

<b>Flanders v Boachie-Adjei</b>
2016 NY Slip Op 30503(U)
March 18, 2016
Supreme Court, New York County
Docket Number: 805437/2014
Judge: Joan B. Lobis
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.

**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY: IAS PART 6**

-----X  
BETHANY FLANDERS,

Plaintiff,

Index No. 805437/2014

-against-

**Decision, Order  
and Judgment**

OHENEBA BOACHIE-ADJEI, M.D., MATTHEW CUNNINGHAM, M.D., PH.D., VICTOR ZAYAS, M.D. EAST RIVER MEDICAL ANESTHESIOLOGY, P.C. ROBBYN SOCKOLOW, M.D., MARY F. DIMAIO, M.D., MARY F. DIMAIO, M.D., P.C., HYUN SUSAN CHA, M.D., STEPHANIE PERLMAN, M.D., SEENA ABRAHAM, M.S., B.S., PEDIATRIC CARDIOLOGY OF ROCKLAND PLLC, SUSHMA REDDY, M.D., SHIELA L. CARROLL, M.D., LEONARDO LIBERMAN, M.D., MARTHA KUTKO, M.D., DEYIN DOREEN HSING, M.D., STEVEN PON, M.D., LAWRENCE SIEW, M.D., THE NEW YORK SOCIETY FOR THE RELIEF OF THE RUPTURED AND CRIPPLED, MAINTAINING THE HOSPITAL FOR SPECIAL SURGERY d/b/a HOSPITAL FOR SPECIAL SURGERY, HOSPITAL FOR SPECIAL SURGERY PHO, INC., THE NEW YORK AND PRESBYTERIAN HOSPITAL, a/k/a NEW YORK-PRESBYTERIAN HOSPITAL, WEILL CORNELL PHYSICIANS and WEILL CORNELL MEDICAL COLLEGE,

Defendants.

-----X  
Defendant Hospital for Special Surgery, PHO, Inc. moves to dismiss the claims asserted against it on the ground that it is not a proper party to this lawsuit. According to the motion, movant is a separate entity from New York Society for the Relief of the Ruptured and Crippled, maintaining the Hospital for Special Surgery, also known as the Hospital for Special Surgery (Hospital for Special Surgery). It argues that the entities have different corporate officers and Boards of Directors, that movant has never gone by the name of the other entity, and that movant was incorporated in 1996, well over a hundred years after Hospital for Special Surgery was incorporated. Moreover, movant states, unlike Hospital for Special Surgery its purpose is not

to operate on or otherwise treat patients, but to negotiate managed care contracts with third-party payors. Accordingly, movant does not even own or operate a medical facility.

In support, movant points to its certificate of incorporations, which states, at paragraph nine, that it lacks the power “to establish, operate, or maintain a hospital or to provide hospital service or health related services, or to operate a home care services agency, a hospice, a health maintenance organization, or a comprehensive health services plan.” Further, the paragraph states that movant has no authority to practice medicine. Additionally, movant submits a copy of the certificate of incorporation of the Hospital for Special Surgery, which sets forth that its purpose is to maintain a hospital and hospital branches for the treatment of inpatients as well as outpatients, along with its research, clinical training, and other related purposes. The affidavit of movant’s executive director, Eric Dworkin, attests to the limited role of movant, and concludes that movant neither treated plaintiff nor managed or oversaw the treatment plaintiff received at the Hospital for Special Surgery. Movant also submits a copy of a letter from Mr. Dworkin to plaintiff’s counsel requesting discontinuance against movant on the basis of the above facts.

Based on the above, the Court grants the motion. Plaintiff’s arguments in opposition have no merit. Plaintiff contends that Mr. Dworkin’s affidavit cannot be considered, because he asserts it based on information and belief and it is not documentary evidence. Mr. Dworkin’s affidavit, however, is based on his personal knowledge as to the facts before the Court as well as upon information and belief,<sup>1</sup> and is submitted to support movant’s claim that it is not a proper

---

<sup>1</sup> Mr. Dworkin cannot speak to the history of the Hospital for Special Surgery in the 1800s other than on information and belief but speaks to the role of movant based on personal knowledge, as he has served as its executive director since 1999, three years after its formation.

party rather than as documentary evidence. The documentary evidence – in particular the two certificates of incorporation – show that movant is a separate entity which does not have the capacity to provide any medical services. As for plaintiff's statement that movant may still be the direct employer of the numerous doctors against whom she brings this lawsuit, as movant cannot operate a hospital or provide medical services and does not employ the individually named defendants, it is not vicariously liable for their medical treatment of plaintiff.

Accordingly, it is ORDERED that the motion is granted, the action is dismissed as to movant Hospital for Special Surgery PHO, Inc., and the caption is amended to read:

-----X  
BETHANY FLANDERS,

Plaintiff,

Index No. 805437/2014

-against-

OHENEBA BOACHIE-ADJEI, M.D., MATTHEW CUNNINGHAM, M.D., PH.D., VICTOR ZAYAS, M.D. EAST RIVER MEDICAL ANESTHESIOLOGY, P.C. ROBBYN SOCKOLOW, M.D., MARY F. DIMAIO, M.D., MARY F. DIMAIO, M.D., P.C., HYUN SUSAN CHA, M.D., STEPHANIE PERLMAN, M.D., SEENA ABRAHAM, M.S., B.S., PEDIATRIC CARDIOLOGY OF ROCKLAND PLLC, SUSHMA REDDY, M.D., SHIELA L. CARROLL, M.D., LEONARDO LIBERMAN, M.D., MARTHA KUTKO, M.D., DEYIN DOREEN HSING, M.D., STEVEN PON, M.D., LAWRENCE SIEW, M.D., THE NEW YORK SOCIETY FOR THE RELIEF OF THE RUPTURED AND CRIPPLED, MAINTAINING THE HOSPITAL FOR SPECIAL SURGERY d/b/a HOSPITAL FOR SPECIAL SURGERY, THE NEW YORK AND PRESBYTERIAN HOSPITAL, a/k/a NEW YORK-PRESBYTERIAN HOSPITAL, WEILL CORNELL PHYSICIANS and WEILL CORNELL MEDICAL COLLEGE,

Defendants.

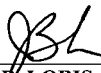
-----X

All further papers shall use the amended caption.

The Clerk is directed to enter judgment accordingly and to note the amended caption in the Court records.

Dated: *Mar. 19*, 2016

ENTER:



---

**JOAN B. LOBIS, J.S.C.**