

Brad H. v City of New York

2014 NY Slip Op 33585(U)

September 19, 2014

Supreme Court, New York County

Docket Number: 117882/99

Judge: Geoffrey D. Wright

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This opinion is uncorrected and not selected for official publication.

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

BRAD H., *et al.*,

Plaintiffs,

- against -

The CITY OF NEW YORK, *et al.*,

Defendants.

Index No. 117882/99

IAS Part 62

Wright, J.

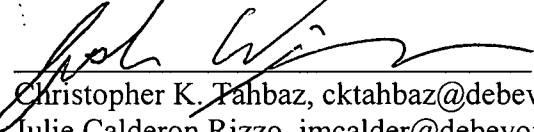
**NOTICE OF ENTRY OF
ORDER**

PLEASE TAKE NOTICE that annexed hereto is a true and correct copy of a Decision issued by the Supreme Court, New York County, dated September 19, 2014, and entered in the office of the Clerk of New York County on September 22, 2014, granting in part the Defendants' Motion to Renew and Reargue the decision by the Supreme Court, New York County, dated April 15, 2014 and entered on April 19, 2014.

Dated: New York, New York
October 21, 2014

Respectfully Submitted,
DEBEVOISE & PLIMPTON LLP

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COUNTY CLERKS OFFICE
NEW YORK

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK PART 47

-----X
BRAD H., *et al.*,

Plaintiffs,

Index # 117882/99

-against-

DECISION

The CITY OF NEW YORK, *et al.*,
Defendants.

Present:
Hon. Geoffrey D. Wright

-----X Acting Justice Supreme Court

RECITATION, AS REQUIRED BY CPLR 2219(A), of the papers considered in the review of this Motion/Order to Reargue.

PAPERS	NUMBERED
Notice of Motion and Affidavits Annexed.....	<u>1</u>
Order to Show Cause and Affidavits Annexed	<u> </u>
Answering Affidavits.....	<u>2</u>
Replying Affidavits.....	<u>3</u>
Other.....Memoranda.....	<u>4,5</u>
Report of Compliance Monitors.....	<u>6</u>

Upon the foregoing cited papers, the Decision/Order on this Motion to Renew is as follows:

Defendants The City of New York, *et al.* move, pursuant to CPLR 2221 (d) and (e), to reargue and renew this court's April 18, 2014 decision in this matter. Specifically, defendants challenge the decretal provisions which order defendants, respectively, to (1) "make the necessary administrative changes to fully staff all clinical and non-clinical discharge positions"; (2) "reorganize the provision of discharge planning services to eliminate the fragmented dichotomy between clinical and discharge planning positions; and (3) implement an improved, transparent quality assurance system more capable of identifying, reporting on, and ultimately reducing the complained of error rate of defendants' reporting." Decision at 5-6.

As defendants acknowledge, “[i]t is elementary that an application for leave to renew must be based upon additional material facts which existed at the time the prior motion was made, but were not then known to the party seeking leave to renew.” Dantowitz affirmation at 5, citing *Matter of Holad v Motor Veh. Acc. Indem. Corp.*, 53 Misc.2d 952, 953 (Sup Ct, Kings County 1967) and *Foley v Roche*, 68 AD2d 558, 5680 (1st Dept 1979). Yet, much of defendants’ motion to renew is based upon facts that did not exist at the time that the prior motion was made. See Dantowitz affirmation, ¶¶ 24 and 27; Venters affidavit (5/23/14) at 5 (referring to salary increases in January 2014 and the creation of a new promotional title). Accordingly, that branch of defendants’ motion that seeks renewal is being denied.

Defendants purport to believe that the first of the decretal provisions that they challenge, “appears to apply to *all* of [the New York City Department of Health and Mental Hygiene]’s clinical positions”. Dantowitz affirmation ¶ 29. As defendants know full well, this case is, and since 1999 has been, solely about defendants’ obligation to provide discharge planning to mentally ill persons incarcerated in the City jails. In any event, in the decretal paragraph pertaining to staffing, the words “clinical” and “non-clinical” both modify the phrase “discharge positions,” and cannot be taken, as defendants appear to fear, to refer to the provision of dental care.

Defendants explain that recruiting and retaining discharge planners is challenging because the client population is unpopular and Rikers Island is not a desirable work location. Venters affidavit (5/23/14) at 4. Dr. Venters also states in his affidavit that he anticipates that two social workers will commence work in a matter of weeks, and that the administrative process to hire three more social workers had been started. Defendants’ current efforts to fill discharge planning

positions is commendable, but I note that, at the time of Dr. Venters's recent affidavit, 9.35% of the discharge planning positions were unfilled, essentially unchanged from the 9.4% rate of unfilled positions at the time of his November 10, 2011 affidavit. Defendants committed themselves to provide discharge planning, and they determined the level of staffing that would be needed to provide that service. It hardly goes beyond enforcing the terms of the Settlement to require defendants to fully staff the positions that they have created, rather than allowing them to have an almost 10% rate of unfilled positions.

With regard to the second decretal paragraph that defendants challenge, defendants have a point. It was not my intention to require that the same personnel provide clinical services and discharge planning to the members of the class. Accordingly, I am changing that provision to require that discharge planning staff be an integral part of the mental health treatment team from the beginning or, in the case of the provision of emergency care, as soon as possible after the beginning of the assessment of a class member's need for mental health treatment.

Defendants' challenge to the order requiring them to improve their quality assurance system is that the order is overbroad. Defendants readily acknowledge that there have been problems with defendant Department of Health and Mental Hygiene's (DOH) MIS computer system, but they contend that plaintiffs' complaints about defendant Human Resources Administration (HRA) are flawed, and that there are no complaints against the remaining defendants. Defendants' explanation of why HRA's data is necessarily discrepant from the data submitted by DOH is not admissible on a motion for leave to reargue, which "shall not include any matters of fact not offered on the prior motion." CPLR 2221 (d)(2) As for the remaining defendants, to the extent that there is no "complained of error rate" in their data reports, they do

not come within the terms of the order.

Accordingly, it is hereby

ORDERED that that branch of defendants' motion that seeks renewal is denied; and it is further

ORDERED that that branch of the motion that seeks leave to reargue is granted to the extent that reargument is granted as to the sixth decretal paragraph of this court's April 18, 2014 decision and upon reargument the sixth decretal paragraph of this court's April 18, 2014 decision is vacated; and it is further

ORDERED that the Defendants reorganize the provision of discharge planning services to ensure that discharge planning staff be an integral part of the mental health treatment team from the beginning or, in the case of the provision of emergency care, as soon as possible after the beginning, of the assessment of a class member's need for mental health treatment.

Dated: 9/19/14

ENTER:


GEOFFREY D. WRIGHT
AJSC

J.S.C.

ORIGINAL

Index No. 117882/99

IAS Part 62 (Justice Wright)

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

BRAD H., *et al.*,

Plaintiffs,

-against-

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