

Megibow v Caron.org
2011 NY Slip Op 31561(U)
June 7, 2011
Sup Ct, NY County
Docket Number: 115588/10
Judge: Doris Ling-Cohan
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SUPREME COURT OF THE STATE OF NEW YORK - NEW YORK COUNTY

PRESENT: Hon. Doris Ling-Cohan, Justice

Part 36

**ALEC JEFFREY MEGIBOW, M.D., M.P.H.,
F.A.C.R., individually, and on behalf of all
similarly situated,**

Plaintiff,

-against-

**CARON.ORG d/b/a CARON NEW YORK, and,
WOLFBLOCK LLP,**

Defendant.

INDEX NO. 115588/10

MOTION SEQ. NO. 001

The following papers, numbered 1-5 were considered on the motion to dismiss:

PAPERS

NUMBERED

Notice of Motion/Order to Show Cause, — Affidavits — Exhibits _____

1, 2

Answering Affidavits — Exhibits _____

3

Replying Affidavits _____

4, 5

Cross-Motion: [] Yes [X] No

**Upon the foregoing papers, it is ordered that this motion is consolidated for joint disposition with
motion seq. no. 002 and is decided in accordance with the attached decision**

FILED

JUN 09 2011

**NEW YORK
COUNTY CLERK'S OFFICE**

Dated:

6/7/11

DORIS LING-COHAN, J.S.C.

**Check one: [X] FINAL DISPOSITION
Check if Appropriate: [] DO NOT POST**

[] NON-FINAL DISPOSITION

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**MOTION SEQ. NO. 001
and 002**

FILED

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**Upon the foregoing papers, it is ordered that motion sequence 001 and 002 are consolidated for joint
disposition and are decided as indicated below.**

NEW YORK
COUNTY CLERK'S OFFICE

Plaintiff commenced this action seeking damages for an alleged breach of contract, false advertising, violation of the Emergency Medical Treatment and Active Labor Act ("EMTALA"), and violation of Gen. Business Law § 349 for false advertising. Plaintiff is also seeking declaratory and injunctive relief in that defendant Caron.org d/b/a Caron New York ("Caron") advertised and held itself out to be a hospital when they are not. Plaintiff's complaint alleges that on or about July 2007, an advance of over \$25,000.00 was paid to defendant Caron for the hospitalization and rehabilitation of Michael Lopez ("Lopez"). Plaintiff further states that in the summer of 2007, it allegedly paid in full, in advance, for the hospitalization and treatment of Jennie Rosario ("Rosario") pursuant to a written agreement with defendant Caron, in anticipation of defendant Caron submitting claims for Rosario's treatment directly to Rosario's health insurance carrier ("1199").

Plaintiff alleges that on or about August 15, 2007, defendant Caron transported Lopez, to the

emergency department of Bellevue Hospital ("Bellevue") in New York City, New York, without the consent or authority of plaintiff, Lopez, or Bellevue. Additionally, prior to the end of 2007, defendant Caron informed plaintiff that 1199 had rejected, in full, the claims for Rosario's medical treatment. However, plaintiff alleges that in the fall of 2008, without plaintiff's knowledge, 1199 reimbursed defendant Caron in full settlement of all claims submitted for Rosario, previously paid for by plaintiff.

Defendant filed the within motion seq. number 001 to dismiss pursuant to CPLR §3211(a)(1), (5), and (7), dismissing plaintiff's complaint on the grounds that plaintiff's claims are barred by documentary evidence, a release, and failure to state a cause of action. Defendant alleges that plaintiff previously commenced a substantially similar proceeding in 2008 ("2008 Proceeding"), the complaint being served in 2009, in which plaintiff alleged breach of contract, false advertising, violation of the EMTALA, injunctive and declaratory judgment. Specifically, plaintiff's 2008 Proceeding asserted, as the current complaint asserts, that defendant Caron advertised and held itself out to be a hospital when they are not, that defendant Caron allegedly accepted full advance payment, by plaintiff, for the hospitalization and treatment of Lopez, and that defendant Caron allegedly wrongfully transferred Lopez to Bellevue.

Defendant Caron was represented in the 2008 Proceeding by Wolfblock, LLP ("Wolfblock"), defendant herein. The 2008 Proceeding was ultimately settled with a payment of \$10,000.00 to plaintiff by defendant Caron. A Stipulation Discontinuing Action was signed by plaintiff's counsel on March 19, 2009 and filed on March 31, 2009, wherein the plaintiff agreed to discontinue the 2008 proceeding with prejudice. Additionally defendant states that plaintiff previously signed a release which covers all the claims raised in this proceeding.

Plaintiff has filed the within motion seq. number 002 seeking to transfer this proceeding, pursuant to "Courthouse Procedure I.B. of New York Supreme Court, New York County Civil Branch",

to Hon. Emily Jane Goodman, the judge presiding over the 2008 Proceeding. Plaintiff argues that this proceeding is related to the 2008 Proceeding. Defendants oppose the transfer in that the transfer would not help to conserve judicial resources. Additionally, defendants argue that there is no danger of inconsistent rulings as the 2008 Proceeding has been fully disposed of.

As a motion to transfer would impact on which judge should hear motion sequence 001, this Court will deal with the transfer motion first. Generally, a case related to an earlier one should automatically be assigned to the Justice assigned to the earlier case, provided that the case had not been disposed of. The Courthouse Procedure I.B. states in relevant part:

In an effort to conserve judicial resources and avoid inconsistent rulings, the filing counsel must check off whether a related case exists. If the new case is designated as related, it will automatically be assigned to the Justice who was assigned to the earlier case provided that the latter has not already been disposed of. If the earlier case has been disposed of, the Clerk will assign the case at random; the filing attorney is, however, free to argue to the Justice to whom the case is assigned that the matter ought to be assigned to the Justice who had handled the earlier case due to considerations of judicial efficiency and the like."

The 2008 Proceeding was settled prior to the filing of an answer, requiring little, if any, judicial intervention. Additionally, there is no danger of inconsistent rulings because the 2008 Proceeding was settled by stipulation. As the 2008 Proceeding has been fully disposed of for over two years, plaintiff's motion to transfer the current proceeding to Hon. Emily Jane Goodman is denied.

Turning to defendants' motion to dismiss the complaint, defendants argue that plaintiff's complaint must be dismissed pursuant to CPLR 3211(a)(1) and (5) as the previous and substantially similar 2008 Proceeding was discontinued with prejudice in March 2009. Defendants further assert that all other claims, known or unknown, were released by plaintiff in March 2009 when plaintiff signed a release. Additionally, defendants argue that defendant Wolfblock must be dismissed as a defendant because the complaint: (1) does not involve claims against defendant Wolfblock; (2) does not allege that defendant Wolfblock owed plaintiff any duty; and (3) does not seek any relief from defendant

Wolfblock.

Plaintiff does not oppose the merits of defendants' motion to dismiss. Instead, plaintiff argues that this Court lacked jurisdiction to accept the filing of defendant's motion as a statutory stay was in effect at the time of the filing. After defendants were served with the complaint, defendants removed this proceeding to the United States District Court for the Southern District of New York ("District Court") on the ground that the federal court had original federal question jurisdiction over the federal claims asserted in the petition, namely claims pursuant to EMTALA and 18 U.S.C. § 1347.

Thereafter, Plaintiff moved to remand the case to state court. On March 22, 2011, the District Court ordered the case be remanded to state court. On March 25, 2011, defendants served their motion to dismiss on plaintiff and filed the motion with the court on March 28, 2011. Plaintiff argues that, pursuant to 28 U.S.C. § 1447(c), the state court could only proceed with this case after the clerk in the District Court took the appropriate action to remand the case. Additionally, plaintiff claims that the District Court did not take any such action until April 4, 2011 when the physical case file was received in State Court.

28 U.S.C. § 1447(c) states, in relevant part, that "[a] certified copy of the order of remand shall be mailed by the clerk to the clerk of the State court. The State court may thereupon proceed with such case." 28 U.S.C. § 1446(d) states that "[p]romptly after the filing of such notice of removal of a civil action the defendant or defendants shall give written notice thereof to all adverse parties and shall file a copy of the notice with the clerk of such State court, which shall effect the removal and the State court shall proceed no further unless and until the case is remanded." Removal of a proceeding from state court "stays any further action in the state court until further orders from the district court." *Wood v. De Weese*, 305 F.Supp. 939, 941 (W.D. Ky. 1969). A stay of the state court proceedings remains in effect "until a determination on the merits of the petition for removal is made in federal court." *Medrano v.*

State of Texas, 580 F.2d 803, 804 (5th Cir. 1978). On March 22, 2011, the District Court made a determination on the merits of the removal petition and ordered the case be remanded. As such, the State Court had jurisdiction over this proceeding at the time defendants' motion was served and then filed.

It is clear from the foregoing papers that plaintiff released defendants from the claims in this proceeding. On March 27, 2009, plaintiff signed an unambiguous release, with advice from counsel, agreeing, in relevant part, to release defendant Caron and its attorney "from any and all claims...[plaintiff] had, now has, or claims to have had, or may hereafter have against [defendant Caron and its attorney] from the beginning of the world to the date of these presents, including without limitation any and all claims asserted in, relating to, arising out of, or that could have been asserted in the Action." The Release bars, not only claims plaintiff knew about and asserted, but also any other claims plaintiff did not know about or could have asserted prior to signing the Release. "Plaintiff is barred from bringing claims against defendants based on defendants' actions prior to the signing of the release." *Shub v. Westchester Community College*, 556 F. Supp2d 227, 242 (SDNY 2008).

Defendants' motion to dismiss the plaintiff's complaint in this matter pursuant to CPLR 3211(a)(1), (5), and (7) is hereby granted as the submitted papers show that this matter was previously settled between the two parties in the 2008 Proceeding and plaintiff has released defendants from all claims through March 27, 2009, the date plaintiff signed the Release. Specifically, the General Release signed by Plaintiff and the Stipulation Discontinuing Action with prejudice signed by plaintiff's attorney unambiguously reflect plaintiff's intention to settle the claims for \$10,000.00.

As such, it is

ORDERED that defendant's motion to dismiss is granted; it is further

ORDERED that within 30 days of entry, defendant shall serve a copy of this decision/order upon plaintiff with notice of entry.

This constitutes the decision/order of the Court.

Dated: 6/7/11


DORIS LING-COHAN, J.S.C.

Check one: FINAL DISPOSITION
Check if Appropriate: DO NOT POST

NON-FINAL DISPOSITION

J:\Dismiss\Megibow MD v Caron.org - release, documentary evidence, failure to state a cause of action.wpd

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