

Mott v Nassau Univ. Med. Ctr.

2011 NY Slip Op 32539(U)

September 16, 2011

Sup Ct, Nassau County

Docket Number: 600052/11

Judge: Anthony L. Parga

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SHORT FORM ORDER

**SUPREME COURT-NEW YORK STATE-NASSAU COUNTY
PRESENT:**

HON. ANTHONY L. PARGA
JUSTICE

-----X PART 8
LINDA MOTT,

Plaintiff,

-against-

INDEX NO.: 600052/11

MOTION DATE: 07/22/11

SEQUENCE NO. 001

NASSAU UNIVERSITY MEDICAL CENTER,
NASSAU HEALTH CARE CORPORATION,
and THERESA KEATING,

Defendants,

-----X

Notice of Motion, Affs & Exs.....	<u>1</u>
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Upon the foregoing papers, the defendants’ pre-answer motion for an order dismissing plaintiff’s complaint, pursuant to CPLR 3211(a)(5) and (7), is denied without prejudice to move for summary judgment at the conclusion of discovery.

The following facts are taken from pleadings and submitted papers and do not constitute findings of fact by this Court.

This is an action brought by plaintiff to recover damages relating to an alleged breach of fiduciary duty of confidentiality by the defendants. Plaintiff was employed by defendants Nassau University Medical Center and Nassau Health Care Corporation (hereinafter collectively referred to as “the Nassau defendants”) and worked in their patient billing department located at 2201 Hempstead Turnpike, 1st Floor, East Meadow, New York. Plaintiff was directly supervised by defendant Theresa Keating, the supervisor for Patient Accounts. While still employed by the Nassau defendants, plaintiff also became a patient of the Nassau defendants and underwent a surgical breast lift at their facility on September 17, 2009. Plaintiff alleges that defendant

Keating expressly divulged confidential, private, and embarrassing information related to plaintiff's surgery to her co-workers and, as a result, said co-workers ridiculed her, embarrassed her, and stared at her chest.

Defendants move to dismiss the plaintiff's complaint on the grounds that she fails to state a cause of action and that her claims are barred by collateral estoppel. They argue that plaintiff fails to state a claim under the various laws cited in her complaint, that she fails to state a cause of action for breach of confidentiality, and that her claims are barred by collateral estoppel because she previously filed a complaint with the U.S. Department of Health and Human Services, Office of Civil Rights (hereinafter "OCR"), the federal agency responsible for enforcing the HIPAA privacy rule.

Defendants argue that on or about November 9, 2009, plaintiff filed a claim with OCR in which she alleged that on October 13, 2009, a Nassau University Medical Center employee accessed her self-pay billing account and made adjustments to two invoices on her account. OCR investigated and, on August 23, 2010, determined that "the identified employee's position required her to regularly access, review and make modifications/adjustments to patient billing information for any patient that is considered self-pay to prevent bills from being inadvertently generated to the patient's health plan" and that "the supervisor/identified employee was acting within the scope of her employment when she accessed and adjusted complainant's account." Five months after OCS dismissed her complaint, the plaintiff brought the within action. Defendants contend that the doctrine of collateral estoppel precludes the plaintiff from bringing the within action.

To begin, the proponent of collateral estoppel has the burden of demonstrating that the issue was identical and necessarily decided in the first action, whereas the opposing party has the burden of establishing that there was no full and fair opportunity to litigate the matter in the prior action. (*Kaufman v. Eli Lilly & Co.*, 65 N.Y.2d 449, 492 N.Y.S.2d 584 (1985)). In her opposition, the plaintiff contends that OCR reviewed plaintiff's complaint in the context of a HIPAA violation only, with the issue being whether defendant Keating had a right as an employee to access plaintiff's records. Plaintiff contends that OCR did not, however, determine or address the issue of whether after accessing such records, defendant Keating divulged the plaintiff's confidential medical information to plaintiff's fellow employees and/or whether defendant Keating had a right or reason to divulge said information. Plaintiff claims that said

undetermined issues are the basis for her complaint herein. The issue reviewed by OCR was whether under Federal administrative law, defendant Keating was acting within the scope of her employment when she accessed the plaintiff's records. As such, plaintiff argues that collateral estoppel does not apply since the issues litigated are not identical.

As OCR never addressed the issue of whether defendant Keating, an employee of the Nassau defendants, breached a fiduciary duty of confidentiality by disclosing some of the information contained in the records that OCR determined she was entitled to access, collateral estoppel does not apply to bar the instant action. (*See generally, Mahler v. Campagna*, 60 A.D.3d 1009, 786 N.Y.S.2d 143 (2d Dept. 2009), *Schwartz v. Public Adm'r of County of Bronx*, 24 N.Y.2d 65, 298 N.Y.S.2d 955 (1969)).

Defendants further contend that plaintiff's complaint fails to state a cause of action. Defendants contend that although plaintiff cites a "host of statutes and regulations touching upon the confidentiality of patient records," a statutory right of action does not exist herein. Defendants also contend that plaintiff's complaint fails to allege with sufficient particularity the circumstances consisting of the defendants' breach of fiduciary duty. The plaintiff does, however, allege within her complaint that defendant Keating revealed details about her surgery to her co-workers which allegedly led to ridicule and embarrassment. While the plaintiff concedes that the statutes cited within her complaint, including those falling under HIPAA, do not provide her with a private cause of action, she contends that she does have a cause of action against the defendants for a common law breach of fiduciary duty of confidentiality and for a breach of their fiduciary responsibility to the plaintiff arising from the doctor-patient relationship.

The Courts have upheld causes of action for breach of common law duty of confidentiality and violations of fiduciary responsibility implicit in, and essential to, the doctor-patient relationship. (*See generally, Harley v. Druzba*, 169 A.D.2d 1001, 565 N.Y.S.2d 278 (3d Dept. 1991); *Randi A.J. v. Long Island Surgi-Center*, 46 A.D.3d 74, 842 N.Y.S.2d 558 (2d Dept. 2007) *Tighe v. Ginsberg*, 146 A.D.2d 268, 540 N.Y.S.2d 99 (4th Dept. 1989); *MacDonald v. Clinger*, 84 A.D.2d 482, 446 N.Y.S.2d 801 (4th Dept. 1982)). The "duty not to disclose confidential personal information springs from the implied covenant of trust and confidence that is inherent in the physician patient relationship, the breach of which is actionable as a tort." (*Doe v. Community Health Plan-Kaiser Corp.*, 268 A.D.2d 183, 709 N.Y.S.2d 215 (3d Dept. 2000)).

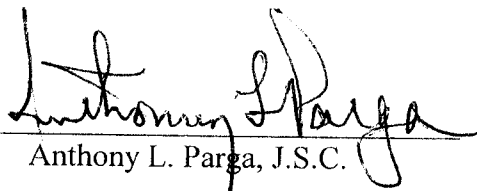
In considering a motion to dismiss for failure to state a cause of action, the court must “afford the pleadings a liberal construction, take the allegations of the complaint as true and provide plaintiff the benefit of every possible inference.” (*Brooks v. Key Trust Co. Nat’l. Ass’n*, 26 A.D.3d 628 (3d Dept. 2006), quoting, *EBC I, Inc. v. Goldman, Sachs & Co.*, 5 N.Y.3d 11 (2005)). In doing so, the Court determines only whether the facts as alleged fit within any cognizable legal theory. (*Id.*, quoting, *Leon v. Martinez*, 84 N.Y.2d 83, 683 N.E.2d 511 (1994)); see also, *Khoury v. Khoury*, 78 A.D.3d 903, 912 N.Y.S.2d 235 (2d Dept. 2010), citing, *Gougenheim v. Ginzberg*, 43 N.Y.2d 268, 372 N.E.2d 17 (1977)). However imperfectly, informally, or even illogically the facts may be stated, a complaint, attacked for insufficiency, is deemed to allege whatever can be implied from its statements by fair and reasonable intendment. (*Condon v. Associated Hosp. Serv.*, 287 N.Y. 411, 40 N.E.2d 230 (1942)). Whether the plaintiff can ultimately establish her allegations is not part of the calculus in determining a motion to dismiss. (*EBC I, Inc. v. Goldman, Sachs & Co.*, 5 N.Y.3d 11 (2005); see also, *Sokol v. Leder*, 74 A.D.3d 1180, 904 N.Y.S.2d 153 (2d Dept. 2010)). Construing plaintiff’s allegations as true, plaintiff’s complaint sufficiently states a cause of action for breach of the fiduciary duty of confidentiality.

Accordingly, defendants’ pre-answer notice to dismiss is denied without prejudice to move for summary judgment upon the completion of discovery. Defendants may serve an answer to the plaintiff’s complaint within thirty (30) days.

It is further hereby ordered that all parties shall appear for a Preliminary Conference on **November 17, 2011** at 9:30 A.M. in the Differentiated Case Management Part (“DCM”), Nassau County Supreme Court, 100 Supreme Court Drive, Mineola, NY, to schedule all discovery proceedings. Plaintiff is directed to serve a copy of this order upon the DCM Case Coordinator of the Nassau County Supreme Court within fifteen (15) days of the date of this Order.

This constitutes the decision and Order of this Court.

Dated: September 16, 2011


Anthony L. Parga, J.S.C.

ENTERED

SEP 23 2011

**NASSAU COUNTY
COUNTY CLERK'S OFFICE**

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