

Maikish v Good Samaritan Hosp. Med. Ctr.
2017 NY Slip Op 32735(U)
December 19, 2017
Supreme Court, New York County
Docket Number: 805030/2016
Judge: Eileen A. Rakower
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 6

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Charles Maikish,

Plaintiff,

- v -

Good Samaritan Hospital Medical Center, Patrick Reid,
M.D., Steve Cagen M.D., and Long Island
Anesthesiologists PLLC,

Defendants.

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HON. EILEEN A. RAKOWER, J.S.C.

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805030/2016

**DECISION
and ORDER**

Mot. Seq. #001

Plaintiff Charles Maikish (“Maikish”) commenced this medical malpractice action (“Action 1”) by Summons and Complaint on January 21, 2016 against Defendants Good Samaritan Hospital Medical Center (“Good Samaritan”), Patrick Reid, M.D. (“Reid”), Steve Cagen M.D. (“Cagen”) and Long Island Anesthesiologists PLLC (“LIA”). Maikish alleges that the defendants departed from accepted standards of medical practice and failed to procure his informed consent. Pursuant to the Complaint, it appears that the alleged malpractice occurred between December 29, 2013 and January 13, 2014 at Good Samaritan. Good Samaritan, Cagen, LIA, and Reid interposed their Answers on February 16, 2016, March 8, 2016, March 8, 2016, and March 14, 2016 respectively. This action bears the Index Number 805030/2016.

Maikish also commenced a medical malpractice action by Summons and Complaint (“Action 2”) on May 17, 2016 against Defendants Steven Blau M.D. (“Blau”), Joseph A. Bonafede M.D. (“Bonafede”), August Da Silva M.D. (“Da Silva”), Kathleen O’Hara, M.D. (“O’Hara”), Khalid A. Noori, M.D. (“Noori”), James McHale, M.D. (“McHale”), Brian Weber, M.D. (“Weber”), Andrea Baierlein (“Baierlein”), Patrick Norton s/h/a Patrick Naughton (“Norton”), and Iram Ahsanuddin (“Ahsanuddin”). Maikish alleges that the defendants in this action departed from accepted standards of medical practice when they rendered medical care to him. Pursuant to the Complaint, it appears that the alleged malpractice

occurred between December 29, 2013 and January 13, 2014 at Good Samaritan. Blau interposed his Answer on June 13, 2016, Bonafede on June 22, 2016, Da Silva on June 27, 2016, O'Hara on June 27, 2016, Noori on June 29, 2016, McHale on July 6, 2016, Weber on July 6, 2016, Baierlein on November 2, 2016, Ahsanuddin on November 2, 2016, and Norton on November 16, 2016. This action bears the Index Number 805202/2016.

Presently before the court is Maikish's Order to Show Cause, pursuant to CPLR § 602, consolidating the above captioned action ("Action 1") with Action 2 for joint discovery and joint trial; permitting the defendants to assert cross-claims, directing the court clerk to transfer all of the filings from Action 2 into the earlier filed Action 1, and scheduling this matter for a preliminary conference so that a discovery schedule may be entered; and amending the caption accordingly.

The defendants do not oppose.

Consolidation

CPLR § 602(a) gives the trial court discretion to consolidate actions involving common questions of law or fact. Consolidation merges the separate actions into a single action to be disposed of by a single decision or verdict, in the case of a jury trial, and a single judgment with one bill of costs. (*Padilla v Greyhound Lines, Inc.*, 29 AD2d 495, 497 [1st Dept 1968].) After a consolidation, "the former defendants in the individual actions all become co-defendants, creating new opportunities for amending the pleadings to assert additional claims, counterclaims and cross-claims among newly conjoined parties." (Vincent C. Alexander, Practice Commentaries, McKinney's Cons Laws of NY, 2017 Electronic Update, CPLR § 602)

"[C]onsolidation is generally favored by the courts in the interest of judicial economy and ease of decision making where there are common questions of law and fact, unless the party opposing the motion demonstrates that consolidation will prejudice a substantial right." (*Amtorg Trading Corp. v Broadway & 56th St. Assoc.*, 191 AD2d 212, 213, 594 NYS2d 204 [1993]). The burden of demonstrating prejudice to a substantial right is on the party opposing consolidation. (*Sokolow, Dunaud, Mercadier & Carreras v Lacher*, 299 AD2d 64, 74, 747 NYS2d 441 [2002])." (*Amcan Holdings, Inc. v. Torys LLP*, 32 A.D.3d 337, 339 [1st Dep't 2006]).

Discussion

Although Maikish does not provide much detail in this instant Order to Show Cause, it appears from both Summons and Complains that there are common questions of law and fact with respect to whether any of the defendants committed malpractice at Good Samaritan between December 29, 2013 and January 13, 2014. (*Amtorg Trading Corp. v Broadway & 56th St. Assoc.*, 191 AD2d 212, 213, 594 NYS2d 204 [1993]). None of the parties demonstrate that consolidation will prejudice a substantial right because no opposition is submitted. (*id.*)

Wherefore, it is hereby

ORDERED that Plaintiff Charles Maikish's Order to Show Cause to consolidate Action 2 bearing Index Number 805202/2016 into Action 1 bearing Index Number 805030/2016 is granted without opposition and the consolidated action shall bear the following caption:

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Charles Maikish,

Plaintiffs,

- against -

Good Samaritan Hospital Medical Center, Patrick Reid, MD., Steve Cagen, M.D., Long Island Anesthesiologists PLLC, Steven Blau, M.D., Joseph A. Bonafede, M.D., Augusto Da Silva, M.D., Kathleen O' Hara, M.D., Khalid A. Noori, M.D., James McHale, M.D., Brian Weber, M.D., Andrea Baierlein, Patrick Norton, And Iram Ahsanuddin,

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Defendant.

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and it is further;

ORDERED that the pleadings in the actions hereby consolidated shall stand as the pleadings in the consolidated action; and it is further

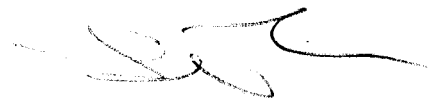
ORDERED that the co-defendants may amend the pleadings to assert any cross-claims; and it is further

ORDERED that Plaintiff Charles Maikish is directed to serve a copy of this order with notice of entry upon the Clerk of the Trial Support Office (Room 158) who is hereby directed to mark the court's records to reflect the consolidation; and it is further

ORDERED that the parties are directed to appear for a scheduled compliance conference on January 9, 2018 at 9:30 AM.

This constitutes the decision and order of the Court. All other relief requested is denied.

Dated: DECEMBER 19, 2017



Eileen A. Rakower, J.S.C.