

Yu Yun Dong v Ruiz

2011 NY Slip Op 31590(U)

June 10, 2011

Sup Ct, NY County

Docket Number: 109135/2009

Judge: Alice Schlesinger

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

ALICE SCHLESINGER

IA PART 16
PART _____

Index Number : 109135/2009

CHEN, DANNY

vs

RUIZ, REGINALD

Sequence Number : 002

DISMISS

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

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

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion *to dismiss*
by defendant *St. Vincent's Medical Center*
is denied in accordance with the
accompanying memorandum decision.

FILED

JUN 14 2011

NEW YORK
COUNTY CLERK'S OFFICE

Dated: June 10, 2011

Alice Schlesinger
ALICE SCHLESINGER J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

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

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

-----X

YU YUN DONG, as mother and natural guardian of
DANNY CHEN, an infant,

Plaintiff,

Index No. 109135/2009
Motion Seq. No. 002

-against-

REGINALD RUIZ, M.D., DANIEL CLEMENT, M.D.,
DANIEL ROSHAN, M.D., MARY MARRON-CORWIN,
WALTER VON PECHMAN, M.D., EILEEN CASSIDY,
M.D., ALEXANDER MAATVEEVSKI, M.D., RICHELLE
GASKIN, M.D., TINA LUNG, M.D., BETSY ARNALD,
LEAHY, C.N.M., and ST. VINCENT'S CATHOLIC
MEDICAL CENTERS,

Defendants.

FILED

JUN 14 2011

NEW YORK
COUNTY CLERK'S OFFICE

-----X

SCHLESINGER, J.:

Defendant Saint Vincent Catholic Medical Centers of New York (St. Vincent's) has moved to dismiss this medical malpractice action as against it pursuant to CPLR §3211(a)(5) and (7) on the ground that plaintiff's claims are barred due to discharge in bankruptcy. Plaintiff vigorously opposes, asserting that the claims were properly preserved pursuant to a Stipulation and Order dated February 16, 2011 and approved by United States Bankruptcy Judge Cecelia G. Morris. Defendants Dr. Roshan and Dr. Shaw argue that, regardless of the disposition of plaintiff's claim, their right to seek contribution from St. Vincent's has not yet accrued and therefore cannot be barred. In reply, St. Vincent's contends that plaintiff's claims were barred before the Stipulation and Order was issued and that the Stipulation does not prevent St. Vincent's from asserting the defense of a discharge of the claim in bankruptcy.

Background Facts

In this action, plaintiff claims that St. Vincent's departed from good and accepted standards of care in connection with the birth of Danny Chen on August 21, 1999 at the

hospital. Plaintiff timely commenced this action in June 2009, taking advantage of the ten-year infancy toll.

In the interim, on or about July 5, 2003, St. Vincent's filed for Chapter 11 bankruptcy protection. As part of that process, the Bankruptcy Court issued an order dated January 25, 2006 establishing March 30, 2006 as the "Bar Date" for filing proofs of claim based on debts or liabilities asserted against St. Vincent's arising before July 5, 2005 (Exh G to moving papers). The Bar Date Order provides in relevant part that "any holder of a claim against the Debtor [St. Vincent's] who is required, but fails to file a proof of such claim in accordance with this Order on or before the Bar Date shall be forever barred, estopped and enjoined from asserting such claim against Debtors" There is no dispute that the plaintiff here did not file a proof of claim before the Bar Date in the first bankruptcy action. On July 27, 2007 the Bankruptcy Court confirmed St. Vincent's First Amended Chapter 11 Plans of Reorganization and Liquidation.

On or about April 14, 2010, a few months after the instant motion was filed, St. Vincent's filed for Chapter 11 bankruptcy a second time. This motion and this action as a whole were automatically stayed pursuant to Bankruptcy Code §362(a). Plaintiff thereafter moved for relief from the automatic stay. United States Bankruptcy Judge Cecelia G. Morris approved a Stipulation and Order dated February 16, 2011 that is, in the opinion of this Court, the key to the resolution of this motion.

The Stipulation, attached as Exhibit C to plaintiff's opposition papers, was entered into by Morelli Ratner PC, counsel for the plaintiff herein, and Kramer Levin Naftalis & Frankel LLP as counsel for St. Vincent's in the bankruptcy proceeding. The Stipulation refers to the plaintiff in this action Yu Yun Dong and indicates that the

plaintiff — referred to as the Claimant in the bankruptcy case — sought to vacate the automatic stay for the express purpose of permitting the adjudication of the instant medical malpractice action. The parties then agreed to the following relief as relevant here: (1) to vacate the automatic stay of this malpractice action resulting from the bankruptcy filing; (2) to limit the Claimant's recovery in the malpractice action to St. Vincent's insurance coverage; (3) that the insurance company, rather than St. Vincent's Estate, will have the duty to defend the hospital.

Discussion

Plaintiff asserts that the Stipulation compels the denial of the defendant's motion in that it constitutes proof that plaintiff timely filed a notice of claim under St. Vincent's second bankruptcy petition. Defendant disagrees, arguing in its Reply (at ¶13) that the Stipulation "contains no reference whatsoever to plaintiff's notice of claim or proof of claim." Defense counsel insists that the plaintiff's failure to file a proof of claim in St. Vincent's first bankruptcy resulted in a bar of the medical malpractice claim and that the Stipulation "does not limit or impair in any way the affirmative defenses available to St. Vincent's" based on that bar.

This Court rejects defendant's argument, as to accept it would render wholly meaningless the Stipulation and Order approved by Judge Morris. Contrary to defendant's argument, the Stipulation directly refers to the plaintiff's claims in the instant malpractice action and lifts the automatic stay resulting from the bankruptcy for the express purpose of allowing the litigation to proceed. Had St. Vincent's bankruptcy counsel or Judge Morris concluded that the action was barred by the Claimant's failure to file a proof of claim in the first bankruptcy proceeding, or had either recognized that

an issue existed in that regard, the Stipulation would have so indicated. Instead, and quite the contrary, the Stipulation clearly and unequivocally indicates that the Claimant can proceed with the litigation of her malpractice claims against St. Vincent's, so long as any recovery is limited to the insurance policy rather than the Debtor's estate. Nothing of any nature is included to the Stipulation to suggest that St. Vincent's was preserving its affirmative defense that this malpractice action is barred by plaintiff's failure to file a proof of claim in the first bankruptcy proceeding.

Accordingly, it is hereby

ORDERED that the motion to dismiss by defendant Saint Vincent Catholic Medical Centers of New York s/h/a St. Vincent's Catholic Medical Centers is in all respects denied.

This decision constitutes the order of the Court.

Dated: June 10, 2011

JUN 10 2011



J.S.C.
ALICE SCHLESINGER

FILED

JUN 14 2011

**NEW YORK
COUNTY CLERK'S OFFICE**