

Pieter v Polin
2014 NY Slip Op 33863(U)
June 2, 2014
Supreme Court, Queens County
Docket Number: 5216/10
Judge: Peter J. O'Donoghue
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Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: Honorable, PETER J. O'DONOGHUE IAS PART MD
Justice

Angela Pieter,

Plaintiff,

Index No.: 5216/10

Motion Date: 05/14/14

-against-

Nichole M. Polin, et. al.,

Motion Seq. No.: 003

Defendants.

The following papers numbered 1 to 14 read on this O.S.C. by plaintiff for an order restraining defendants as well as their attorneys and legal representatives from (1) acting in accordance with the Stipulation of Discontinuance; (2) staying this action for the pendency and decision on this current Order to Show Cause, until entry of the said decision; (3) vacating the Stipulation of Discontinuance fraudulently obtained; and cross-motion by former counsel for plaintiff, Pulvers, Pulvers & Thompson, LLP for an order (1) denying Plaintiff's Order to Show Cause in its entirety; (2) awarding cost to your affirmant; (3) imposing sanctions against plaintiff's current counsel Ilana Vale, Esq.; and (4) filing a grievance with the First Judicial Dept. against Ilana Vale, Esq.

PAPERS
NUMBERED

O.S.C.-Affidavits-Exhibits	1-3
Notice of Cross Motion-Affidavits-Exhibits.	7-10
Answering Affidavits-Exhibits.....	4-6; 11-13
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Upon the foregoing papers it is ordered that the O.S.C. by plaintiff for an order restraining defendants as well as their attorneys and legal representatives from (1) acting in accordance with the Stipulation of Discontinuance; (2) staying this action for the pendency and decision on this current Order to Show

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Cause, until entry of the said decision; (3) vacating the Stipulation of Discontinuance fraudulently obtained is decided as follows:

This case was originally scheduled for trial on January 14, 2013. At that time the plaintiff Angela Pieter was represented by the law firm of Pulvers, Pulvers & Thompson. The trial was adjourned to March 11, 2013, April 3, 2013 and April 10, 2013. On April 10, 2013 plaintiff's counsel's Order to Show Cause to be relieved as counsel was submitted for decision and Order. An Order dated April 18, 2013 was issued by this Court granting the motion and relieving the law firm of Pulvers, Pulvers & Thompson LLP as counsel for Angela Pieter and ordering the retaining of a lien on the file pending payment of all disbursements and for legal services rendered. A subsequent Order dated July 24, 2013 was issued modifying the order to require that disbursements be paid in full to the Pulvers firm upon turning over the file to incoming counsel, which is the Law Office of Ilana Vale. A conference was held on July 10, 2013 at which time plaintiff's new counsel and defense counsel appeared and signed a stipulation setting forth 3101(d) expert exchange dates and a trial date of October 15, 2103. On October 15, 2013 the case was adjourned for a settlement conference to December 3, 2013. The case did not settle and a final trial date was set for January 7, 2014. There was an application by defense counsel for an adjournment which was granted to March 5, 2014. The case was marked "settle or select no excuses" on March 5, 2014. At this point, plaintiff's counsel was advised that there were no subpoenaed records in this building and she was advised to subpoena all relevant records forthwith.

Subsequently during jury selection, plaintiff's counsel informed defense counsel, in the presence of the Court, that she had subpoenaed records in early April. An application to adjourn by plaintiff's counsel was again granted to April 7, 2014 and marked "settle or pick-no excuses" On April 7, 2014 plaintiff's counsel Ilana Vale requested an adjournment representing to the Court that a family member was having a stent implanted. One last and final adjournment of the trial was granted to April 14, 2014 based on this representation. On April 10, 2014 counsel for plaintiff and defendant appeared on an emergency basis with an Order to Show Cause to be signed and placed upon this Court's motion calendar, prepared by plaintiff's counsel seeking an Order restraining defendants and their attorneys from acting in accordance with the Stipulation of Discontinuance of the action against Edmond Herrold executed May 23, 2012 between Marc Thompson, plaintiff's former counsel and Dana Palmieri counsel for all defendants and staying the trial pending a decision on

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this Order to Show Cause. Defendants opposed the application for the TRO.

The within application to stay the trial and vacate the stipulation of discontinuance is denied in its entirety for the following reasons:

A hearing was held on May 14, 2014 at which time the Court heard the testimony of plaintiff Angela Pieter. The Court also reviewed the Order to Show Cause papers to be relieved as counsel submitted by Marc Thompson. Mr. Thompson sets forth with specificity the following facts:

Paragraph 6

the original experts consulted could no longer support their original opinions in light of "new information" and additional medical records obtained during discovery

Paragraph 6-7

an additional expert review was obtained with a negative result

Paragraph 7

A \$75,000.00 offer was obtained

Paragraph 8

Plaintiff rejected the offer. Mr. Thompson and an associate met with plaintiff (numerous lengthy in-person meetings) and explained the situation.

Plaintiff Angela Pieter submitted an "Affirmation in Opposition" acknowledging that her attorney advised of a \$75,000.00 settlement offer and her response was "the sum was not an accurate reflection of her injuries in this action". Ms. Pieter also objected to the quality of representation and asked the Court to disallow a lien unless she was awarded money. As previously stated, the Pulver firm was relived as Counsel.

In the Order to Show Cause papers the Court notes that Exhibit A is labeled an "Affidavit in Support of Order to Show Cause and Temporary Restraining Order" signed by Angela Pieter on April 8, 2014 and notarized by plaintiff's counsel on April 8, 2013 which is clearly a typographical error and should be 2014. The Court is disturbed by the fact that an adjournment of the

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April 7 trial was granted because of Ms. Vale's representation of a family emergency yet three(3) days later an Emergency O.S.C. was presented to the Court for the first time seeking to vacate the stipulation of discontinuance and stay the trial. Ms. Vale first appeared before this court as plaintiff's counsel in July 2013 and exchanged expert information on August 12, 2013 & December 7, 2013. Certainly by December 7, 2013 Ms. Vale should have known if her experts' opinions included allegations of liability on the part of Edmond Herrold, the defendant who was stipulated out of the case. The Court would have expected this O.S.C. to have been brought sooner.

Turning now to plaintiff's testimony, the Court finds that plaintiff failed to introduce any evidence to support the allegation that attorneys Mr. Thompson and Mr. Watson colluded and/or fraudulently entered into a stipulation of discontinuance against Dr. Herrold.

With respect to plaintiff's allegation that Mr. Thompson never obtained her informed Consent to discontinue the action against Dr. Herrold, plaintiff's testimony was inconsistent with the written statement she made on pg 5, paragraph 22 of her notarized affidavit wherein she states "on or about May 12, 2012 when the deposition of Dr. Herrold was completed my former attorney contacted me over the telephone to tell me the following. We decided that you have no case against Dr. Herrold and we are letting him out of the case". I said, "Are you sure? To which my former attorney responded in the affirmative, "of course." At that point without the benefit of any further explanation I said "okay you are the expert." (Paragraph 23). "The entire conversation lasted less than five minutes and no other conversations took place prior to the dismissal. Actually, I never knew when the actual dismissal took place, but at that time I fully trusted my attorney and relied on his legal judgment and integrity."(paragraph 24). Conversely, plaintiff testified that the first time she was aware of the discontinuance was November 2012 (TR dated May 14, 2014 at p4, LL 2-7).

Finally, plaintiff testified that she maintained a diary wherein she would write down when she visited Mr. Thompson's office, the subject matter discussed and how long the conversation lasted (TR at p5, LL 16-17). She also testified that she only received calls from Mr. Thompson on her land line, never her cell phone (TR at p6, LL 13-23). Since plaintiff failed to produce her diary or phone records the Court has drawn a negative inference regarding the contents of said documents.

In conclusion, the Court reiterates its decision that

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plaintiff's O.S.C. is denied in its entirety.

The cross-motion by Mr. Thompson is granted to the extent that (a) Mr. Thompson shall submit to the court a Bill of Costs for the Court's review and determination within 30 days of service of a copy of the within Order with Notice of Entry upon all parties; an (b) the Court finds that plaintiff's counsel has engaged in delay tactics and admonishes counsel to refrain from any further delay tactics.

Dated: June 2, 2014

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/s/
Hon. Peter J. O'Donoghue, J.S.C.