

Gomez v Buena Vida Corp.

2015 NY Slip Op 32730(U)

February 26, 2015

Supreme Court, Kings County

Docket Number: 9274/09

Judge: Laura Lee Jacobson

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part 21 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Borough of Brooklyn, City and State of New York, on the 26th day of February 2015.

PRESENT:

HON. LAURA L. JACOBSON

Justice

JOSE A. GOMEZ, proposed Administrator of
JOSE GOMEZ RODRIGUEZ, and
JOSE A. GOMEZ, Individually,

Index No.: 9274/09

Plaintiffs,

-against-

BUENA VIDA CORPORATION, BUENA VIDA
NURSING HOME, BUENA VIDA CONTINUING
CARE AND REHABILITATION CENTER and
WYCKOFF HEIGHTS MEDICAL CENTER,

Defendants.

WYCKOFF HEIGHTS MEDICAL CENTER,

Third Party Index No.: 75154/13

Third-Party Plaintiff,

-against-

DEEPAK K. SETIA, M.D., KHAING MOE, M.D.,
REKHA BHANDARI, M.D., and GLENRIDGE
MEDICAL ASSOCIATES, P.C.,

Third-Party Defendants.

WYCKOFF HEIGHTS MEDICAL CENTER,

Second Third Party Index No.:75228/13

Third-Party Plaintiff,

-against-

AKELLA CHENDRASEKHAR, M.D., ADDAGADA
C.RAO, M.D. and A.C. RAO, M.D., P.C.,

Third-Party Defendants.

The following papers numbered 1 to 6 read on this motion	Papers Numbered
Notice of Motion - Order to Show Cause-Cross-Motion and Affidavits (Affirmations) Annexed _____	1-2 _____
Answering Affidavit (Affirmation) _____	3-6 _____
Reply Affidavit (Affirmation) _____	_____
_____ Affidavit (Affirmation) _____	_____
Pleadings-Exhibits _____	_____
Stipulations - Minutes _____	_____
Filed Papers _____	_____

In this personal injury action sounding in medical malpractice, plaintiff moves pursuant to CPLR §3025(b) for an order granting leave to amend the complaint to add a cause of action for negligent hiring, retention and supervision. Plaintiff alleges that defendants were negligent and committed malpractice in their care and treatment of plaintiff's decedent and their medical assessment and management of plaintiff's skin care and skin condition resulting in severe decubitus ulcers, sepsis, necrotizing fasciitis, necrotic epidermis and excisional debridements, ultimately leading to plaintiff's death on September 15, 2008.

Plaintiff commenced this action by service of a summons and complaint on April 27, 2011. On or about June 12, 2013, defendant Wyckoff Heights Medical Center (hereinafter "Wyckoff") served an answer and interposed cross-claims against third-party defendant Akella Chendrasekhar, M. D. Defendant Wyckoff commenced a third-party action on January 2, 2013. On April 10, 2013, defendant Wyckoff commenced a second-third party action against, among others, third-party defendant Chendrasekhar. By Order to Show Cause dated December 9, 2014, third-party defendant Chendrasekhar, M.D. moved to disqualify defendant Wyckoff's counsel, Arshak, Hajek & Lehrman, PLLC (hereinafter "Arshak"). Third-party defendant Chendrasekhar contends that there is a conflict of interest because Arshak represented him before the New York State Office of Professional Misconduct.

Plaintiff alleges that as a result of the Order to Show Cause, plaintiff learned for the first time, that third-party defendant Chendrasekhar had lost his license to practice medicine in several states and that at least six (6) patients had died under his care. Further, as a result, there are several lawsuits pending against third-party defendant Chendrasekhar. According to plaintiff, it appears that defendant Wyckoff hired third-party defendant Chendrasekhar without performing any background check and then retained him without supervision despite several allegations of negligence during his tenure at the hospital. Plaintiff contends that defendant Wyckoff and third-party defendant Chendrasekhar have been fully aware of these facts for years, and as such, defendant Wyckoff cannot demonstrate either prejudice or surprise as a result of the proposed amendment adding a cause of action for negligent hiring, retention and supervision.

Defendant Wyckoff argues that the claims to be added have nothing to do with the facts of the instant case. Defendant Wyckoff asserts that third-party defendant Chendrasekhar's prior disciplinary history deals solely with his ability to perform bariatric surgery in the State of Iowa and this case has nothing to do with bariatric surgery. Defendant Wyckoff further asserts that plaintiff's proposed negligent hiring claim is meritless because all of plaintiff's decedent's care performed by third-party defendant Chendrasekhar was in the course of his employment with third-party defendant Addagada Rao, M.D., P.C. Defendant Wyckoff claims that during the period that plaintiff received care, third-party defendant Chendrasekhar was only employed by Wyckoff in a teaching and administrative capacity. According to defendant Wyckoff, third-party defendant Chendrasekhar did not take part in the treatment of plaintiff's decedent as an employee of Wyckoff and as such, the negligent hiring claim does not apply to the hospital under the facts of this case. Defendant Wyckoff argues that plaintiff's negligent credentialing claims are meritless because third-party defendant Chendrasekhar's disciplinary history consists of mere allegations and that no state agency has ever determined that he negligently performed medical treatment. Defendant Wyckoff claims that settlements were entered in the disciplinary proceedings in Iowa and Ohio without a resolution on the merits. Defendant Wyckoff further asserts that after a full hearing, the New York State Board for Professional Medical Conduct dismissed all charges of professional misconduct against third-party defendant Chendrasekhar and granted him an unrestricted license to practice medicine in the State. Defendant Wyckoff argues that it was legally obligated to rely on the Board's determination. Moreover, defendant Wyckoff contends that at the time that it credentialed third-party defendant Chendrasekhar he was not named in any lawsuits. Defendant Wyckoff argues that it would be prejudiced by inclusion of such a meritless claim which would only serve to bias the jury. Defendant Wyckoff further claims that it will be prejudiced by the fact that plaintiff has been excessively late in bring this proposed amendment almost six (6) years after the case was commenced and almost two years after third-party defendant Chendrasekhar was impleaded into this case. Defendant Wyckoff contends that inclusion of the claims would also be highly prejudicial because plaintiff's proposed amendment alleges that Wyckoff was negligent in hiring third-party defendant Chendrasekhar as well as his agents and independent contractors, who are also parties to this action and some of whom have already been deposed.

Third-party defendants Deepak K. Settia, M.D., Khaing Moe, M.D., Rekha Bhandari, M.D. and Addagada C. Rao, M.D. and Rao, M.D., P.C (hereinafter collectively "Rao Third-Party Defendants") filed partial opposition to the motion. They contend that plaintiff's complaint is against Wyckoff and Buena Vida only and now plaintiff is seeking to add a cause of action against Wyckoff for negligent hiring of third-party defendant Chendrasekhar, only, based on recently received information regarding disciplinary proceedings against him. Third-party defendants Settia, Moe, Bhandari and the Rao

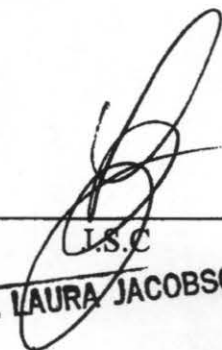
third-party defendants claim that any reference to “agents, independent contractors, doctors, nurses, medical staff, employees, or other individuals” improperly extends plaintiff’s new cause of action to individuals other than third-party defendant Chendrasekhar, and as such, any such language should be stricken. They further assert that it would be highly prejudicial to them to allow plaintiff to amend the complaint to include language that would allege negligent hiring, training and supervision against Wyckoff in relation to third-party defendants Settia, Moe, Bhandari and the Rao third-party defendants at this late stage in the litigation, after depositions have been completed in the first-party action and started in the third-party actions. Third-party defendants Settia, Moe, Bhandari and the Rao third-party defendants take no position on plaintiff’s request to amend the complaint to add a cause of action for negligent hiring against Wyckoff in regards to third-party defendant Chendrasekhar.

After due deliberation and consideration and based on the foregoing papers, plaintiff’s motion to amend is granted only as it relates to third-party defendant Chendrasekhar and his employment with defendant Wyckoff. In the absence of prejudice or surprise to the opposing party, leave to amend a pleading should be freely granted unless the proposed amendment is palpably insufficient or patently devoid of merit (*Thomsen v. Suffolk County Police Department*, 50 AD3d 1015, 1017 [2nd Dept. 2008]). Furthermore, “on a motion for leave to amend, plaintiff need not establish the merit of its proposed new allegations..., but simply show that the proffered amendment is not palpably insufficient or clearly devoid of merit” (*MBIA Insurance Corporation v. Greystone & Co., Inc.*, 74 AD3d 499, 500 [1st Dept. 2010]), which plaintiff has done. Plaintiff’s counsel’s affirmation along with supporting evidence and relevant documentation regarding third-party defendant Chendrasekhar’s disciplinary proceedings are sufficient to support a showing of merit for a claim against defendant Wyckoff for negligent hiring, retention and supervision regarding third-party defendant Chendrasekhar.

Accordingly, plaintiff’s motion to amend is granted only as it relates to third-party defendant Chendrasekhar and his employment with defendant Wyckoff and plaintiff is ORDERED, to serve a copy of the amended pleadings within thirty (30) days of the date of this decision and order.

This constitutes the decision and order of the court.

ENTER



 I.S.C.
 HON. LAURA JACOBSON

FILED
 APR 22 2015
 KINGS COUNTY CLERK'S OFFICE