

Wang v Lee
2013 NY Slip Op 33345(U)
April 10, 2013
Sup Ct, New York County
Docket Number: 805053/12
Judge: Alice Schlesinger
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.
This opinion is uncorrected and not selected for official publication.

NEW YORK COUNTY

PRESENT: ALICE SCHLESINGER

IA PART 16 PART

Justice

Index Number : 805053/2012
WANG, MINNA
vs.
LEE, HARRISON H.
SEQUENCE NUMBER : 003
AMEND

INDEX NO.
MOTION DATE
MOTION SEQ. NO.

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

Notice of Motion/Order to Show Cause - Affidavits - Exhibits No(s).

Answering Affidavits - Exhibits No(s).

Replying Affidavits No(s).

Upon the foregoing papers, it is ordered that this motion to amend is

denied and the action is dismissed in accordance with the accompanying memorandum decision.

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

Dated: APR 10 2013

Alice Schlesinger, J.S.C.

ALICE SCHLESINGER

- 1. CHECK ONE: CASE DISPOSED
2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 16

-----X
MINNA WANG,

Plaintiff,

Index No.805053/12
Mot Seq 003

-against -

HARRISON H. LEE, VYACHESLAV FATTAKHOV,
BEVERLY HILLS MEDICAL CENTER FOR
COSMETIC SURGERY, INC., LEXINGTON PLASTIC
SURGEONS, JOHN DOE, JANE DOE, fictitiously
named parties, true name(s) Unknown, and COMPANY
ABC, COMPANY XYZ, Fictitiously named entities,
true name(s) unknown,

Defendants.

-----X
SCHLESINGER, J.:

On this day, April 10, 2013, pursuant to the tortured history of this relatively recent case wherein nothing of substance occurred during the discovery process, and pursuant to an April 9, 2012 letter sent to me by the plaintiff Minna Wang (translated from Mandarin to English) wherein for reasons related to her inability to retain an expert physician, she confirmed that she wished to discontinue this medical malpractice action, I am granting motions filed by the various defendants to dismiss the complaint based on plaintiff's noncompliance with discovery demands and plaintiff's expressed intent not to proceed with this action (seq. Nos. 004 and 005).

However, since it appears there is still one motion extant, one filed on plaintiff's behalf by Heng Wang, Esq. while he was still representing Ms. Wang, I am electing to now deny that motion and also take the opportunity to comment on the actions of Mr. Wang.

The instant motion seeks leave to file a Third Amended Complaint. The original Complaint was filed on or about April 10, 2012, and a Second Amended Complaint was

filed on or about April 26, 2012; a motion was made in August 2012 to file a Third Amended Complaint but was withdrawn in September after defense counsel noted in opposition that the motion was defective. The instant motion is the second attempt to obtain leave to file a Third Amended Complaint, which seeks to add more detailed causes of action that sound in medical malpractice and breach of contract. However, as pointed out in opposition by counsel for the defendants, this motion lacks any proper evidentiary proof as to either cause of action. The movant, therefore, has been unable to show that the desired amendments have any merit as required by CPLR §3025. Accordingly, the motion is denied.

However, there is more to say, and in that regard I am forwarding a copy of this decision to the Departmental Disciplinary Committee of the Appellate Division, First Judicial Department, for any action that Committee believes is warranted.

I said earlier that Attorney Wang made the motion to amend while he was still representing Ms. Wang. However, on February 8, 2013, upon the request of this attorney based primarily on outstanding attorney's fees, and with the agreement of the plaintiff, Mr. Wang was relieved as counsel. I said in that short decision that:

The relationship between client and lawyer has totally broken down. Much, if not all, of this can be attributed to outgoing counsel, who is also responsible for virtually all of the failures of discovery and failures in following court orders.

Thereafter, Ms. Wang contacted other counsel, who while not agreeing to represent her at that time, was willing to review her case and advise her. At the conference with that counsel, defense counsel, and Mr. Wang present, a disturbing matter came to light. Since the plaintiff lived in New Jersey, defense counsel had earlier moved, pursuant to CPLR

§8501(a), to require Ms. Wang to post security for costs. On November 5, 2012, this Court granted that motion and directed that such security in the amount of \$500 be deposited with the Clerk of the Court.

What came to light at the early February conference, when I had inquired as to why there had not yet been compliance with this directive, was that although Ms. Wang had given Mr. Wang the \$500 for the security to be paid, Attorney Wang had not used the money for that purpose but rather had applied it to his fee.

Based on the above circumstances, as well as other information revealed at this conference which indicated that Attorney Wang had not accepted this personal injury case on a contingency fee basis but instead had billed tens of thousands of dollars at an hourly rate, I instructed outgoing Attorney Wang to submit a letter to me outlining what moneys he had been paid by Ms. Wang and what services he had provided.

On February 7, 2013, Mr. Wang hand delivered a letter to the Court wherein he indicated that he had received \$22,419.40 from Ms. Wang "to cover fees and expenses." No hourly rates were included in the letter, which consisted of a narrative prepared by Mr. Wang rather than actual billing records. Of the 31 items listed as services, many, if not most, concerned "drafting" letters, responses and motions or involved "reviewing" and "researching" issues. All of those efforts concerned straightforward, routine matters involved in initiating a medical malpractice case. All of them dealt with discovery, which he was finding hard to provide. Additionally, as noted above, the Complaint had been written and re-written multiple times.

However, very little had been done to advance the case. Additionally, no certificate of merit had been filed, though one had been repeatedly requested by the defense, and

no depositions had occurred. Even Ms. Wang had not yet been deposed so that her attorney had never spent any time either defending or questioning at a deposition.

I believed then, and I continue to believe now, that the plaintiff, who is predominantly fluent in Chinese, not English, was taken advantage of by someone who, it appears, had very little, if any, experience in medical malpractice cases. I believe Ms. Wang was not served well by this attorney.

Accordingly, it is hereby

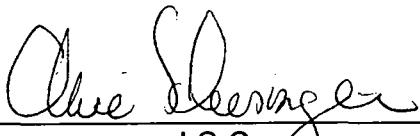
ORDERED that plaintiff's motion for leave to file a Third Amended Complaint is denied, and this proceeding is dismissed based on plaintiff's noncompliance with discovery orders and her expressed desire not to proceed with this action; and it is further

ORDERED that this decision shall be forwarded to the Departmental Disciplinary Committee for any action it may deem appropriate.

The Clerk is directed to enter judgment in favor of the defendants dismissing this action.

Dated: April 10, 2013

APR 10 2013



J.S.C.
ALICE SCHLESINGER