

Lancia v Good Samaritan Hosp.
2017 NY Slip Op 33386(U)
September 14, 2017
Supreme Court, Rockland County
Docket Number: Index No. 035690/2016
Judge: Thomas E. Walsh II
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND

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ROBERT LANCIA and LISA LANCIA,

Plaintiff,

-against-

DECISION AND ORDER

Index No.: 035690/2016

Motion #1 - MD
DC - N
Adj:

GOOD SAMARITAN HOSPITAL, BON SECOURS HEALTH SYSTEM, INC., JEFFREY OPPENHEIM, M.D., JAMES MILLS, P.A., STANLEY KANH, M.D., HUDSON VALLEY BRAIN AND SPINE SURGERY, P.C., PATRICIA KNIGHT, R.N., MERCEDES NUNEZ, R.N. and ARUP KUMAR BHADRA, M.D.,

Defendants.

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Thomas E. Walsh II, J.S.C.

The following papers, numbered 1 to 3, were considered in connection with Defendant BON SECOURS HEALTH SYSTEM, INC.'s motion for an Order granting summary judgment against all claims, cross-claims and any and all related and/or derivative actions, pursuant to Civil Practice Law and Rules § 3211 and/or § 3212 since Plaintiff cannot maintain any causes of action against a Defendant that had neither a factual relationship with Plaintiff ROBERT LANCIA nor owed a legal duty to the Plaintiff, along with such other and further relief as to this Court may seem just and proper:

<u>PAPERS</u>	<u>NUMBERED</u>
NOTICE OF MOTION/AFFIRMATION OF HEATHER HARALAMBIDES, ESQ./ MEMORANDUM OF LAW/ EXHIBITS (A-J)	1
AFFIRMATION OF JORDAN K. MERSON, ESQ. IN OPPOSITION/EXHIBITS (A-E)	2
REPLY AFFIRMATION OF HEATHER HARALAMBIDES, ESQ./EXHIBIT A	3

Upon the foregoing papers, the Court now rules as follows:

Plaintiff moves for summary judgment, arguing that there is no medical relationship between Plaintiff and Defendant BON SECOURS HEALTH SYSTEM, INC. (hereinafter

BON SECOURS). Specifically, Defendant BON SECOURS asserts that they did not provide any care or services to the Plaintiff, that they did not manage, control or oversee the care of Plaintiff, and that they provided no employees or agents who managed medical services that were provided to the Plaintiff while he was in the Defendant GOOD SAMARITAN HOSPITAL facility. Further, Defendant BON SECOURS provided an Affidavit of Matthew Toddy, an Executive Vice President and General Counsel of BON SECOURS in which he states that Defendant BON SECOURS role is the employment of information system technicians who support the electronic medical system at Defendant GOOD SAMARITAN HOSPITAL, that GOOD SAMARITAN HOSPITAL is not a division or department of Defendant BON SECOURS and that Defendant BON SECOURS does not own or operate Defendant GOOD SAMARITAN HOSPITAL.

Defendants oppose the motion arguing that, (1) the instant motion by Defendant BON SECOURS does not comply with the undersigned's preliminary conference Order (from the bench) on May 10, 2017, is untimely based on the non-compliance with the Court's Order, is premature as the parties have not exchanged discovery or completed any depositions and that a factual dispute exists regarding ownership and management of Defendant GOOD SAMARITAN HOSPITAL. As to the first and second arguments, Plaintiffs have enclosed the transcript from the court appearance on May 10, 2017 in which the undersigned directed counsel for Defendant BON SECOURS to submit the instant motion for summary judgment by May 20, 2017¹ and have asserted that Defendant BON SECOUR's filing of the instant motion on May 24, 2017 was untimely with no excuse or justification for non-compliance. Plaintiff submits that based on Defendant BON SECOUR's failure to comply with this Court's Order the instant motion should be denied for untimeliness. Turning to Plaintiff's third argument, they aver that they have only been provided with the Affidavit of Mr. Toddy and have no underlying discovery regarding the

¹ The Court upon review of a calendar agrees with the parties that May 20, 2017 was a Saturday, and therefore the Defendant's motion would have been timely had it been filed on Monday May 22, 2017.

relationship between Defendants BON SECOURS and GOOD SAMARITAN HOSPITAL. Further, Plaintiff submits that based on letterhead of the medical records of Plaintiff from the subject surgical procedure Defendant BON SECOURS has failed to address or refute a material fact in the case that Defendant BON SECOURS owned, operated, controlled, supervised and/or managed Defendant GOOD SAMARITAN HOSPITAL.

The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, by tendering sufficient evidence to eliminate any material issues of fact from the case and to warrant a court to direct judgment in its favor, as a matter of law. [*Civil Practice Law and Rules* § 3212(b); *Giuffrida v. Citibank Corp., et al*, 100 NY2d 72 (2003), citing *Alvarez v. Prospect Hosp.*, 68 NY2d 320 (1986); *Zuckerman v. City of New York*, 49 NY2d 557 (1980)]. Failure to make such showing requires denial of the motion, regardless of the sufficiency of the opposing papers. [*Winegrad v. New York University Medical Center*, 64 N.Y. 2d 851 (1985)].

Once a moving party has made a prima facie showing of its entitlement to summary judgment, the burden shifts to the opposing party to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action. [*Alvarez v. Prospect Hosp.*, 68 NY2d 320 (1986); *Gonzalez v. 98 Mag Leasing Corp.*, 95 NY2d 124 (2000), citing *Alvarez*, supra; *Winegrad v. New York University Med. Center*, 64 NY2d 851 (1985)]. The opponent must assemble, lay bare and reveal his proofs, in order to show that the matters set up in his complaint are real and are capable of being established upon a trial. [*Di Sabato v. Soffes*, 9 AD2d 297 (1st Dept 1959)].

Summary judgment will be granted only if there is no triable issue of fact, issue finding, rather than issue determination, is the key to summary judgment, and the papers on the motion should be scrutinized carefully in the light most favorable to the party opposing the relief. [*Judice v. DeAngelo*, 272 AD2d 583 (2d Dept 2000)].

The Court notes that the Defendant failed to comply with this Court's motion

schedule issued from the bench on May, 10, 2017 and filed the instant motion two (2) past the date to file the instant motion. Further, a review of the transcript demonstrates that the undersigned indicated to the parties that any non-compliance with the motion schedule would be preemptorially marked against the parties. The date for Defendant BON SECOURS to file the instant motion was mistakenly set by the Court for a Saturday. The Court would have considered a filing of the instant motion on the following Monday, May 22, 2017 as timely. However, Defendant BON SCOURS' motion was not filed until May 24, 2017, making the motion untimely. Despite the untimeliness of the motion, the Court considered the arguments raised by Defendant BON SECOURS, as the filing of the motion two (2) days late had a minimal prejudicial effect on the parties to this action and Defendant's counsel has included an Affidavit accepting responsibility for the mistake. The Court reminds the parties that all orders and directives by this Court must be complied with as directed.

Turning to the arguments raised by the parties, the Court upon review of the Affidavit of Matthew Toddy finds that Defendant BON SECOURS application for summary judgment is premature, as the relationship between BON SECOURS and Defendant GOOD SAMARITAN HOSPITAL is unclear. In opposition Plaintiff has raised issues of fact that preclude the granting of Defendant BON SECOUR's motion for summary judgment. Further, in light of the fact that discovery has not yet begun, the Court finds the motion for summary judgment to be premature. [*Lantigua v. Mallick*, 263 A.D.2d 467, 468 (2d Dept. 1999)].

Accordingly, it is hereby

ORDERED that Defendant BON SECOURS motion for summary judgment (Motion #1) is denied with leave to re-file upon the completion of discovery.

The foregoing constitutes the Decision and Order of this Court on Motion #1.

Dated: New City, New York
September 14, 2017



HON. THOMAS E. WALSH II
Justice of the Supreme Court

TO:

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