

Brook v Peconic Bay Med. Ctr.
2016 NY Slip Op 31928(U)
October 12, 2016
Supreme Court, New York County
Docket Number: 650921/2012
Judge: Saliann Scarpulla
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
COUNTY OF NEW YORK: PART 39

-----X

ADAM BROOK, M.D., PH.D., and
ADAM BROOK, M.D., PH.D., P.L.L.C.,

Plaintiffs,

DECISION/ORDER
Index No. 650921/2012

-against-

PECONIC BAY MEDICAL CENTER,
RICHARD KUBIAK, M.D.,
DANIEL MASSIAH, M.D.,
AGOSTINO CERVONE, M.D.,
JAY ZUCKERMAN,
JOAN HOIL, R.N.,
DANIEL HAMOU, M.D.,
ANDREW MITCHELL,
and JOHN DOES #1-5

Defendants.

-----X

HON. SALIANN SCARPULLA, J.:

In this action, plaintiff Adam Brook, M.D. Ph.D. (“Dr. Brook”), moves to supplement the record on defendants’ motion to dismiss (mot. seq. no. 006). Defendants oppose the motion and cross-move for sanctions and to allow them to reply to Adam Brook, M.D., Ph.D., P.L.L.C.’s (“Brook PLLC”) memorandum of law.

For the purposes of this motion, familiarity with the facts and arguments made in the underlying motion to dismiss is assumed. Dr. Brook makes this motion after recently receiving documents pursuant to his Freedom of Information Act (“FOIA”) requests to the United States Department of Health and Human Services and to the National Practitioner Databank. Dr. Brook submits six exhibits: (1) an April 19, 2012 email from Kerry Courson to Linda Redmond; (2) Dr. Brook’s April 19, 2012 letter to Cynthia Grubbs; (3) Judy Rogers’s June 25, 2012 letter to Dr.

Richard Kubiak;¹ (4) Leonard Rosenberg's August 15, 2012 letter to Judy Rodgers; (5) Judy Rogers's October 12, 2012 letter to Dr. Richard Kubiak; and (6) a June 7, 2012 email chain between Ivy Vedamuthu and Dr. Anastasia Timothy. In addition to Dr. Brook's memorandum of law submitted in support of his motion, Brook PLLC additionally submits a memorandum of law on the motion, joining Dr. Brook's arguments "for the reason that the information offered on the Motion is newly discovered and relevant to defendants' pending Motion to Dismiss."

Defendants oppose the motion and cross-move for sanctions and to extend the time for them to respond to Brook PLLC's memorandum of law, which they assert is untimely. They argue that Dr. Brook's motion should be denied because Dr. Brook has not shown a valid reason to supplement the motion to dismiss, which has already been argued, the documents submitted are irrelevant, and Dr. Brook had most of the documents before the March 2016 argument on the motion. They also move for sanctions due to Dr. Brook's attack on defendants' counsel's character.

Discussion

Section 2214(c) of the CPLR states that "[t]he moving party shall furnish all other papers not already in the possession of the court necessary to the consideration of the questions involved."

Moreover,

[w]here such papers are in the possession of an adverse party, they shall be produced by that party at the hearing on notice served with the motion papers. Only papers served in accordance with the provisions of this rule shall be read in support of, or in opposition to, the motion, unless the court for good cause shall otherwise direct.

CPLR § 2214(c); *see also Traders Co. v. AST Sportswear, Inc.*, 31 A.D.3d 276, 277 (1st Dep't 2006) (internal citation omitted) ("Defendants also belatedly submitted papers containing a security deposit argument without demonstrating good cause, which was improperly relied upon by the IAS

¹ In his affirmation, Dr. Brook acknowledges that this document is already in the record in 652265/2013 as docket entry number 51, exhibit 12, but notes that it is not yet part of the record under this index number.

Court.”). Litigants may not seek to supplement the record with documents they had at the time their earlier motion papers were submitted. *See, e.g., In re Schleifer*, 2016 WL 1180184, *1 (Sur Ct, NY County, Mar. 25 2016) (denying motion for leave to supplement record on pending motions to dismiss where movants sought to add documents that “were available to them at the time their opposition to the motions to dismiss was filed and thus the arguments petitioners advance based on those documents could have been made in those opposition papers”).

Here, in opposition to the motion, defendants argue that Dr. Brook had five out of the six documents that he seeks to add to the record on the motion to dismiss at the time of the March 2016 oral argument on that motion. Dr. Brook does not deny this fact, nor does he explain why he did not submit these documents back then. Additionally, the one document that Dr. Brook did not have prior to the March 2016 oral argument—the April 19, 2012 email from Kerry Courson to Linda Redmond—does not affect the outcome on the motion to dismiss. *See In re Schleifer*, 2016 WL 1180184, at *1; *GSO Re Onshore LLC v. Sapir*, 29 Misc.3d 1234(A), 2010 WL 5071785, *6 (Sup Ct, NY County Nov. 24, 2010); *Nicoletti Gonson Spinner & Owen LLP v. York Claims Service, Inc.*, 2007 WL 3131002 (Sup Ct, NY County Oct. 4, 2007). Dr. Brook’s motion to supplement the record is therefore denied, and defendants’ cross-motion to extend the extend the time for them to respond to Brook PLLC’s memorandum of law is denied as moot.

22 NYCRR 130-1.1 (a) allows a court to award sanctions for “frivolous conduct.” 22 NYCRR 130-1.1 (c) states that “[f]or purposes of this Part, conduct is frivolous if . . . (2) it is undertaken primarily to delay or prolong the resolution of the litigation, or to harass or maliciously injure another.” In defendants’ cross-motion, they request sanctions for Dr. Brook’s attacks on the character of defendants’ counsel, Leonard Rosenberg.

In their reply papers on the motion to dismiss, defendants also requested that Dr. Brook be reprimanded for the statements related to defendants’ counsel that he made in his opposition

memorandum of law. In the decision and order on that motion, which is being rendered with the decision and order on this motion, I noted that there must be civility and collegiality from all parties appearing in this action. I understand that this case raises sensitivities for the parties. Nevertheless, I repeat here that, consistent with their clear ethical obligations (which apply to both self represented parties, represented parties, and attorneys) the parties shall not launch into unsubstantiated, character maligning attacks. At this time I decline to award sanctions against Dr. Brook, with the expectation that I will not need to address this issue again.

In accordance with the foregoing, it is hereby

ORDERED that plaintiff Adam Brook, M.D. Ph.D.'s motion to supplement the record on defendants' motion to dismiss is denied; and it is further

ORDERED that defendants' cross-motion for sanctions and to extend the time for them to respond to Adam Brook M.D. Ph.D. P.L.L.C.'s memorandum of law is denied; and it is further

ORDERED that the parties are directed to appear for a preliminary conference in Room 208, 60 Centre Street, on October 26, 2016, at 2:15 PM.

This constitutes the decision and order of the court.

DATE: 10/12/16


SALIANN SCARPULLA, JSC