Rong Lan Lin v Wong

2020 NY Slip Op 32270(U)

July 1, 2020

Supreme Court, New York County

Docket Number: 805241/2016

Judge: George J. Silver

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK - PART 10

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RONG LAN LIN,

Plaintiff,

- against - INDEX NO: 805241/2016

MARGARET WONG, M.D., KATIE ZHANG, M.D., STEPHAN WAN, M.D., STEPHAN WAN, M.D., P.L.L.C., and MOUNT SINAI BETH ISRAEL HOSPITAL,

Defendants.

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HON. GEORGE J. SILVER:

This is an action for medical malpractice. Presently before the court is defendant MOUNT SINAI BETH ISRAEL HOSPITAL ("MOUNT SINAI") motion for an order pursuant to CPLR § 3217 "so-ordering" a stipulation of discontinuance as to MOUNT SINAI, and removing MOUNT SINAI from the caption. Although plaintiff RONG LAN LIN ("plaintiff") and MOUNT SINAI signed the subject stipulation of discontinuance, defendants KATIE ZHANG, M.D. ("Dr. Zhang"), STEPHAN WAN, M.D. ("Dr. Wan"), and STEPHAN WAN, M.D., P.L.L.C. ("Stephan Wan, M.D., PLLC") have not signed the stipulation. The non-signing defendants have submitted no opposition to the motion, and are not asserting any cross-claims against MOUNT SINAI.

CPLR § 3217(a)(2) provides that a party may discontinue its claim against another party by filing a stipulation of discontinuance "in writing signed by the attorneys of records for all parties." Where a party is unwilling to sign the stipulation, the court may nevertheless order discontinuance under CPLR § 3217(b). CPLR § 3217(b) provides that "an action shall not be discontinued by a party asserting a claim except upon order of the court and upon terms and conditions, as the court deems proper."

The subject stipulation of discontinuance, signed by the attorneys for plaintiff and MOUNT SINAI , but not by the attorneys for Dr. Zhang, Dr. Wan, and Stephan Wan, M.D., PLLC, constituted a release of MOUNT SINAI from the action within the meaning of General Obligations Law § 15--108 (*see,* General Obligations Law § 15--303; *Tereshchenko v. Lynn*, 36 A.D.3d 684, 685 [2d Dept. 2007]; *Hanna v Ford Motor Co.*, 252 A.D.2d 478, 479 [2d Dept. 1998]; *Killeen v. Reinhardt*, 71 A.D.2d 851, 853 [2d Dept. 1979]). Said stipulation served to relieve MOUNT SINAI "from liability to any other person for contribution as provided in article fourteen of the civil practice law and rules" (General Obligations Law § 15--108 [b]; *see, Rosado v. Proctor & Schwartz*, 66 NY2d 21, 24 [1985]; *Tereshchenko*, 36 A.D.3d at 686, *supra*). However, any verdict in favor of plaintiff and against the remaining defendants will be reduced in the amount of MOUNT SINAI's equitable share of the damages, if any (*see,* General Obligations Law § 15--108 [a]; *Tereshchenko*, 36 A.D.3d at 686, *supra*; *Killeen*, 71 A.D.2d at 853, *supra*).

This court, in its sound discretion, has the authority to grant or deny an application to discontinue an action made pursuant to CPLR § 3217(b) (*Tucker v. Tucker*, 55 NY2d 378 [1982]). In the absence of special circumstances, such as prejudice to the substantial rights of other parties to the action, a motion for a voluntary discontinuance should be granted (*see, Burnham Serv. Corp. v. National Council on Compensation Ins*., 288 A.D.2d 31, 32 [1st Dept. 2001]; *Citibank v. Nagrotsky*, 239 A.D.2d 456, 457 [2d Dept. 1997]; *County of Westchester v. Welton Becket Assocs*., 102 A.D.2d 34 [1984], *aff'd* 66 NY2d 642 [1985]). Although CPLR § 3217(b) authorizes a voluntary discontinuance by court order on motion of "a party asserting a claim," this provision may not be the basis for a dismissal motion by a party defending a claim unless the party asserting the claim consents or joins in the motion (*Shamley v. ITT Corp*., 67 NY2d 910 [1986]).

Here, since the subject stipulation has not been signed by counsel for defendants Dr. Zhang, Dr. Wan, and Stephan Wan, M.D., PLLC, CPLR § 3217(a) is inapplicable. However, CPLR § 3217(b) is applicable, and no co-defendant has submitted opposition specifically attacking the discontinuance of MOUNT SINAI from this matter. Therefore, the request to discontinue the action as against MOUNT SINAI with prejudice is granted, and the complaint is dismissed as against MOUNT SINAI . In addition, MOUNT SINAI is to be deleted from the caption of this action.

Furthermore, although MOUNT SINAI will not be liable for contribution under CPLR article 14, any verdict in plaintiff's favor and against the remaining defendants will be reduced in the amount of MOUNT SINAI's equitable share of damages, if any (*see, Tereshchenko*, 36 A.D.3d at 686, *supra*; *Killeen*, 71 A.D.2d at 853, *supra*). In addition, as the instant motion is one for discontinuance pursuant to CPLR § 3217, which is not the functional equivalent of a trial on the merits, the remaining defendants may seek to include any liability attributable to MOUNT SINAI as part of the total liability assigned to "all persons liable" for purposes of CPLR article 16 (*see, Hendrickson v. Philbor Motors, Inc*., 102 A.D.3d 251, 955 NYS2d 384 [2d Dept. 2012]; *Anderson v. House of Good Samaritan Hosp*., 44 A.D.3d 135, 840 NYS2d 508 [4th Dept. 2007]).

Moreover, defendants have suffered measurable prejudice here since he has had to expend the cost of making the instant motion in the face of no credible opposition. Likewise, plaintiff's prosecution of this case has been halted by the needless diversion of the remaining defendants' intransigence towards signing the subject stipulation of discontinuance. Under New York State practice, a court may impose monetary sanctions for "frivolous conduct" (see, e.g., 22 NYCRR § 130–1.1 [authorizing imposition of costs and attorney's fees for engaging in "frivolous

conduct"]). Conduct is frivolous under 22 NYCRR section 130–1.1 if it is "completely without merit in law and cannot be supported by a reasonable argument for an extension, modification or reversal of existing law" [22 NYCRR § 130–1.1(c)(1)] or it is "undertaken primarily to delay or prolong the resolution of the litigation, or to harass or maliciously injure another" (22 NYCRR § 130–1.1(c)(2)), or "it asserts material factual statements that are false" 22 NYCRR § 130–1.1(c)(3). Significantly, in the present case, the remaining co-defendants have managed to run afoul of the provisions within 22 NYCRR section 130–1.1. Indeed, here, where none of the remaining co-defendants have advanced credible opposition, let alone any opposition, to MOUNT SINAI's instant request, it is axiomatic that the failure to sign the subject stipulation of discontinuance amounts to "frivolous conduct" that taxes the court's finite resources. As such, the remaining co-defendants are put on notice that the court does not countenance such conduct, and future similar behavior may result in the court awarding costs in connection with applications such as the instant motion.

Accordingly, it is hereby

ORDERED that MOUNT SINAI's motion pursuant to CPLR § 3217 for a court-ordered discontinuance is granted; and it is further

ORDERED that MOUNT SINAI's counsel is directed to serve a copy of this order, with notice of entry, on all remaining parties within 20 days of its entry; and it is further

ORDERED that the instant action shall continue as against the remaining defendants; and it is further

ORDERED that the caption of this action is amended to read as follows:

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RONG LAN LIN, Index №. 805241/2016

-against-

MARGARET WONG, M.D., KATIE ZHANG, M.D., STEPHAN WAN, M.D., STEPHAN WAN, M.D., P.L.L.C.

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This constitutes the decision and order of the court.

Dated: July 1, 2020

HON. GEORGE J. SILVER, J.S.C.