to appear for a preliminary conference in IAS Part 13, at 71 Thomas Street, on April 18, 2018 at 9:30a.m..

ENTER:

MANUEL J. MENDEZ
J.S.C.

MANUEL J. MENDEZ,
J.S.C.

Dated: March 5, 2018

Check one: ☐ FINAL DISPOSITION X NON-FINAL DISPOSITION
Check if appropriate: ☐ DO NOT POST ☐ REFERENCE