

Siemanowicz v Sculco
2020 NY Slip Op 31700(U)
May 29, 2020
Supreme Court, New York County
Docket Number: 805246/2019
Judge: Eileen A. Rakower
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SUPREME COURT OF THE STATE OF NEW YORK – NEW YORK COUNTY

PRESENT: Hon. EILEEN A. RAKOWER

PART 6

Justice

**LISA SIEMANOWICZ, As Administratrix of the Estate,
of VICTOR SIEMANOWICZ, AND LISA,
SIEMANOWICZ, Individually,**

**INDEX NO. 805246/2019
MOTION DATE
MOTION SEQ. NO. 2
MOTION CAL. NO.**

Plaintiffs,

- against-

**PETER SCULCO, M.D., HOSPITAL FOR SPECIAL
SURGERY, ARTHUR YEE, M.D., JAMES
CALLOWAY, M.D., AND PATRICK LEE, M.D.,**

Defendants.

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

Notice of Motion/ Order to Show Cause – Affidavits – Exhibits ...
Answer – Affidavits – Exhibits _____
Replying Affidavits

PAPERS NUMBERED

█
█
█

Cross-Motion: Yes X No

Defendant Patrick Lee, M.D. (“Dr. Lee”) moves for an Order pursuant to CPLR §3211(a)(8), dismissing Plaintiffs Complaint with Prejudice based on Plaintiffs failure to obtain personal jurisdiction over Dr. Lee under CPLR §301, §302(a), §308, and §313. Plaintiffs oppose.

Plaintiffs commenced this action by filing the summons and complaint on July 31, 2019. The action arises out of the alleged medical malpractice, lack of informed consent, wrongful death, and loss of service. Plaintiffs allege that Defendants failed to timely and properly treat Decedent Plaintiff Victor Siemanowicz (“Decedent”) which resulted in a stroke, brain damage, quadriplegia and death. Plaintiffs further allege that Dr. Lee provided advice, recommendations, and suggested medical treatment and/or therapies which were relied upon in treatment, surgical preparation, medical clearance, and post-operative care of [D]ecedent.” No cross-claims are asserted.

Parties’ Contentions

Dr. Lee argues that Plaintiffs do not have either general or specific personal jurisdiction over Dr. Lee. Dr. Lee contends that he is only licensed to practice medicine in New Jersey, he treats patients and has offices in only New Jersey and

he does not advertise in New York. Dr. Lee asserts that all treatment at issue was rendered in New Jersey. Dr. Lee further asserts that he has never been licensed to practice in New York, he does not work for a practice group, medical office, consortium, or hospital in New York and does not have hospital privilege in New York. Dr. Lee argues that there is no general jurisdiction over him in New York because he has “no contacts with New York, let alone continuous and systematic ones sufficient to render him at home there.”

Moreover, Dr. Lee argues that Plaintiffs cannot establish specific jurisdiction. Dr. Lee asserts that he does not transact business in New York or provide services in New York. Dr. Lee contends that all of the care he provided was in New Jersey and all of the claims against Dr. Lee concerned his care in New Jersey.

In opposition, Plaintiffs contend that Dr. Lee was involved in the medical care to Decedent, and further discovery is required to determine what extent Dr. Lee was involved. Plaintiffs argue that Dr. Lee’s motion should be denied without discovery. Plaintiffs argue that Dr. Lee “coordinated with co-defendants in this case to provide hematological treatment to [D]ecedent ... in preparation for upcoming orthopedic surgeries.” Plaintiffs assert that the treatment Dr. Lee provided “advice, recommendations, and suggested medical treatment and/or therapies which was relied upon in the treatment, surgical preparation, medical clearance, and post-operative care of [D]ecedent ... by co-defendants.”

Plaintiffs assert that pursuant to CPLR § 302(a)(1), Dr. Lee does not need to be physically in New York but must have “purposely availed” himself. Plaintiffs argue that Dr. Lee has “purposely availed” himself because Dr. Lee “knew that his consultation (for coordination of treatment, as agent, servant, and/or employee of co-defendants, or in partnership with co-defendants) was for the specific purpose of preparing [Decedent] for surgery in New York.” (Plaintiffs’ Affirmation in Opposition at 4). Plaintiffs argue that there is an issue of fact as to Dr. Lee’s involvement in the medical care and treatment at issue and Dr. Lee’s motion to dismiss must be denied until further discovery taken.

In reply, Dr. Lee argues that “New York cannot exercise specific jurisdiction over Dr. Lee based on legal and constitutional grounds.” (Dr. Lee’s Reply Affirmation at 2). Dr. Lee asserts that he neither transacted business nor was contracted to provide services in New York and all of the care provided to Decedent were in New Jersey. Dr. Lee argues that he had “no intention” of participating in Decedent’s care in New York.

Legal Standards

“CPLR 3211(a)(8) provides that ‘[a] party may move for judgment dismissing one or more causes of action asserted against him on the ground that... the court has not jurisdiction of the person of the defendant.’” *Silverman v. Minify, LLC*, 2016 N.Y. Slip Op. 30046[U] [N.Y. Sup Ct, New York County 2016] (quoting *Marist Coll. v. Brady*, 84 AD3d 1322, 1322-1323 [2d Dept 2011]). “When presented with a motion under CPLR 3211(a)(8), ‘the party seeking to assert personal jurisdiction, the plaintiff[,] bears the ultimate burden of proof on this issue.’” *Id.* (quoting *Marist Coll. v. Brady*, 84 AD3d 1322, 1322-1323 [2d Dept 2011]).

“In general, New York courts may obtain personal jurisdiction over a party based on (1) consent to jurisdiction in New York, (2) domicile in New York (CPLR § 301), (3) general jurisdiction (CPLR § 301), (4) or specific jurisdiction by means of the long arm statute as to a non-domiciliary (CPLR § 302).” *Id.*

CPLR 302(a)(1) states in relevant part:

(a) Acts which are the basis of jurisdiction. As to a cause of action arising from any of the acts enumerated in this section, a court may exercise personal jurisdiction over any non-domiciliary ... who in person or through an agent:

1. transacts any business within the state or contracts anywhere to supply goods or services in the state....

“In determining the meaning of the phrase transacts any business, the courts have stated that an entity transacts business when it purposefully avails itself of the benefits and privileges of conducting business in New York.” *Paterno v Laser Spine Inst.*, 112 AD3d 34, 39 [2d Dept 2013], *aff'd*, 24 NY3d 370 [2014] (citations omitted). “It is not necessary that the entity be physically present in the State to conclude that it has purposefully availed itself, and a single transaction can satisfy the statute where that transaction is purposeful and there is a substantial relationship between the transaction and the claim asserted.” *Id.* at 39-40 (citations omitted).

“However, it is not the number of contacts which is determinative of whether a defendant purposely availed itself of the benefits and privileges of conducting business in New York.” *Id.* at 40. “Each jurisdictional inquiry pursuant to CPLR 302(a)(1) will turn upon the examination of the particular facts of the case, and although determining what facts constitute purposeful availment is an objective inquiry, it always requires a court to closely examine the defendant’s contacts for

their quality.” *Id.* (citations omitted). “Purposeful activities are those with which a defendant, through volitional acts avails itself of the privilege of conducting activities with the forum State, thus invoking the benefits and protections of its laws.” *Id.* (citations omitted). “Whether a non-domiciliary has engaged in sufficient purposeful activity to confer jurisdiction in New York requires an examination of the totality of the circumstances.” *Id.* (citations omitted).

Discussion

Here, Dr. Lee, a New Jersey doctor, examined treated and prescribed for his patient, a New Jersey resident, in his New Jersey offices. The records provided show that this patient came under Dr. Lee’s care with a history of a 2002 elbow surgery followed by a DVT. That DVT was treated with Coumadin, but when Coumadin was discontinued, it prompted a second DVT. Thereafter, the patient was treated for his coagulable condition. Dr. Lee saw this patient on August 25, 2017, days after the August 21, 2017 New York surgery. Clearance for the New York surgery was obtained by referral to a New York doctor, Dr. Yee, who saw the patient on August 1, 2017. Dr. Lee had no contact with New York prior to the surgery, and had no authority, license or privileges to control or oversee the Decedent’s treatment in New York. Therefore, Dr. Lee did not “purposefully avail[] [himself] of the benefits and privileges of conducting business in New York.” *Paterno*, 112 AD3d at 39, *aff’d*, 24 NY3d 370 [2014]. The Complaint against Dr. Lee is dismissed for lack of personal jurisdiction.

Wherefore it is hereby

ORDERED that Defendant Patrick Lee, M.D.’s motion is granted and the Clerk is directed to enter judgment severing and dismissing the action as against Defendant Patrick Lee, M.D. The remainder of the action shall continue.

This constitutes the Decision and Order of the Court. All other relief requested is denied.

Dated: May 29, 2020

ENTER: 
J.S.C.

HON. EILEEN A. RAKOWER

Check one: FINAL DISPOSITION X NON-FINAL DISPOSITION