

Perez v 139 Med. Facility, P.C.
2017 NY Slip Op 30989(U)
May 3, 2017
Supreme Court, New York County
Docket Number: 450552/2016
Judge: Joan B. Lobis
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY: IAS PART 6**

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TANIA VENTURA PEREZ, Administrator of the
Estate of RAMONA ANTONIA PEREZ, deceased,

Plaintiff,

Index No. 450552/2016

-against-

Decision and Order

139 MEDICAL FACILITY, P.C.; MUHAMMAD
MISHBAH-UL HAQUE; MUHAMMAD HAQUE JR., M.D.;
JEE SOOK LEE, M.D.; JACQUELINE FLORES, N.P.;
YASMINE JONES, N.P.; NATALIE WILSON, N.P.;
and MICHELLE CABRERA, P.A.,

Defendants.

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

Defendant Jee Sook Lee, M.D. (defendant) brings this motion seeking dismissal of the complaint and action against her with prejudice for lack of personal jurisdiction, re-argument and renewal of motion sequence 001, which sought an extension of time to serve her, retraction and reversal of the Court’s August 30, 2016 Order granting the extension, and summary judgment dismissal in her favor on the ground that the action against her is time-barred. Plaintiff cross-moves, seeking disclosure of defendant’s address. For the reasons below, the motion is granted to the extent of dismissing the action for lack of personal jurisdiction, and the cross-motion is denied.

Ramona Antonia Perez treated with defendant from February 3, 2009 until November 30, 2010 for various ailments including headaches, shortness of breath, and coughing. She died on March 11, 2014. Tania Ventura Perez (plaintiff) brought this medical malpractice

action on August 4, 2015 in the Bronx alleging plaintiff died from brain and lung and brain cancer that defendants negligently failed to detect and treat. Plaintiff attempted to serve defendant at Bronx Lebanon, where defendant worked until April 2011. On February 24, 2016, the Bronx Supreme Court granted change of venue to New York County. On August 30, 2016, this Court granted plaintiff's motion to extend the time to serve defendant for an additional 120 days. On September 29, 2016, plaintiff attempted to serve defendant at a condominium unit that defendant owns and leases out. On October 28, 2016 defendant answered asserting lack of personal jurisdiction and untimeliness. Now, through her new counsel, defendant brings the motion currently before the Court.

Defendant argues that this Court does not have personal jurisdiction because service has not been effectuated in the statutorily prescribed manner, and that it is irrelevant that she learned about the action by other means. Defendant contends that the statute of limitations expired on May 30, 2013, two-and-one-half years after decedent last treated with her, and that the Court had no authority to retroactively extend plaintiff's time to serve more than three years after its expiration. Defendant states that her motion to reargue and renew is not untimely because she was never served with the Order with Notice of Entry. She states that plaintiff's motion does not demonstrate due diligence because plaintiff's first effort to serve her was in August 2015, two-and-one-quarter years after the statute of limitations expired. She argues that plaintiff does not demonstrate a diligent attempt to ascertain her address or place or business and that she never consented to an extension of time to server her or authorized her prior attorneys to consent to such. She states that prior counsel's failure to oppose the motion is excusable law office failure, not sufficient to deprive her of her statute of limitations protection. She argues, moreover, that there

is no merit to the action against her. She contends that the continuous treatment doctrine does not apply because she did not treat plaintiff after November 30, 2010. She asserts that she will be prejudiced if plaintiff is allowed to proceed against her because the passage of time impaired her memory of plaintiff's treatment.

Plaintiff cross-moves, seeking denial of defendant's motion and a direction to defendant to provide her address as well as an additional extension of time to serve her. Plaintiff states that she could not have made the initial motion to extend time to serve earlier because the case was in the midst of a transfer from Kings to New York county. She also states that defendant is the landlord at the address she attempted service at and that there is no prejudice to defendant because she has been on notice. Plaintiff argues that as the action is timely because it was filed less than two years after the date of death and less than two-and-one-half years after the last date of treatment with the primary care physician group that defendant belonged to. Plaintiff asserts that because defendant was an admitted employee physician she is united in interest with defendant and the statute of limitations is sufficient as to defendant as long as it is sufficient to the physician group. Additionally, she argues the two are united in interest because the primary care group is vicariously liable for defendant's actions. Plaintiff states that due to the serious nature of decedent's complaints and prescription of medicine at each visit, defendant cannot argue the visits were routine and did not constitute continuous treatment. She contends that under CPLR section 2221, renewal and re-argument are untimely because they were not commenced within thirty days of service of the prior order. She also states that renewal is not appropriate because defendant does not bring facts to the Court's attention which were not available at the time the motion was made. She argues defendant has not demonstrated that failure to oppose the motion was unintentional.

Plaintiff also contends that lack discovery should bar summary judgment because discovery is necessary to determine whether dismissal is warranted and that defendant does not offer evidence to demonstrate a prima facie case for summary judgment.

In reply and opposition to the cross motion, defendant argues that the cross-motion only sought to obtain defendant’s address, and did not oppose the original motion, and thus the motion should be granted. She argues that plaintiff still does not demonstrate that she made any diligent effort to locate defendant’s proper address. She asserts that because she is not a proper party she should not have to provide her address and that forcing her attorney to turn over her address would violate attorney-client privilege.

The motion is granted to the extent that defendant seeks dismissal for lack of personal jurisdiction. The Court does not reach the issues of re-argument or renewal of motion sequence 001 because, regardless of the outcome, defendant’s timely motion to dismiss based on lack of proper service warrants dismissal of the action. Plaintiff does not demonstrate good cause for additional time under CPLR 306-b where during a 120-day extension, she made only one attempt to serve defendant and does not set forth any additional efforts made to obtain the correct address.

Therefore, it is

ORDERED that the motion is granted and the action is dismissed as to defendant Jee Sook Lee, M.D; and it is further

ORDERED that the caption is amended to reflect the discontinuance, and the new caption shall read:

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

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TANIA VENTURA PEREZ, Administrator of the
Estate of RAMONA ANTONIA PEREZ, deceased,

Plaintiff,

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NATALIE WILSON, N.P.;and MICHELLE CABRERA, P.A.,

Defendants.
-----X

All future papers shall use the amended caption; and it is further

ORDERED that within 15 days of this Order, plaintiff shall serve a copy of this order with notice of entry upon the County Clerk (Room 141B) and the Clerk of the Trial Support Office (Room 158), who are directed to amend their records to reflect such change in the caption herein.

Dated: *May 3*, 2017

ENTER: 

JOAN B. LOBIS, J.S.C.