STATE OF NEW YORK
SUPREME COURT COUNTY OF ULSTER
RICHARD BLAUVELT and DONNA BLAUVELT,

Plaintiff,

-against-

Decision & Order
Index No. 13-2454

CRAFT CHIROPRACTIC ASSOCIATES, P.C., RICHARD H. CRAFT, D. C. and MARK RICHARD CRAFT, D.C.,

Defendants.

Supreme Court, Ulster County
Motion Return Date: December 20, 2017
RJI No.: 55-13-02341

Present: Christopher E. Cahill, JSC

Appearances: LAW OFFICE OF EDGAR P. CAMPBELL, ESQ.
Attorney for Plaintiffs
2 Madison Avenue
Valhalla, New York 10597

LAW OFFICE OF STEPHEN P. HABER, ESQ.
Attorney For Defendants
81 Main Street, Suite 304
White Plains, New York 10601

Cahill, J.:

Defendant, Richard H. Craft, D.C., moves pursuant to CPLR § 3212 for summary judgment on the issue of liability seeking the dismissal of the complaint. Defendant also seeks an order imposing sanctions and attorneys fees on plaintiff pursuant to 22 NYCRR § 130-1.1 (a) because of plaintiff's alleged frivolous conduct in suing him. Plaintiff opposes the motion and contends that questions of fact exist which preclude the granting

of summary judgment.

On July 17, 2013, the plaintiff commenced this action against the defendants for chiropractic malpractice relating to two cervical disc herinations that required extensive surgery. Defendants Richard Craft and his son Mark Craft are chiropractors and are co-shareholders of defendant Craft Chiropractic Associates, P.C. which was established in 1992. Richard Craft treated the plaintiff from October 1977 until December 19, 1998. Thereafter, the plaintiff was treated by Mark Craft until 2005. Treatment resumed again, commencing on February 2, 2012. Richard Craft contends that he cannot be held liable for any negligence that occurred on or after February 2, 2012 as the applicable three-year statute of limitations had long since expired. He further contends that he cannot be held vicariously liable for the actions of his son or the PC for treatment rendered on or after February 2, 2012 as he exercised no supervision over his son's treatment of plaintiff and only shared in the profits of the PC.

In opposition, the plaintiff apparently claims that a credibility issue has been raised by Mr. Craft's conflicting assertions regarding his income from the PC. According to the plaintiff, Dr. Craft testified at his EBT that although he was a 51% shareholder of the PC, he did not receive a percentage of the profits but rather a weekly check for $500.00. He stated, however, in his affirmation supporting the motion, that at the time of plaintiff's treatment he did share in the profits of the PC. The plaintiff also points out that Richard Craft testified that his son, defendant Mark Craft worked for him for over 25 years, which

includes the time that Mark Craft was treating the plaintiff and that, therefore, Richard Craft is vicariously liable pursuant to the doctrine of respondent superior. In addition, the plaintiff claims that the defendants have not produced documentary proof such as tax returns and payroll records for 2012 which would indicate whether Richard Craft was responsible for the actions of his son. In short, plaintiff in so many words is apparently arguing that a question of fact exists as to whether the PC actually existed at the time of plaintiff's treatment since the doctrine of respondent superior does not apply to a PC.

"Summary judgment is a drastic remedy that should not be granted where there is any doubt as to the existence of a triable issue" (McDay v. State, 130 AD3d 1359 [3rd Dept. 2016]). In deciding whether summary judgment is warranted, the Court's main function is issue identification, not issue determination (Barr v. County of Albany, 50 NY2d 247 [1980]). The party seeking summary judgment has the burden of establishing its entitlement thereto as a matter of law (Winegard v. New York Univ. Med. Ctr., 64 NY2d 851 [1985]). The evidence must be construed in a light most favorable to the party opposing the motion (Davis v. Klein, 88 NY2d 1008 [1996]). In order to defeat a motion for summary judgment, the party opposing the motion must produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact requiring a trial of the action (Alvarez v. Prospect Hospital, 68 NY2d 320 [1986]; Zuckerman v. City of New York, 49 NY2d 557 [1980]). Failure to make such showing requires denial of the motion regardless of the sufficiency of the opposing papers (Voss v. Netherlands Ins. Co.,

22 NY3d 728 [2014]).

A shareholder of a professional corporation may be held liable for "any negligent or wrongful act or misconduct committed by him or by any person under his direct supervision and control while rendering professional services on behalf of such corporation" (Ruggiero v. Miles, 125 AD3d 1216 [3rd Dept. 2015]). Regardless of whether defendant Richard Craft made certain statements regarding his earnings for the PC which are arguably contradictory, which statements the plaintiff relies on in opposing the motion, the fact remains that plaintiff has presented no proof that Richard Craft either treated the plaintiff on or after February 2, 2012 or supervised Mark Craft in treating the plaintiff during this period. His conflicting statements are also not sufficient evidence to raise a question of fact as to whether the PC actually existed, and the mere fact that he was receiving income from the PC at the time of plaintiff's treatment is not sufficient to raise a question of fact as to whether he was treating the patient directly or was supervising his treatment. Accordingly, the motion for summary judgment must be granted.

The court further finds, however, that the plaintiff's claim against Richard Craft was not frivolous as defined in 22 NYCRR § 130.1.1 (c) and, therefore, the application for sanctions and attorneys fees pursuant to 22 NYCRR § 130-1.1 (a) is denied (Perna v. Realty Roofing, Inc., (122 AD3d 821 [2nd Dept. 2014]). It is

ORDERED that the motion for summary judgment is granted and the motion for

sanctions is denied, without costs to either party.

This shall constitute the Decision and Order of the Court. The original Decision and Order and all other papers are being delivered to the Supreme Court Clerk for transmission to the Ulster County Clerk for filing. The signing of this Decision and Order shall not constitute entry or filing under CLR 2220. Counsel is not relieved from the applicable provisions of that rule regarding notice of entry.

SO ORDERED.

Dated: Kingston, New York
April 13, 2018

ENTER,

CHRISTOPHER E. CAHILL, JSC

PAPERS CONSIDERED:

1. Notice of Motion dated November 7, 2017;
2. Affirmation of Stephen P. Haber, Esq. dated November 7, 2017 with exhibits A-D;
3. Affidavit of Richard H. Craft dated October 31, 2017;
4. Affirmation of Edgar P. Campbell, Esq. dated December 7, 2017 with exhibits A & B;
5. Affirmation of Stephen P. Haber, Esq. dated December 8, 2017 with exhibit A.